

(2007) 02 JH CK 0033

In the Jharkhand High Court

Case No : Letters Patent Appeal No. 567 of 2006

The State of Jharkhand and Others

APPELLANT

Vs

Binod Kumar Saria

RESPONDENT

Date of Decision : 22-02-2007

Acts Referred:

Bihar Saw Mills (Regulation) Act, 1990 — Section 10 13, 16(2), 5
Constitution of India, 1950 — Article 300A
Forest Act, 1927 — Section 41, 42, 43, 45, 49

Citation : (2007) 3 JCR 503

Hon'ble Judges : M.Y. Eqbal, J;D.K. Sinha, J

Bench : Division Bench

Advocate : Saibal Mitra, for the Appellant;

Final Decision : Allowed

Judgement

D.K. Sinha, J.—This appeal under Clause 10 of the Letters Patent at the instance of the State of Jharkhand is directed against the order dated 13.7.2006 passed in C.W.J.C.No. 2067/1999(R) whereby the learned Single Judge allowed the writ petition by quashing the order dated 12.12.1998 passed in Confiscation Case No 7/1998 and appellate order dated 7.7.99 passed in Confiscation Appeal No. 1/1999 and directed the appellants herein to calculate the value of the seized timber (Except the timber claimed by one Tahir Ali Ansari) on the basis of rate per cubic feet at which the timbers were being sold by the Forest Department and to pay the said amount to the petitioner-respondent within two months along with interest @ 6% p.a.

2. It is relevant to mention that 332 logs were seized from the saw mill of the respondent and a confiscation proceeding was initiated u/s 13 of the Bihar Saw Mills (Regulation) Act, 1990.

3. The brief fact of the case is that on 4.7.1998 raid was conducted in the saw mill of the respondent and 332 logs of the respondent were seized on the allegation that no valid papers about possession of such logs were shown and

simultaneously a criminal case against the respondent and a confiscation case against the logs seized were initiated.

4. Learned Counsel pointed out that in the criminal case the trial court acquitted the respondent vide judgment delivered on 22.5.2000. The respondent's saw mill was a licensee saw mill as granted u/s 5(b) of the Bihar Saw Mills (Regulation) Act, 1990.

5. The learned Single Judge quashed the impugned orders of confiscation in confiscation proceeding as well as in appeal on the ground that the genuineness of the documents produced by the respondent before the trial court in criminal case were not disputed by the appellants Forest Department. Learned Single Judge further observed that the appellant Forest Department failed to prove the allegation before the Trial Court and that the respondent was acquitted after full dress trial and not on technical ground. The Single Judge further observed:

Such judgment of the criminal court which has become final, has to be relied and respected over the quasi judicial order passed by the officers of the Forest Department. From the aforesaid facts, it further appears that the seizure was arbitrary and mala fide. In the circumstances, the impugned orders of confiscation are quashed.

6. Learned Counsel for the appellants submitted that Hon"ble the Single Judge failed to take into consideration that the respondent could not produce the transit permit in relation to the confiscated timbers as required under the provisions of Section 10 & 13 of Bihar Saw Mills (Regulation) Act, 1990. Admittedly, 332 pieces of logs were seized in the year 1998 by the Forest Department and at that time the age of such logs was assessed about only six months old whereas, the defence of the respondent was that the same was purchased in the year 1995 and the logs seized were from the same lots. The confiscation proceeding of forest produce or connecting materials/vehicle is contemplated u/s 52 subject to its appeal and revision respectively under Sections 52A, 52B of the Indian Forest Act whereas Regulation of Transit of forest produce and penalty for breach of rules are contained u/s 41 & 42 of the Indian Forest Act. Therefore, both the confiscation proceeding and the criminal proceeding are different in nature governed by different procedural law. In view of the above fact and provisions of law the order passed in a criminal proceeding by a court of criminal jurisdiction is not binding upon the order passed in confiscation proceeding having distinct jurisdiction.

7. Advancing his argument, the learned Counsel further submitted that the logs of the respondent were seized from the saw mill for non-production of valid papers and transit permits etc. whereas in the criminal proceeding the Court recorded the order of acquittal of the respondent only after considering the evidence and materials on record by giving finding that the prosecution could not be able to prove its case and not that the prosecution case was disproved.

8. Concluding his argument learned Counsel for the appellants submitted that

the relevant fact cannot be lost sight of that none of the seized logs from the saw mill of the respondent was having hammer mark of the Forest Department which is indicative that the same were not purchased from the Forest Department against the valid documents rather the logs were procured illegally by illegal felling of the woods.

9. Learned Counsel concluded that as regards the payment of value upon the valuation of the seized timber to the respondent, the Court can take notice that the species of the timbers which were seized viz. Semal, Palas, Beir, Doka & Chowra were perishable items which could not remain intact for long and were not disposed of in time pursuant to the direction of this Court dated 22.9.2000. Similarly law is very specific as per Section 43 of the Indian Forest Act, 1927, and to quote,

Government and Forest-Officers not liable for damage to forest produce at depot.-

The "[Government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest-produce while at a depot established under a rule made u/s 41, or while detained elsewhere, for the purposes of this Act; and no Forest Officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously or fraudulently.

Section 49 of the Indian Forest Act, 1927 is specific;-

Government and its officers not liable for damage to such timber.-

The 1[Government shall not be responsible for any loss or damage which may occur in respect of any timber collected u/s 45, and no Forest Officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

10. To sum up learned Counsel submitted that the order recorded by the criminal court by acquitting the respondent for the alleged offence is not binding upon the confiscation proceeding and that the appellants herein are competent officer to make search, seizure and confiscate the forest produce procured by illegal means.

