

(2001) 07 GUJ CK 0143
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 5274 of 2001 in Special Criminal Application No. 707 of 1998

Suleman Abdullah Hokla

APPELLANT

Vs

Deputy Conservator of Forests

RESPONDENT

Date of Decision : 16-07-2001

Acts Referred:

Citation : (2001) 07 GUJ CK 0143

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : M.A. Kharadi in Criminal Misc. application No. 5274 of 2001, for the Appellant; M.A. Kharadi and H.L. Jani, Addl Public Prosecutor for Respondent No. 2 in Criminal Misc. Application No. 5274 of 2001, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—Heard Mr.M.A.Kharadi, learned advocate appearing on behalf of the applicant - original respondent and Mr.H.L.Jani, learned APP on behalf of the respondent original petitioner.

RULE. Mr.H.L.Jani, learned APP appearing on behalf of the respondent - State of Gujarat waives service of rule.

2. In the present petition, the petitioner has challenged the order passed by this Court on 15th December, 2000 in Special Criminal Application No.707 / 1998 on the ground that the order has been passed by this Court in absence of the original respondent. The submission of Mr.Kharadi, learned advocate for the petitioner is that though the order has been passed by this Court on 15th December, 2000, the matter has been circulated on the Board of this Court on three occasions, viz, 13th March, 2001, 10th April, 2001 and 16th June, 2001. On 16th June, 2001, an endorsement made on the Board by the Registry to the effect that this matter is already decided on 15th December, 2000. Therefore, learned advocate has submitted that this order has been passed by this Court in

absence of the original respondent and hence, the present application has been filed with a request to condone the delay and further to recall the order which has been passed by this Court in absence of the original respondent.

3. This Court has passed order on 15th December, 2000 and even according to the cause title, none present for the respondent No.1. However, this Court has examined the merits of the matter and allowed the petition filed by the State of Gujarat. In such circumstances, this Court has not given sufficient opportunity to the learned advocate Mr.Kharadi to satisfy on merits and therefore, apart from the contention of the learned advocate that order was passed in absence, this Court is inclined to give full opportunity of hearing to Mr.Kharadi, learned advocate for the petitioner.

4. Initially, the Deputy Conservator of Forest, Chhotaudepur has passed order on 16th August, 1993 u/s 61(a)(2) of the Indian Forest Act and the vehicle in question was ordered to be confiscated by the concerned authority with direction that u/s 61-F, this property now be vested in the State Government free from all encumbrances and necessary direction has also been issued against the accused to the effect that now further prosecution will be initiated u/s 61-E. This order has been challenged by the original respondent before the appellate authority - Sessions Judge, Vadodara in Criminal Appeal No.13 / 1996. The Sessions Judge, Vadodara has passed order on 29th May, 1998 and modified the order passed by the Deputy Conservator of Forest and directed payment of Rs.9,000/as compensation and accordingly, the vehicle in question was ordered to be released by the Sessions Judge, Vadodara. This is that order which has been challenged by the State Government before this Court.

5. Learned advocate Mr.Kharadi has submitted that looking to the merits of the matter and considering the powers vested with the competent authority, the order passed by the Sessions Judge, is correct and the same does not require any interference of this Court. He also submitted that u/s 68 of the Indian Forest Act, the competent authority has powers to direct to pay compensation for the offence and vehicle which has been seized by the concerned authority. After this order, nothing remains against the original respondent and therefore, he submitted that there is no illegality committed by the Sessions Judge while modifying the order passed by the Deputy Conservator of Forest. Mr.Kharadi, learned advocate has relied upon unreported decision of this Court dated 5th August, 1997 delivered in Special Criminal Application No.800 / 1997 [Coram : N.J.Pandya, J.]. He also relied upon the division bench decision of this Court dated 21st December, 1998 in Letters Patent Appeal No.1154 / 1998 so also the reported decision in case of State of Gujarat Vs. Shantilal Mansukhlal Mistry and Others, . He also relied upon the decision in case of DINESHKUMAR VS. STATE OF M.P. AND OTHERS reported in 2000 [1] SSC 323.

