
(2004) 12 OHC CK 0027
In the Orissa High Court
Case No : Writ Petition (C) No. 3993 of 2004

Uday Chandra Pattnaik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 10-12-2004

Acts Referred:

Orissa Forest Act, 1972 — Section 2(1), 56(2), 56(2A)

Orissa Timber and Other Forest Produce Transit Rules, 1980 — Rule 12, 21, 212, 4, 5

Citation : (2005) CriLJ 1928 : (2005) 1 OLR 132

Hon'ble Judges : R.N. Biswal, J;P.K. Tripathy, J

Bench : Division Bench

Advocate : Prasanna Ku. Misra and S.K. Dash, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Biswal, J.—Order of confiscation u/s 56(2-A) of the Orissa Forest Act, 1972 (in short "the Act") passed on 7-5-2002 by the Authorised Officer-cum-Assistant Conservator of Forest, Keonjhar in O. R. No. 318-K of 2001-2002 is under challenge. By that order a jeep bearing Registration No. BIR 135 was directed to be confiscated.

2. On 29-10-2001, in course of regular patrolling, the forest officials chased, intercepted and searched the aforesaid jeep and found a case of illegal transportation of 11 pieces of hand sawn Sal sizes i.e. 9.59 cft. Show cause notice was issued to the petitioner as the owner of the vehicle and his younger brother Govinda Chandra Pattnaik as the driver of the vehicle. Show cause was filed by each of them. In his show cause, petitioner pleaded his ignorance regarding involvement of the jeep in carrying forest produce. The driver stated that on being requested by some unknown persons, he accepted the fare and loaded the said seized wood. Though both of them filed such show cause, they did not participate in the further enquiry. Thus, after examination of the witnesses the Authorised Officer conducted the enquiry and passed orders of

confiscation on the finding that the case of transporting of the forest produce without valid permit made out a forest offence because of breach of Rules 4, 12 and 212 of the Timber and other Forest Produce Transit Rules, 1980. Petitioner challenged that order in Misc. Appeal No. 12 of 2002 and learned District Judge, Keonjhar after hearing the parties remanded the case to the Authorised Officer with direction to allow the petitioner to cross-examine the witnesses and also to adduce evidence from his side.

3. The Authorised Officer permitted the petitioner to cross-examine all the witnesses except the Range Officer, Keonjhar and also recorded the evidence of witnesses, examined on behalf of the petitioner and the driver. On fresh assessment of the evidence on record, the Authorised Officer again passed an order of confiscation on 3-3-2003, reiterating his finding as noted above. Petitioner, challenged that order before the District Judge, Keonjhar in F, A. No. 9 of 2003. After hearing the parties, on 9-3-2004, learned District Judge confirmed the impugned order of confiscation and dismissed the appeal. Thus, the present writ petition has been filed by the registered owner of the jeep.

4. Learned counsel for the petitioner argued that the order of the Authorised Officer passed on 3-3-2003, should have been set aside by learned District Judge in view of the fact that notwithstanding the direction in the remand order the Authorised Officer did not recall the Forest Ranger for his cross-examination and, therefore, the whole enquiry is vitiated. While dealing with that aspect, learned District Judge in the impugned judgment, has negated the contention of the petitioner on the ground that when in their show cause the driver has admitted about seizure and the owner has pleaded his ignorance and the evidence of other forest officials, who intercepted and checked the vehicle have proved on record the vehicle being carrying the hand sawn Sal sizes, therefore, non-examination of the Range Officer who merely submitted the prosecution report is of no prejudice to the petitioner. Learned District Judge further recorded that petitioner wanted to prove his innocence by confronting the report of the Range Officer in which he has opined regarding the driver transporting the Sal sizes without the consent of the petitioner. In that respect, learned District Judge held that the burden of proving lack of vicarious liability being on the petitioner, he cannot get rid of the order of confiscation from the above-noted opinion of the Range Officer.

5. Even in course of hearing of this writ petition, except reiterating that on cross-examination of the Range Officer, the opinion relating to non-involvement of the petitioner could, have been proved nothing else was argued. It is found from the record that in the show cause not only the driver admitted but also the other Forest Officials who were examined and cross-examined also proved carrying of the hand sawn Sal sizes in the jeep. Therefore, if at all the Range Officer was not made available for cross-examination that automatically does not disprove the whole case of the prosecution relating to interception, search and seizure. On the other hand, the factum of seizure is an admitted fact. As rightly observed, by the learned District Judge if the petitioner wanted to take advantage of any opinion

expressed by the Range Officer in his enquiry report, then the petitioner could have examined that Officer from his side when the prosecution did not make that: witness available for cross-examination. Non-cross-examination of the Range Officer, in this case, at best may result in non-consideration of evidence given in examination-in-chief of that witness and nothing beyond that. Even excluding that evidence of the Range Officer, as it is seen from the impugned order and judgment of the Authorised Officer and the District Judge, case for committing a forest offence by carrying such hand sawn Sal sizes without valid transit permit makes out the case of the Department in support of the order of confiscation. Thus, the aforesaid contention of the petitioner is of no assistance to him in furtherance of his prayer to set aside the order of confiscation.

