

(1998) 12 BOM CK 0088

In the Bombay High Court

Case No : Criminal Writ Petition No's. 631 and 703 of 1997

The State of Maharashtra and another

APPELLANT

Vs

Naim Emmamuddin Chikhalekar

RESPONDENT

Date of Decision : 01-12-1998

Acts Referred:

Evidence Act, 1872 — Section 3, 58, 9
Forest Act, 1927 — Section 52(2)

Citation : (1999) 5 BomCR 109

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Advocate : Pravin Singhal, APP and V.A. Gangal, for the Appellant;

Judgement

D.G. Deshpande, J.—Both these petitions arise out of the order passed by II Additional Sessions Judge (K.J. Paratwar), Thane by which the appeal filed by petitioner Naim Chikhalekar was allowed and order of the Authorized Officer (Conservator) Shahapur dated 3-1-1997 was quashed and the Truck bearing No. MA-04- C-3742 was allowed to be returned to petitioner Naim Chikhalekar on his execution of certain bond.

2. The State filed writ petition against this judgment because almost all the findings of the Additional Sessions Judge were in favour of the State but the order of releasing the truck in favour of Naim Chikhalekar was passed on technicality i.e. non-compliance to Rule Sic section 52(2) of the Forest Act. Where as Naim Chikhalekar, the owner of the truck, filed his petition challenging all the adverse findings of the Additional Sessions Judge.

3. I heard Mr. Gangal, the Counsel for the truck owner Name Chikhalekar and Mr. Singhal, the learned A.P.P. for the State in both the petitions.

4. It was strenuously contended by Mr. Gangal that even if the case of the forest department is accepted as it is, neither the driver of the truck, nor the owner, could be attributed the knowledge of the fact that the wood that was found in the

truck was the forest produce, and that the forest pass, that was issued, was in respect of some forest produce. Mr. Gangal also contended that owner Name could not be said to have any knowledge of the activities carried on by the driver of the truck and on that ground itself the findings of the Additional Sessions Judge is liable to be quashed. He further contended that since the Sessions Judge releasing the truck in favour of the owner on owner's execution of bond of Rs. 3/- lacs, the interest of the State is well protected and no prejudice is likely to be caused to the State, particularly in view of the affidavit and undertaking given by the owner Name that he would not use the truck for commission of similar offence or any other illegal purposes. Further it was contended by him that the forest pass was issued in the name of Fakir Mohamad Chikhalekar and even though the specific time was mentioned in the pass there were difficulties in the movements of the truck on account of heavy rains, and therefore, the delay that was caused in using the truck beyond the period of the pass was properly explained or was acceptable on its face at this stage. He, therefore, contended that the findings of the Additional Sessions Judge as against the truck owner were liable to be set aside and the petition of the State was liable to be dismissed.

5. On the other hand, the learned A.P.P. for the State contended that as per the affidavit of S.V. Mane, the Asstt. Conservator of Forest Wild life Division, Shahapur Dist. Thane, dated 3-11-1998, this petitioner Naim Chikhalekar was present at the time of seizure of the truck on the spot and this was not only merely grease of transporting the forest beyond the time specified in the forest pass put it was a clear cut case of theft of forest produce. He further contended that from the circumstances that were brought on record there was sufficient material which directly connected the truck owner, and the defence of ignorance raised by the truck owner could not be accepted.

6. He lastly contended that since the Additional Sessions Judge gave all the findings on facts in favour of the State, a grave error was committed by releasing the truck in favour of the owner on the basis of the so called non-compliance of the provisions of section 52(2) of the Forest Act.

7. I have given my anxious consideration to the submissions made by both the Advocates. So far as non compliance of section 52(2) of the Forest Act is concerned, I find that the reasonings given by the Additional Sessions Judge are totally wrong and uncalled for and his reliance upon the rulings of Karnataka High Court referred to in the Judgment is also wrong.

