

(2012) 02 KL CK 0002
In the High Court Of Kerala
Case No : C.R.P. No. 877 of 1999

The State of Kerala and Others

APPELLANT

Vs

K. Chandran Nair

RESPONDENT

Date of Decision : 06-02-2012

Acts Referred:

Kerala Forest Act, 1961 — Section 61A

Citation : (2012) 2 KarLJ 17 : (2012) 2 KLJ 17

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : M.P. Madhavankutty GP, for the Appellant; Rajesh Nair and Bijoy Chandran, for the Respondent

Judgement

S.S. Satheesachandran. J.

1. The revision is directed against the cancellation of the order of confiscation passed over a motor vehicle, a mini lorry, bearing registration No. KLI-5311, belonging to the 1st respondent u/s 61A of the Kerala Forest Act, 1961, for short, the "Act" by the Divisional Forest Officer, Punalur. The above vehicle allegedly involved in the commission of a forest offence was ordered to be confiscated, after conducting an enquiry issuing a show cause notice, and, hearing the 1st respondent/owner of the vehicle. That confiscation order was reversed and set aside in appeal by the District Judge, Kollam. Questioning the propriety, correctness and legality of the cancellation and setting aside of the order of confiscation by the learned District Judge, the State with the forest officials has filed this revision. Short facts involved in the case can be summed up thus:

The forest officials attached to the Range office, Pathanapuram apprehended certain persons while they were engaged in removing a log of timber from the banks of Kallada river at Madathil Kadavu. That log was one of the three cut pieces of the timber, which was found embedded in the Kallada river. An occurrence report was prepared over the detection of the forest offence, as indicated, and in the investigation of that case, it was revealed that the timber

embedded in the river after taken out was cut into three pieces and the other two pieces had already been transported in the lorry of the 1st respondent from the banks of the river to a saw mill and were sold. The timber logs unloaded at the saw mill and also the vehicle belonging to the 1st respondent in which the logs were transported were seized into custody. The vehicle however had been later released on interim custody to the 1st respondent subject to conditions imposed on orders passed by this Court in a writ petition filed by the respondent. The Divisional Forest Officer, Punalur, on the basis of the report of the Forest Range Officer, Pathanapuram, initiated confiscation proceedings over the vehicle issuing a show cause notice to the respondent as to why it should not be confiscated for commission of a forest offence. The 1st respondent had contended that the timber logs transported in his lorry were collected from a private property and the vehicle was not involved in the commission of forest offence. Repelling his objections and being satisfied from the materials collected in the case over the seizure of the logs and the lorry, the authorised officer ordered for confiscation of the vehicle. Allowing the appeal preferred by the owner, the learned District Judge has reversed that order expressing the view that the facts and circumstances presented in the case, at best, would only show of violation of the Kerala Forest Produce Transit Rules, 1975, for short, the "Transit Rules", for which, maximum penalty that could be imposed is only a sum of Rs. 500/-. Impeaching the correctness of that order, the revision has been filed.

2. I heard the learned Special Government Pleader (Forest) and also the learned counsel for the 1st respondent. The main thrust of argument canvassed by the learned Special Govt. Pleader was that the Transit Rules, the provisions of which had been applied to hold that the forest offence involved would invite only a penalty of Rs. 500/-, by the learned District Judge, who reversed the confiscation order, was totally inapplicable to the facts presented in the case. The 1st respondent/owner of the vehicle has taken a defence that the logs transported in his vehicle and unloaded in the saw mill were collected from a private property, but, that was not substantiated by him with any convincing material. Statements recorded from the persons apprehended, at the banks of the river, while they were involved in removing the cut pieces of timber during the enquiry by the Forest Range Officer and also the previous statement recorded from the owner/1st- respondent also, according to the Govt. Pleader, clearly demonstrate that the timber embedded in the river after being taken out were cut to pieces and two of such pieces had been transported in the vehicle of the 1st respondent to the saw mill. The owner did not plead and prove that the commission of the forest offence was without his knowledge nor that reasonable care had been taken by him to avoid the use of his vehicle in the commission of any such offence as alleged. He was not only the owner but the driver of the vehicle in which the logs were transported to the saw mill and later sold to the proprietor of that mill, makes it crystal clear that the forest offence using the vehicle in the transportation of the logs belonging to the Government was done with his

knowledge and participation, and as such, the vehicle used for the commission of such offence, according to the Govt. Pleader, is liable to be confiscated. An order of confiscation passed by the authorised officer was improperly and in fact unjustifiably interfered with by the learned District judge in appeal, that too, applying the provisions of the Transit Rules, which do not have any impact nor even any application to the facts and circumstances involved in the case, according to the Govt. Pleader.