6. Learned counsel for the petitioner further argued that the show cause of the driver available in the confiscation proceeding was not filed by him and only his signature was obtained by the forest officials on a plain paper. He further stated that the driver in his evidence before the Authorised Officer stated about that aspect. That plea of the petitioner and the driver have been rejected by both the courts below for reasons recorded in that respect. We do not find any flaw or perversity in that respect. If the signature of driver was obtained per force or fraudulently it does not stand to reason as to why he kept quiet for such a long period even after the seizure of the jeep by the forest officials. In that respect, it be further noted that two witnesses have been examined by the petitioner to state that in fact a family had taken that jeep on hire to visit the Goddess Tarini at Ghatagaon, and that for no rhyme or reason the vehicle was detained by the forest officials. It does not stand to reason that the vehicle, as stated by the petitioner being his sole source of earning livelihood was detained by the forest officials without any valid reason and yet the petitioner as the owner or his brother as the driver kept quiet and complacent and did not approach the competent authority including the police or the Court. For the said reason, the Authorised Officer and the learned District Judge have rightly disbelieved such plea of innocence and non-liability of the owner introduced into the proceeding at a later stage and that too being contrary to the show cause filed by them. In the show cause filed by the petitioner, after the aforesaid seizure, he did not take any such plea. Therefore, the evidence which has been adduced from the side of the petitioner appears to be self-serving apart from being far from truth. Thus, we do not find any error in the appreciation of the evidence by the Authorised Officer and District Judge to reject such contention of the petitioner.

7. Section 56 (2-a) of the Orissa Forest Act reads as follows :--

"Where an authorized officer seizes any forest produce under Sub-section (1) or where any such forest produce is produced before him under Sub-section (2) and he is satisfied that a forest offence has been committed in respect thereof, he may order confiscation of the forest produce so seized or produced together with all tools, ropes, chains boats, vehicles or cattle used in committing such offence."

8. Rule-4 of the T.T. Rules lays down that except as provided in Rule-5 all forest

produce in transit by land, rail or water shall be covered by a permit to be issued free of cost by the Divisional Forest Officer or Assistant Conservator of Forest in that behalf. Hand sawn Sal sizes are forest produce as defined u/s 2(g)(1)(a) of the Orissa Forest Act. The same are not covered under Rule-5 of the T.T. Rules. Violation of Rule-4 of T.T. Rules is punishable under Rule-21. So, the jeep in question was used in commission of a forest offence.

Section 56(2-c) of the Orissa Forest Act reads as follows :--

"Without prejudice to the provisions of Sub-section (2-b), no order of confiscation under Sub-section (2-a) of any tool, rope, chain, boat, vehicle or cattle shall be made if the owner thereof proves to the satisfaction of the authorised officer that it was used without his knowledge or connivance or the knowledge or connivance of his agent, if any or the person in charge of the tool, rope, chain, boat, vehicle or cattle, in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.

In the case at hand as stated earlier the petitioner utterly failed to prove that his vehicle was used without his knowledge or connivance or the knowledge or connivance of the driver.

9. As an alternative, learned counsel for the petitioner argues for imposing a fine on the petitioner instead of confiscating his vehicle and in that respect, relies on the case of Gurudev Singh Rai Vs. Authorised Officer-cum-Asst. Conservator of Forests and Another, . Indeed a co-ordinate Bench of this Court laid down the ratio which supports the contention of the petitioner, but we are undone because of the well reasoned ratio propounded by the Apex Court in the case of State of Karnataka Vs. K. Krishnan, in which the aforesaid principle of the Orissa High Court has been superseded. Therefore, we are not inclined to accede to the aforesaid argument of the petitioner.

10. To sum up, we hold that the order of confiscation does not suffer from any illegality, perversity or jurisdictional error. Thus, we decline to interfere with the same. It appears from the judgment of the District Judge that during pendency of the aforesaid confiscation proceeding one application having been filed by the petitioner before this court was registered as O.J.C.No. 4248 of 2002, wherein order was passed on 22-4-2002, granting interim release of the vehicle in his favour. If that is so, then, on termination of the confiscation proceeding, it is for the State to take appropriate steps to secure possession of the said vehicle by applying coercive method if the petitioner does not voluntarily deliver the said vehicle before the authorised officer within a period of six weeks.

11. The writ petition stands dismissed.

P.K. Tripathy, J.

12. I agree.