8. Section 52(2) of the Forest Act requires every forest officer seizing, any property under this section shall place on such property, or the receptacles or vehicle (if any) in which it is contained, a mark indicating that the same has been so seized. On the basis of this provision the learned Additional Sessions Judge came to the conclusion that not putting a mark on the vehicle ie. the truck of the petitioner was an illegality affecting the seizure of the vehicle, and therefore, the petitioner was entitled to get back his vehicle. I do not find any force in this

conclusion and reasoning because when the vehicle i.e the truck had registration number, it was in itself a mark, sufficient to identify the said truck and distinguish it from other trucks, hence not putting of any separate mark on the vehicle cannot be said to be an illegality resulting in and affecting the validity of the seizure.

9. So far as merits of the case are concerned, the affidavit of Mr. S.V. Mane, Asstt. Conservator of Forest has given four discrepancies in respect of the forest pass and the forest produce that was found in the truck, as under:-

- a) The pass was issued for Khair Kita where as the loaded material in the truck found to be Khair timber logs.
- b) The pass was valid for 10. 40 a.m. to 12. 40 noon on 7-7-96 where as the seizure of the truck took place at 3.00 p.m. to 3.30 p.m. during transport activity.
- c) The route indicated on pass was Rahur to Padagha whereas truck
- d) The pass was issued to load the material in the depot of Fakir Chikhalekar whereas the truck was found loading the material at other place (beda) quite away from the said depot and this fact has been admitted by the owner of the truck in his statement before authorized officer.

Apart from this, the Additional Sessions Judge has after giving facts of the case, given his reasoning for rejecting the entire defence of the truck owner. While doing so, he has also pointed out some discrepancies in the pass and the forest produce that was seized.

10. From the facts that are brought on record by the prosecution in this case, it has to be concluded at this stage that this is not a case of simple delay of few hours in using the forest pass, but this is a prima facie case of theft of the forest produce and illegal attempt to transport it. The discrepancies pointed out in the affidavit of Mr. S.V. Mane go to the root of the matter and they are required to be seriously considered at the time of trial.

11. So far as contention of the truck owner regarding his total ignorance in respect of the activities of the driver is concerned, firstly, he is falsified by the affidavit of Mr. S.V. Mane where in it is stated that at that time of seizure of the truck, the owner Name was present. Secondly, a perusal of the reply given by the truck owner to the show cause notice issued to him shows that the truck owner has admitted that on 7-9-1996 he has given his truck to Fakir Mohamad Chikhalekar for transportation of Kita. It is pertinent to note that this Fakir Chikhalekar is the same person in whose name the forest pass was issued. The truck owner has, further, stated in his reply that while transporting the kita there was valid forest pass bearing No. 650337 dated 7-9-1996 which was obtained from the forest officer, and there after the vehicle was carrying the kita to one Serekar, the contractor.

12. All these statements made by the owner of the truck in his shown cause

notice contradict his defence of total ignorance regarding the activities that were carried on or carried out by his driver. These admissions nullify his defence because it is clear from those admissions that he had given his truck for transportation of forest produce to Fakir Chikhalekar and he knew that the forest produce was being transported under the same forest pass issued on 7-9-1996. Since the criminal case is already pending, this Court need not express its opinion regarding the defence raised, but it is sufficient to show that the defence of total ignorance is contradicted by the admissions of the petitioner. Lastly, it was contended by Mr. Gangal that the interest of the State is well protected by undertaking given by the truck owner and bond for Rs. 3 /- lacs given by him. I do not find any force in this contention that when almost all the findings of the Additional Sessions Judge are in favour of the State and the defence of the truck owner is not found satisfactory at this stage, he is not entitled to get the custody of the truck. Hence the order:-

ORDER

Petition No. 631 of 1997 is allowed.

Rule is made absolute.

The order of the Additional Sessions Judge (K.J. Paratwar) Thane releasing the truck in favour of the truck owner is quashed. Respondent Naim Chikhalekar, the truck owner, is directed to hand over the truck to the forest Authority within fifteen days of this order.

Petition No. 703 of 1997 is dismissed.

Rule is discharged.

Copy of the reply given by the truck owner Name Chikhalekar is taken on record.

Certified copy expedited.

13. Petition allowed.