11. Mr. A.K. Das, learned Counsel for the respondent submitted that the short question which falls for consideration in the instant letters patent appeal is as to whether the decision of a court of criminal jurisdiction is binding upon the decision taken in the confiscation proceeding initiated u/s 13(e) of Bihar Saw Mills (Regulation) Act, 1990.

12. Admittedly, the prosecution (Forest Department) failed to establish the charge against the respondent u/s 41, 42 of the Indian Forest Act before the criminal court of competent jurisdiction and that after meticulously examining the evidence adduced on behalf of the parties, the respondent was acquitted but for the same set of evidence the logs/timbers seized from the saw mill of the respondent was confiscated mainly relying upon the report of the I.F.S. Officer

attached with Dhanbad Forest Division. Mr. Das assailed the finding of confiscation proceeding on the ground as well, that only a couple of days ago the stock register of the respondent was verified by the Forest Beat Officer (Appellant No. 3) and finding no irregularity therein, he made endorsement with his signature and soon thereafter the logs were suspected to be brought without valid documents and were seized with mala fide intention by putting a heavy pecuniary loss to the respondent. It was out-rightly an illegal seizure of the timbers of the respondent for which he had given and produced the relevant documents and that without assigning cogent reason the documents were discarded by forest authority. He relied upon the decision reported in *State of West Bengal and Others Vs. Sujit Kumar Rana*, . The Apex Court in *State of West Bengal and Ors. v. Sujit Kumar Rana* observed:

This Court, however, is not oblivious of the fact that whereas the courts must give purposive construction to the provisions of such statutes which have been framed in public interest keeping in view the object thereof, but it must also be borne in mind that illegal seizure amounts to deprivation of property and by reason of an order of confiscation, the owner thereof is deprived of his right of property as contained in Article 300A of the Constitution of India. The rights of the parties are, therefore, required to be delicately balanced.

13. In *Divisional Forest Officer and Another Vs. G.V. Sudhakar Rao and Others*, it was clearly laid down by the Apex Court that the two proceedings are quite separate and distinct and initiation of confiscation proceeding is not dependent upon launching of criminal prosecution.

14. In *State of M.P. Vs. S.P. Sales Agencies and Others*, . The Apex Court observed:

In the case of *State of West Bengal Vs. Gopal Sarkar*, while noticing the view taken in the case of *G.V. Sudhakar Rao* this Court has reiterated that the power of confiscation is independent of any criminal prosecution for the forest offence committed. This being the position, in our view, the High Court has committed an error in holding that initiation of confiscation proceeding relating to Kattha was unwarranted as no criminal prosecution was launched.

15. Concluding his argument Mr. Das submitted that the learned Single Judge has rightly held that the appellants have acted in arbitrary and mala fide manner. The respondent was entitled to get back the seized timber or the amount upon valuation of the seized timber along with interest @ 6% p.a. on the said amount from the date of seizure till the date of payment.

16. Having regard to the facts and circumstances of the case we are of the firm view that confiscation proceeding in the instant case u/s 13(e) of the Bihar Saw Mills (Regulation) Act, 1990 is distinct from the criminal prosecution of the respondent u/s 41/42 of the Indian Forest Act, 1927. Section 42 of the Act envisages penalty for breach of rules made u/s 41 of the Act which prescribes imprisonment for minimum term of 6 months which may extend to two years or

with a minimum fine of 1,000/- rupees which may extend to 5,000/- rupees or with both.

17. In *State of West Bengal and Others Vs. Sujit Kumar Rana*, . The Apex Court observed:

A confiscation envisages a civil liability whereas an order of forfeiture of the forest produce must be preceded by a judgment of conviction. Although indisputably having regard to the phraseology used in Sub-section (2) of Section 59A, there cannot be any doubt whatsoever that commission of a forest offence is one of the requisite ingredients for passing an order of confiscation; but the question as to whether the order of acquittal has been passed on that ground and what weight should be attached thereto is a matter which, in our opinion, should not be gone into at this stage.

18. In view of decision referred to above we are of the firm view that both the proceedings have different and independent identity without overriding effect on each other. The criminal prosecution of the respondent was conducted under the procedural law as well as evidence Act relevant for the prosecution of an accused subject to conviction or acquittal but on the other hand in the confiscation proceeding of the timbers seized from the saw mill of the respondent various technical aspects were examined including the age of the seized timbers, its nature and species as well as the relevant documents produced by the respondent in the confiscation proceeding in support of his claim and it is relevant to mention that the burden of proof was upon respondent u/s 16(2) of the Bihar Saw Mills (Regulation) Act, 1990 and to quote:

Where, in any prosecution for an offence against this Act or rules made thereunder, it is established that any wood declared unlawful was seized in the premises of a saw mill of a person, or at any site where sawing was being done, it shall be presumed such person has contravened the provisions of this Act or rules, made thereunder until the contrary is proved, the burden of proving the same shall lie on the accused.

19. We further find that Section 43 of the Indian Forest Act speaks about the liability of the Government and authorized Forest officers and to quote:

Government and Forest-Officers not liable for damage to forest produce at depot.-

The "[Government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest-produce while at a depot established under a rule made u/s 41, or while detained elsewhere, for the purposes of this Act, and no Forest Officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously or fraudulently.

20. For the aforesaid reasons, this appeal is allowed and the impugned judgment passed by the learned Single Judge is set aside.

M.Y. Eqbal, J.

21. I agree.