

(2018) 04 OHC CK 0102
In the Orissa High Court
Case No : W.P.(C) No.2385 of 2003

SUSANTA KUMAR BEHERA

APPELLANT

Vs

THE AUTHORIZED OFFICER-CUM-ASSISTANT CONSERVATOR
OF FORESTS, ANGUL DIVISION, ANGUL

RESPONDENT

Date of Decision : 20-04-2018

Acts Referred:

Orissa Forest Act, 1972 — Section 56

Citation : (2018) 04 OHC CK 0102

Hon'ble Judges : DR. A.K. RATH

Bench : Single Bench

Advocate : R.K. Mohapatra, S.J. Mohanty, S. Ratho,??D. Shit, K.K. Mishra

Final Decision : Dismissed

Judgement

Biswanath Rath, J. Â

1. This matter involves a challenge to the orders at Annexures-2 & 3 passed by the Authorized Officer-cum-A.C.F., Angul in C.P. Case No.6 of

2002-2003 and also an order in the First Appeal No.24 of 2002 passed by the Additional District Judge, Angul involving a forest offence.

2. This is a writ petition filed by the owner of the vehicle challenging the direction for confiscation and confirmation of the order of the confiscation

thereby in the appeal.

3. Short background involved in the case is that on 25.07.2002, the Excise Mobile Staff were on patrolling duty and during patrolling, they found, the

truck bearing No.OR-05-B-8109 came in high speed and rushed defying the signal of the patrolling party. To stop the vehicle and ultimately on

chasing, though the truck could be stopped but the driver escaped from the spot. On search operation, the Excise Staff found 74 pieces of Sal plank

loaded in the truck. On being informed, the Range Officer on seizure of the vehicle as well as the materials contained therein, initiated a Section 56 of the Orissa Forest Act proceeding. The confiscation proceeding after entering into evidence, in the conclusion was closed with the finding that the truck involved in an Forest offence and therefore, there was a direction for confiscation of both the truck bearing No.OR 05 B 8109 along with the wood seized there from to the Government. An appeal filed bearing First Appeal No.24 of 2002 also ended with an order of dismissal. Hence the present writ petition.

4. Shri Mohapatra, learned counsel appearing on behalf of Miss. Sabitri Ratho, learned counsel for the petitioner advancing his argument submitted that one Karunakar Sahu, S/o- Kirtan Sahu was engaged by the petitioner as the driver of the truck about 4 to 5 years back to the incident. The driver even though had been given strict instruction not to carry any forest goods without proper document but the driver involved in transporting the forest goods under the peculiar circumstance involving the request of the owner of the woods and also on receipt of some payment. The driver after the seizure of the vehicle came back to the owner of the vehicle and informed him about the seizure of the truck by the concerned authority.

5. Shri Mohapatra at the first step submitted that for the disclosure of the driver that he transported the forest produces under compelling situation, learned counsel for the petitioner contended that the owner of the vehicle cannot be held as responsible for such transportation and the driver ought to be held responsible for the offence. As second step learned counsel for the petitioner taking this Court to the evidence of the official witness contended that for the official witnesses categorically disclosing that the forest material seized are all "Ballah"/ "Rafters", there was otherwise no involvement of a forest offence. Shri Mohapatra under the premises that both the authorities below as well as the court below having failed to appreciate this aspect of the matter and thus have arrived at the wrong and illegal impugned order, requested this Court to interfere in both the impugned orders and set aside the same.Â Â

6. Shri K.K. Mishra, learned Additional Government Advocate, on the other hand, while strongly disputing the claim made by Shri Mohapatra, learned counsel for the petitioner, taking this Court to the seizure list, statement of the

persons, recorded at the time of seizure and the evidence of the official witnesses borne from the record as taking place during trial of the proceeding submitted that the claim of the petitioner that the official witnesses submitted that the forest material is in the nature of rafters and not Sal wood, is contrary to the materials available on record. There is no such statement by any concerned. Similarly, on the claim of the learned counsel for the petitioner that for the driver transporting the materials clandestinely but, under the peculiar circumstance the owner cannot be held as responsible. Shri K.K. Mishra taking this Court to the materials available on record including the statement recorded during the seizure contended that this is a plea not only against the materials available on record including the statement recorded but the same is also a plea doctored by the owner for the purpose of escaping from the rigour of punishment under Section 56 proceeding. It is under the circumstance, Shri Mishra prayed this Court for rejecting the writ petition.

7. Considering the rival contentions of the parties, on perusal of the statement recorded at the time of confiscation of the materials particularly the official witnesses and the evidence recorded during trial involving the original proceeding and on whole reading of the statement, this Court nowhere finds the official witnesses claiming Forest produces seized are Rafters. It is, on the other hand, there is a clear statement of the official witnesses indicating that the Forest produces includes "Choukatha" and "Kadi" and the same undoubtedly, goes to establish that there is no material disclosing in the remote scope that the forest produces seized are rafters.

Now coming to the plea of the owner on the basis of statement made by the driver, this Court finds, for the established involvement of forest offence entangling the vehicle of the owner, for the clear admission of the driver as well as the owner regarding transportation of forest materials without valid permit may be under whatever compelling circumstance, this Court finds, the plea of the owner in this regard is of no importance and this Court observes, for the vicarious liability of the owner of the vehicle for any misconduct committed by the driver and being the owner of the particular vehicle, the owner cannot escape from such liability. Â

8. Perused both the impugned orders as well as the records available on record, this Court finds no infirmity in either of the impugned orders leaving

no scope for this Court to interfere in the same.

9. Accordingly, this writ petition stands dismissed. No cost. Â