3. Per contra, the learned counsel appearing for the 1st respondent/owner of the vehicle contending that no interference with the judgment rendered by the learned District Judge reversing the order of confiscation is called for in the proved facts of the case, assailed even the competency of the Divisional Forest Officer to pass the order of confiscation. The Divisional Officer of forests is not an authorised officer as covered u/s 61A of the Act, and a confiscation order over the property seized as involved in a forest offence under the aforesaid Section can be passed only by an authorised officer of the Government notified in the Gazette and such officer should not be below the rank of Assistant Conservator of Forests, is the submission of the counsel. The Divisional Forest Officer, who has passed the confiscation order is not a notified forest officer empowered to order such confiscation, is the further submission of the counsel. In respect of the forest offence relating to the timber removed from the banks of a river, some of the logs after being cut to pieces are alleged to have been transported in the lorry of the respondent to the saw mill, no prosecution has been launched hitherto is the submission of the counsel to contend that the order of confiscation of the vehicle was totally improper and unjustified. Adverting to Section 42 of the Act, it is contended that in respect of adrift and stranded timber as covered by that Section, it can be deemed to be the property of the Government only if such timber was found in an area notified by the Government but not otherwise. In the present case, it has not been established that the banks of Kallada river from where the adrift and stranded timber was allegedly removed was a notified area, is the submission of the counsel. Lastly, canvassing that the value of the timber allegedly transported in the vehicle is very meagre and it has no nexus with the value of the vehicle, the learned counsel urged that interference with the judgment passed by the learned District Judge reversing the confiscation order would be unjust, and as such, the revision is only to be turned down.

4. The learned Special Government Pleader (Forests) has made available the file containing the enquiry conducted in the confiscation proceedings. Perusing such records with the confiscation order and the judgment impugned with reference to the submissions made by the counsel on both sides, at the outset, it has to be pointed out that there was total non-application of mind by the learned District Judge in passing the judgment impugned reversing the order of confiscation of the vehicle passed by the authorised officer. As seen from the impugned judgment, the confiscation order issued is reversed on two reasons. No evidence was available on record to show that the timber found embedded in the river was a tree standing at any time in a reserve forest or that some one cut and removed

the tree from the reserve forest. When that was so, according to the court below, no forest offence could be stated to have been committed in respect of the timber logs transported in the lorry. The next reason formulated to reverse the order of confiscation was that the offence, if any, committed in transporting the timber logs in the lorry would only amount to a violation of Rule 23 of the Transit Rules, for which, the maximum punishment that could be imposed is only imprisonment which may extend to six months or with fine which may extend to Rs. 500/- or both. The absence of valid permit or pass as required by the Rules constituted the violation of Rule 23, that alone, could be gathered on the materials produced in the transportation of logs in the lorry was the view taken by the court below to reverse the order of confiscation relying upon *Bhargavan v. Divisional Forest Officer*, 1994(1)KLT29.

5. The vehicle, a mini lorry bearing registration No. KJLI-5311 owned by the 1st respondent was used for transportation of the timber logs from the banks of Kallada river to the saw mill and it was sold to the proprietor of that mill collecting the value thereof has been unequivocally admitted by the 1st respondent when his statement was recorded by the Forest Range Officer in the investigation conducted over the occurrence report registered in the case. In such statement, he had also admitted that such timber pieces transported in his vehicle were from a timber which was found embedded in the Kallada river and taken out by those who used his vehicle for transportation of the logs. When show cause notice was given, he had given a different version that the timber logs transported in his vehicle to the saw mill were collected from a private property. That defence canvassed by him retracting from the previous statement given before the Forest Range Officer remained without any evidence whatsoever. Even the 1st respondent has no case that he was not questioned by the Forest Range Officer immediately after registration of the occurrence report and his statement was not recorded during the course of such investigation. The accused involved in the forest offence, who removed the embedded timber from the river bank, cut them into pieces and transported them in the vehicle of the 1st respondent, had also given statements unequivocally admitting their complicity in the commission of the offence imputed. When such be the case, the learned District Judge was not at all justified in holding that no material was available before the authorised officer to show that the timber pieces transported in the vehicle of the 1st respondent were not collected from the embedded timber found in the river bank, which required to be treated as the property of the Government unless shown otherwise. In fact, the learned District Judge proceeded to hold that there was only violation of the Transit Rules in the transportation of the timber logs to the mill in the vehicle of the 1st respondent, without having any permit thereof, on the conclusion already formed that there was no material before the authorised officer to hold that the timber transported formed part and parcel of a timber embedded in the river. When the finding entered by the learned District Judge that there is no evidence on record to hold that the timber pieces transported in the lorry were not from a timber embedded