6. As against that, Mr.H.L.Jani, learned APP Mr.H. L. Jani, appearing on behalf of the respondents has submitted that when the order has been passed by this Court on merits and opportunity of hearing was given to the original respondent

but inspite of this fact, the respondent had not remained present and in absence of the respondent, the Court has considered the merits of the matter and therefore, in light of this fact, this Court cannot review the order which is not permissible under the Code. Moreover, this Court cannot exercise powers u/s 482 and exercise of such powers and practice of filing the frivolous petitions after disposal of the main case is unwarranted. Therefore, the relief upon the recent decision of the Apex Court in case of HARISINGH MAN VS. HARBHAJAN BAJAWA reported in AIR 2001 SC 43.

7. Learned APP Mr.H.L.Jani has also relied upon the decision of the Apex Court in case of State of Karnataka Vs. K. Krishnan, , wherein the Apex Court while dealing with Section 17(1) of the Karnataka Forest Act, it is observed by the Apex Court that illegal transportation of forest produce - seizure and release of the forest produce / property used in commission of forest offence, liberal approach in matter is uncalled for and the vehicle seized for committing forest offences, shall not be normally be returned to party till culmination of all proceedings in respect of the said offence.

8. Before deciding the controversy raised in the present application, relevant provisions of law - Indian Forest Act, are required to be enlightened and therefore, the same are quoted as under :-

"Section 52 : Seizure of property liable to confiscation :- (1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, boats, carts or cattle used in committing any such offence, may be seized by any Forest Officer or Police Officer.

[2] Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made, provided that when the forest produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior."

Section 61 - Saving of power to release property seized.

- Nothing herein before contained shall be deemed to prevent any officer empowered in this behalf by the State Government from directing at any time the immediate release of any property seized u/s 52.

9. As per State Amendments, u/s 61-A Confiscation by Forest Officers in certain cases .. wherein a detailed procedure has been prescribed and u/s 61-B, prior to confiscation, a show cause notice is necessary. In the instant case, it was issued by the competent authority to the original respondents but no reply has been filed by the original respondent against said show cause notice which was issued

by the competent authority. However, learned advocate Mr.Kharadi has submitted that a personal statement has been made by the original respondent before the concerned authority. Order of confiscation has been passed u/s 61-B (2) by the competent authority. However, there is provision for appeal u/s 61-B and accordingly if any person aggrieved by any order passed u/s 51-A and 61-G, may within 30 days from the date of communication to him of such orders, an appeal to the Sessions Judge having jurisdiction over the area in which the property to which the order of release has been seized and the Sessions Judge shall after giving an opportunity of being heard to the appellant and the authorised officer or officers specially empowered u/s 61-G as the case may be, by such orders as he may think fit, confirming or modifying or annulling the order appealable against and this order has to be considered to be final.

10. Now relevant Section under which the Sessions Judge has exercised the powers u/s 68 wherein the powers to compound the offence and such powers are vested with the Forest Officer to accept from any person against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in Section 62 or Section 63, payment of a sum of money or, at his discretion, an undertaking in writing to pay a sum of money, by way of compensation for the offence which such person is suspected to have committed and as per provisions of Section 68(b) [as per State Amendments] when any property has been seized as liable to confiscation, to release the same on payment of, or at his discretion, or acceptance of any undertaking in writing to pay such sum of money, the value thereof as named or both as the case may be, to such officers, by the suspected persons if and custody shall be discharged the property if any seized shall be released and no further proceedings other than those u/s 82 were necessary shall be taken against such person or property.

