

(2011) 01 CHH CK 0017
In the Chhattisgarh High Court
Case No : Writ Petition (227) No. 904 of 2010

Sukhdeo Singh Bachchu

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 11-01-2011

Acts Referred:

Forest Act, 1927 — Section 33(1)(a), 41, 52, 52(3)

Citation : (2011) 1 CG.L.R.W. 466

Hon'ble Judges : Sunil Kumar Sinha, J

Bench : Division Bench

Advocate : Vishnu Koshta, for the Appellant; Arun Sao, Govt. Advocate for the State, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, J.—Petitioner-Sukhdeo Singh Bachchu is the owner of Tractor No. CG 04/ZG-5388 and Trolley No. CG 04/ZG-5389. His tractor and trolley were seized by the Forest Authorities on 19-4-2008 on the ground that the said vehicles were engaged in illegal transportation of 9 logs of teak amounting to 0.432 cubic meters. On account of above seizure; forest offence No. 408/15 dated 20-4-2008 was registered under Sections 33(1)(a) and 41 of the Indian Forest Act, 1927 and proceedings of confiscation of the said vehicles were drawn u/s. 52(3) of the said Act. The Authorized Officer/Sub-Divisional Officer, West Kondagaon, Forest Sub-Division issued show-cause notice to the petitioner for confiscation on 22-4-2008. Reply was filed by the petitioner on 28-4-2008. Thereafter evidence of prosecution witnesses was recorded and the petitioner was also called upon to adduce his evidence in rebuttal. The petitioner examined himself on 16-9-2008 and contended that he was the owner of tractor and trolley. On 19-4-2008 his tractor and trolley was kept in the house of driver-Dhannu S/o. Mangal Murya, resident of Jamkotpara, Kondagaon. The driver without his knowledge and permission took the vehicles and ultimately on 20-4-2008, he came to know that the vehicles have been seized by the Forest

Authorities.

2. The Authorized Officer, on due consideration of the entire material available before him, passed the order of confiscation of the tractor and trolley on 16-12-2008 (Annexure-P/1). The petitioner thereafter filed an appeal before the Appellate Authority which was dismissed by the said authority on 15-4-2009 (Annexure-P/2), Thereafter the petitioner filed criminal revision No. 13/2009 (Annexure-P/4) before the Sessions Court which was also dismissed vide impugned order dated 11-12-2009. The petitioner, therefore, has filed this petition challenging the aforesaid orders passed by the said authorities and has prayed for restoration of possession of his tractor and trolley.

3. Mr. Vishnu Koshta, learned counsel appearing on behalf of the petitioner, argued that the driver of the petitioner used his vehicles without his knowledge which was proved on record. He also argued that the petitioner had taken all reasonable and necessary precaution that his vehicles may not be indulged in any illegal activity, but even after that the driver took the vehicles for transportation of certain articles from a marriage place and teak logs were allegedly found in the tractor while it was transporting the said articles. He argued that even his tractor was not engaged by him for transportation of articles from the marriage place. In the facts and circumstances of the case, when the vehicles were being used without his knowledge, they were not liable for confiscation u/s. 52(3) of the Forest Act.

4. On the other hand, Mr. Arun Sao, learned Govt. Advocate appearing on behalf of the State /respondents, opposed these arguments and supported the order of confiscation.

5. I have heard the learned counsel for the parties at length and have also perused the records of the writ petition.

6. Section 52 of the Indian Forest Act, 1927 provides for seizure of property liable to confiscation and procedure therefor. Sub-section (5) of Section 52 provides that no order of confiscation under sub-section (3) of any tools, vehicles, boats, ropes, chains or any other article (other than timber or forest-produce seized) shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorized officer that any such tools, vehicles, boats, ropes, chains or other articles were used without his knowledge or connivance or, as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of objects aforesaid for commission of forest-offence.