in the river is shown to be patently erroneous and unsustainable, the reasoning taken by him on the erroneous conclusion so formed to hold that in the transportation of the timber logs there was only violation of the Transit Rules, has no value at all. Further, the decision relied by the appellate authority (District Judge) in Bhargavan's case (cited supra) has no application to the facts of the present case. That was a case where an order of confiscation was passed over a lorry, in which, 100 teak poles were transported alleging violation of forest offence. Out of the 100 teak poles, six of them belonged to the Government and the rest purchased in an auction conducted in a forest depot. In fact, the transportation of the six teak poles belonging to the Government in the lorry with the rest formed the fulcrum of the confiscation order passed by the authorised officer. However, in appeal against that confiscation order, the appellate authority (District Judge) after holding that the finding of authorised officer that six teak poles were Government property cannot be sustained, confirmed the order of confiscation since the transportation of the teak poles in the lorry was done in violation of the Transit Rules. It was in such circumstance, this Court held that an order of confiscation of a lorry cannot be made for violation of the Transit Rules. The facts involved in this case are entirely different, as it was not a case of violation of the Transit Rules but commission of a forest offence as the timber pieces transported in the vehicle of the 1st respondent, even on his own admission in his previous statement before the Forest Range Officer, were taken out from a timber embedded in the banks of a river, which as u/s 42 of the Act has to be treated as the property of the Government.

6. Section 42 of the Act reads thus:

42. Certain kinds of timber to be deemed property of Government until title thereto proved, and may be collected accordingly:-

All timber found adrift, beached, stranded or sunk, all timber bearing marks which have not been registered u/s 39 or on which the marks have been obliterated, altered or defaced by fire or otherwise, and in such areas as the Government direct, all unmarked timber shall be deemed to be the property of Government unless and until any person establishes his right and title thereto, as provided in this Chapter.

Such timber may be collected by any Forest Officer or other persons entitled to collect the same by virtue of any rule made u/s 47 of this Act and may be brought to such stations as the Forest Officer may, from time to time, notify as stations for the reception of drift timber.

The Government may, by notification in the Gazette, exempt any class of timber from the provisions of this section, and may in a like manner, withdraw such exemption.

What the aforesaid Section postulates is that the timber found in the circumstances referred to shall be deemed to be the property of the Government unless and until any person establishes his right and title thereto. The timber

involved in the case, Kambakam, undoubtedly, is not an exempted category, and as such, if it was found adrift or embedded in a river bank, none other man the Government has title and right thereto. So much so, when a show cause notice is issued u/s 61A of the Act against the owner of the vehicle alleging that his vehicle had been used for commission of a forest offence in relation to a timber covered by Section 42 of the Act, even as per the rider placed under that Section, and also with the conditions to be satisfied by the owner u/s 61B of the Act to relieve him from an order of confiscation, the burden is squarely on him to bring in such materials as to why the vehicle should not be confiscated once it is shown that the timber transported in the vehicle shall be deemed to be the property of the Government. Without looking into those aspects, it is seen, the appellate authority has reversed the confiscation order passed by the authorised officer taking an erroneous view that the transportation of timber in the lorry of the 1st respondent constituted only violation of the Transit Rules. The impugned judgment by the appellate authority is wholly unsustainable.

7. There is no merit in the submission made by the learned counsel for the 1st respondent that the Divisional Forest Officer cannot pass an order of confiscation u/s 61A of the Act. Notification No. G.O.(P).206/75/AD dated 03/07/1975 published in the Kerala Gazette Ex. No. 349 dated 07/07/1975 as S.R.O.No. 560/75 clearly spells out the authority of the Divisional Forest Officer and his competency to pass confiscation orders as covered u/s 61A of the Act. The contention raised by the counsel that it must be shown that the timber adrift, beached, stranded or sunk in a river, to be considered as deemed property of the Government should be within areas Government have notified, is also not correct. It is only in the case of "unmarked timber" the applicability of areas notified by the Government, as stated u/s 42 of the Act has applicability. The notification published by the Government Notification No. 79512/F2/72/AD dated 24/05/1973, published in Kerala Gazette No. Ext.451 dated 24/05/1973 as S.R.O.No. 331/73 also clearly spell that in the case of unmarked timber Section 42 of the Act has application in Kochi and Kozhikode. So far as the unmarked timber alone, notification prescribing area, so as to treat such timber as deemed property of the Government is necessary, and, the rest of the timber as specified and covered under the Section, no notification of the area is required, and it shall be deemed to be the property of the Government unless and until it is otherwise shown. The culprits against whom the case was registered for commission of the forest offence have not been prosecuted hitherto by the forest officials is another circumstance canvassed by the counsel to contend that no interference against the cancellation of the confiscation order is called for in this case, cannot also be appreciated. Confiscation of the vehicle involved in the forest offence is not depended upon the prosecution of others who have committed such offence. Even in a case the culprits involved who committed the forest offence escaped from punishment for one reason or other, that cannot be canvassed as an excuse to avoid the confiscation of the vehicle which is used in the commission of a forest offence involving timber belonging to the Government. Perusing the