11. In light of above referred relevant provisions of law, now I am examining the contentions raised by the learned advocate Mr.Kharadi. Learned advocate Mr.Kharadi further pointed out that the present petition has been filed by the State of Gujarat through the Deputy Conservator of Forest under Article 226 and 227 of the Constitution of India and therefore, the judgement relied upon by the learned APP Mr.H.L.Jani reported in AIR 2001 SC 43 is not applicable because this is not the matter pertaining to the relevant provisions of CrPC. He also submitted that in a decision reported in 2000 [1] SSC 323 wherein there is observations of the Apex Court when there is provisions to release the vehicle then on such occasion, the competent authority must have to take into account the same while passing the order of confiscation against the concerned person. I have considered all the decisions cited by Mr.Kharadi, of which, reliance is placed on a decision of the division bench of this Court in LPA No.1164 / 1998 dated 21st December, 1998, where this Court has examined the discretionary powers and released the vehicle after imposing penalty of Rs.40,000/- keeping in mind the value of the vehicle. The second decision relied upon by Mr.Kharadi is delivered by the learned Single Judge of this Court in Special Criminal Application No.800 / 97 decided on 25th August, 1997, wherein also this Court has

considered imposing penalty of lesser fine instead of confiscation but wherein according to the petitioner, it was a case where the petitioner - appellant can pray for mercy because there is no escape from the finding of the vehicle having been used in removal of forest produce unauthorisedly and in this background decision as to use of vehicle for the offending activity stood certainly be confirmed by the Ld.Sessions Judge when the matter was argued at length and on merits making attempts to get the tempo released on the basis as if vehicle is not involved in the offence. In above set of facts and circumstances, this Court considered fit to impose penalty of Rs.10,000/- and exercised discretionary powers in favour of appellant petitioner instead of confiscation of the vehicle. In a case between STATE OF GUJARAT VS. SHANTILAL MANSUKHLAL MISTRY AND OTHER reported in 1995 [1] GLR 860, wherein there is no dispute as to the proposition which has been decided by this Court that the authorised officer is empowered to confiscate forest produce in respect of which an offence is committed as also a vehicle used in the commission of the offence, but it is not absolutely obligatory to confiscate a vehicle. The Sessions Judge has power to modify an order passed by the authorised officer. However, this Court is also in full agreement with the said proposition settled by this Court.

12. In light of this fact, the Deputy Conservator of Forest has passed order after considering all the details how the vehicle was used and under which circumstances the forest produce were being taken by the original respondent. The entire incident has been narrated in detailed that what type of activities were being carried out by the respondent while taking away the forest produce in the tempo. Necessary Panchnama were also came to be recorded by the concerned authority and the original respondent has specifically mentioned that he purchased the jeep in question at the cost of Rs.75,000/from one driver Anwarbhai Shaikh at Godhara. How much quantity of the forest produce was taken away by the concerned respondent has also been mentioned in detail by the concerned authority. In all twelve persons were involved in the offending activities and a clear finding to that effect has been recorded by the concerned authority. After considering all these details so also considering the relevant provisions and looking to the facts and circumstances of the present case, ultimately, the Deputy Conservator of Forest taking into account the earlier offence which is at page-9 running page-19, committed by the very respondent , ultimately exercised the powers u/s 61(8)(2) and thereby confiscated the vehicle which was used in taking away forest produce unauthorised. Thereafter, in appeal, Sessions Judge has not considered any relevant material and simply looking to the value of the produce determined the penalty and directed to pay penalty and released the jeep.

13. However, dealing with the contention raised by the learned advocate Mr.Kharadi in the midst of the dictation that interference of this Court is required to be exercised in favour of the respondent even on the ground of mercy and sympathy which was also pleaded that even before the Deputy Conservator of Forest. But considering the submission, it is to be noted that the present

respondent has fairly admitted the offence and requested for mercy. But considering the overall facts and circumstances of the offence in question and considering the way in which the offence was attempted, in my opinion, the respondent does not deserve any sympathy and mercy and the relevant observations of the Apex Court in a case having identical facts reported in recent decision in case of State of Karnataka Vs. K. Krishnan, , which are quoted as under :-