7. Admittedly, the petitioner was owner of the vehicles. Therefore, he was required to prove to the satisfaction of the authorized officer that the vehicles were used without his knowledge or connivance and he had taken all reasonable and necessary precautions against the use of vehicles for commission of forest offence. The petitioner has examined himself as DW-4. He deposed that he was an agriculturist and was also the owner of the said tractor & trolley. On

19-4-2008 his tractor-trolley were in possession of his driver-Dhannu who was keeping the tractor-trolley in his house. If the driver, on his own, would have taken the tractor-trolley to some place, he does not know about it-On 20-4-2008, he came to know that his vehicles have been kept in forest depot at kondagaon. In the cross-examination, he admitted that there was no agreement with his driver for driving the said tractor. The driver was driving his tractor on monthly wages. In the suggestion by the authorized officer, he admitted that "It is true that the driver, after plying the vehicles in the day time, used to keep them in his house, because the labours were residing in the same mohallah where the house of driver was situated." He deposed that he was under belief that the driver would not indulge his vehicles in any illegal act. Driver, Dhannu, has also been examined as DW-2. He admitted that on 19-4-2008 he was the driver of the aforesaid tractor. The tractor-trolley were kept in his house. He had taken the tractor to Kushma for bringing marriage articles which were given in the marriage of son of his neighbour. The prosecution has examined Ladru (PW-7), whose son was married. He deposed that he had not engaged the said tractor-trolley in the marriage of his son. However he admitted in the cross-examination that he cannot tell that how many persons were sitting in tractor and who said Chandan to call the tractor. According to the evidence of Ladru (PW-7), tractor was not engaged in the marriage of his son either through its owner or the driver. Almost all the forest officers who have been examined by the prosecution, deposed that Barat is were traveling in tractor & trolley who ran after the tractor was stopped by the forest authorities. It appears that Chandan, whose name comes in the cross-examination of Ladru (PW-7), had called the tractor and the same was engaged in Barat. However it does not appear that either the tractor was engaged through the owner or the owner was having knowledge of engagement of his tractor in the Barat. In such situation, therefore, it was responsibility of the driver and the person on whose instruction the timber was being transported and who may ultimately be liable for facing the penal consequences, but for their alleged illegal acts the vehicles of the petitioner cannot be confiscated.

8. Authorized Officer has recorded the finding that "The aforesaid illegal transportation was in the knowledge of the petitioner; had it not been in his knowledge, he would have lodged the report against his driver which was not done by him; the petitioner has contended that the tractor & trolley were kept by the driver in his house, but no agreement to this effect was filed". Merely not lodging the report by the owner against the driver would not lead to the conclusion that the illegal transportation was either in the knowledge of the owner or it was done with the connivance of the owner. To expect that some agreement would be there between the driver and the owner for keeping the vehicles in the house of the driver, in normal circumstances, appears to be unusual. In many situations, we have experience that the vehicles are kept in the houses of the drivers. It is not unnatural. In the present case explanation is also there that the labours were residing in the mohallah of the driver, therefore, the

tractor was kept by the driver so that he may bring the labours in tractor while coming to the house of the owner. In absence of any other evidence to the contrary, the defence taken by the petitioner, was established and the findings recorded by the authorized officer as confirmed by the Appellate Authority and the Sessions Court appear to be perverse. In fact, it was established that the vehicles were used without knowledge or connivance of the petitioner and also that the petitioner had taken all reasonable and necessary precaution against use of his vehicles for commission of forest offence as he had given the custody of the vehicles to none else than his duly appointed driver on whom he would have relied and trusted.

9. For the foregoing reasons, the writ petition is allowed. The order of confiscation dated 16-12-2008 (Annexure-P/1) passed by the Authorized Officer as also order passed by the Appellate Authority on 15-4-2009 (Annexure-P/2) and the order passed by the Sessions Court on 11-12-2009 (Annexure-P/4) are quashed. It is stated that the tractor and trolley are lying in the possession of the forest authorities since the date of their seizure i.e. 19-4-2008. The Forest Authorities are directed to hand over the seized tractor & trolley to the petitioner immediately. There shall be no order as to cost.