records of the case, it is seen, that the registration of the forest offence in the case was on 20.04.1991. After registration of the occurrence report, on the same day, the mini lorry of the 1st respondent was seized into custody. Towards the transporting charges of the two cut pieces of logs in the mini lorry, the respondent was paid a sum of Rs. 100/- by those who had collected the timber from the river. The 1st respondent/owner had no role other than the transportation of the cut pieces of timber in the removal of the timber from the river bank and cutting it into pieces. That would not relieve him from the confiscation ordered against his vehicle, in which, timber belonging to the Government was transported unless he is able to show that he had taken reasonable care to prevent the use of his vehicle in the commission of the forest offence and such transportation was made without his knowledge. Confiscation proceedings demand issue of a notice u/s 61B of the Act informing the grounds on which it is proposed to order confiscation, for violation of a forest offence. In that notice, he should be posted with the particulars of the case, the grounds on which an opinion has been formed by the authorised officer to initiate such proceedings against him. Strangely enough, in the show cause notice issued to the owner of the vehicle, it is seen, other than the preparation of the mahazer as to seizure of his vehicle by the forest officials, nothing more has been stated, for taking up proceedings against him u/s 61A of the Act. The Range Officer who conducted investigation over the occurrence report has formed an opinion that the timber transported in the vehicle of the 1st respondent was collected from a river bank, and thus a Government property, and as such, the vehicle seized is liable to be confiscated, that alone is stated in the show cause notice. No particulars were given in the show cause notice that the vehicle had been used for transporting the timber to a saw mill, other than that the timber transported was collected from a river bank. If we go by Section 61B of the Act, the show cause notice issued should specify the grounds on which the proposed confiscation is contemplated. The Forest Range Officer, who conducted the investigation has formed an opinion that the vehicle has been involved in a forest offence, without furnishing the particulars of the facts as to how and in what manner the vehicle had been used in the commission of the forest offence, cannot amount to furnishing of sufficient information to the person proceeded against regarding the ground for confiscation. In that context, it is also to be taken note of that it is the satisfaction of the authorised officer that has to form the basis for initiating proceeding for confiscation. Sub Section (2) of Section 61A of the Act clearly spells out that if authorised officer is satisfied that a forest offence has been committed in respect of a property seized under sub section (1) of Section 52 of the Act, he shall order confiscation. But, before passing an order of confiscation, issue of a show cause notice informing of the grounds on which the confiscation is proposed to be made should be issued to the person proceeded against. A reasonable opportunity for making a representation and also hearing is also to be provided, after issuing a show cause notice, to the person proceeded against. Where the show cause notice states only of the opinion formed by the Forest Range Officer that the vehicle seized had been used for transporting the

timber collected from a river bank, without any other particular as to where it was transported to or the use of the vehicle in the commission of the forest offence it cannot be stated that sufficient information as to the grounds for proceeding with confiscation against such vehicle enabling the person proceeded to make an effective representation was given under the notice. Reasonable opportunity to be afforded to the person proceeded against invariably demands a notice containing the grounds of confiscation of his lorry, a valuable property, belonging to him with necessary particulars indicating the involvement of such vehicle in the commission of forest offence. He has filed a representation and participated in the proceedings and that the defence set up by him that the timber was collected from a private property remained unestablished, and even such defence was against his own previous statement recorded by the Forest Range Officer, by themselves, cannot be canvassed to sustain the confiscation order passed in the case where the show cause notice issued to him is found to be defective in as much as information as to the grounds for confiscation was not supplied to the 1st respondent/owner of the vehicle. In the above circumstances, I find, a remission of the case to the appellate authority to decide the appeal afresh, as its judgment impugned in the revision is found to be unsustainable, is not warranted, especially where, it is seen, the confiscation proceedings have commenced nearly two decades ago. In a case of this nature, where reasonable opportunity of making a representation and of being heard supplying the person proceeded against with the grounds on which confiscation is contemplated has not been complied with, the order of confiscation passed by the authorised officer cannot be sustained. So much so, I find, the cancellation of the confiscation order made by the appellate authority is not liable to be interfered with though for different reasons stated above.