"The provisions of the Act are required to be strictly complied with and followed for the purposes of achieving the object for which the Act was enacted. Liberal approach in the matter with respect to the property seized, which is liable to confiscation, is uncalled for as the same is likely to frustrate the provisions of the Act. Before passing an order for releasing the forest produce or the property used in the commission of the forest offence the Authorised Officer of the Appellate Authority has to specify the reasons which justify such release, apparently, prima facie excluding the possibility of such forest produce or the property being confiscated ultimately. Generally, therefore, any forest produce and the tools boats, vehicles, cattles etc. used in the commission of the forest offence, which are liable to forfeiture should not be released. This however does not debar the officers and the authorities under the Act including the circumstances of each case but only after assigning valid reasons. The liberal approach in the matter would perpetuate the commission of the more offences with respect to the forest and its produce which, if not protected, is surely to affect the mother earth and the atmosphere surrounding it. The Courts cannot shut their eyes and ignore their obligations indicated in the Act enacted for the purposes of protecting and safeguarding both the forests and their produce. The forests are not only the natural wealth of the country but also protector of human life by providing a clean and unpolluted atmosphere. When any vehicle is seized on the allegation that it was used for committing a forest offence, the same shall not normally be returned to a party til the culmination of all the proceedings in respect of such offence including confiscatory proceedings, if any. Nonetheless, if for any exceptional reasons a Court is inclined to release the vehicle during such pendency, furnishing a bank guarantee should be the minimum condition. No party shall be under the impression that release of the vehicle would be possible on easier terms, when such vehicle is alleged to have been involved in commission of a forest offence. Any such easy release would tempt the forest offenders to repeat commission of such offences. Its casualty will be the forests as the same cannot be replenished for years to come."

14. I have gone through the order passed by the Sessions Judge, Vadodara so also considered the settled legal position and the recent observations of the Apex Court. While exercising the powers u/s 68 of the Indian Forest Act, it is duty of the Sessions Judge to take into consideration two aspects as provided in the Section itself and accordingly, he ought to have taken into consideration the value of the forest produce which was admittedly taken away unauthorised by the respondent and the value of the vehicle so used in the commission of the

offending activities. These two aspects are part of the different sub sections of Section 68 and both are required to be taken into consideration but looking to the order passed by the Sessions Judge, it is quite apparent that only value of the forest produce was taken into consideration and accordingly imposed meager penalty while releasing the vehicle but the value of the vehicle which ought to have been considered mandatorily, seems to have been grossly ignored by the Sessions Judge. Therefore, according to my opinion, without going into detail of all these contentions based on technical defects raised by the learned advocate Mr.Kharadi to the effect that he was not heard by the learned Single Judge [Coram : S.K.Keshote, J.] while passing the order on 15th December, 2000, whether this application is maintainable or not ? Whether the powers can be exercised by this Court to recall the order but on thoughtful consideration of the merits of the matter, that too after giving full opportunity of hearing for one and half hours and even in the midst of the dictation, interruptions for advancing submission were also permitted, this Court is of the considered opinion that the order passed by the Sessions Judge being appellate authority u/s 68 is apparently erroneous on the face of the record. The Sessions Judge ought to have considered the mandatory provisions of Section 68 of the Act simultaneously with the evidence come on record in respect of the commission of the offence and the vehicle so used for said unauthorised illegal activities for commission of the offence but on the contrary, in the instant case the Sessions Judge has merely considered the value of the produce which was taken away of the respondent and the value of the vehicle was not at all considered and therefore, in my opinion, the order of Sessions has been rightly considered by this Court even in the absence of the respondent at the time of passing order on 15th December, 2000. In the result, the order passed by this Court [Coram : S.K.Keshote, J.] on merits of the matter on date 15th December, 2000 though in absence of the respondent, does not warrant any interference of this Court and therefore the same is confirmed accordingly. The present petition is dismissed accordingly at the threshold.