(2018) 08 CHH CK 0153

Chhattisgarh High Court

Case No: First Appeal No. 11 Of 2003

State Of Chhattisgarh And Ors	APPELLANT
Vs	
Anil Kishore Mishra	RESPONDENT

Date of Decision: Aug. 10, 2018

Acts Referred:

- Indian Forest Act, 1927 - Section 74

Hon'ble Judges: Sharad Kumar Gupta, J

Bench: Single Bench

Advocate: R.K. Gupta, Arvind Dubey

Judgement

Sharad Kumar Gupta, J

1. In this first appeal the challenge levied is to the judgment and decree dated 29.10.2002 passed by the District Judge, Raigarh in Civil Suit No. 15-

B/2002 whereby and whereunder he partly allowed the respondent's suit.

2. It is admitted by the appellants that respondent was the owner of Maruti Van bearing No. DID 5390. On 7.10.1992 the said vehicle was seized on

the direction of appellant No. 2, S.D.O. (Forest), Raigarh and kept in Beladula Depot. The said vehicle was given in Supurdnama to respondent on

05.06.1993.

3. In brief the respondent's case is that the seizure on 07.10.1992 was illegal, at the time of seizure the said vehicle was in working condition and at the

time of Supurdnama dated 05.06.1993 the vehicle was in damaged condition. The appellant No.2 was Bailee and did not care the said vehicle as

prudent person, as a result the vehicle was damaged. On 05.06.1993 the panchnama was prepared. In repairing the said vehicle he had spent Rs.

32,000/-. He was deprived from the use of said vehicle during the seizure period.

4. In brief the case of appellants is that the said vehicle was given on Supurdnama to the respondent on furnishing the solvency. Before the

termination of the period of solvency, respondent was ordered to furnish new solvency certificate but he failed to do so, thus, on 07.10.1992 the said

vehicle was seized. At the time of the aforesaid seizure the vehicle was not in working condition. The vehicle was kept in a shed in good condition.

The suit is barred under Section 74 of the Indian Forest Act, 1927 (hereinafter referred to as 'Act of 1927').

5. The trial Court ordered the appellants to pay Rs. 43,500/- jointly and severally to respondent. Being aggrieved by the impugned judgment and

decree, the appellants preferred this appeal.

6. Counsel for the appellants vehemently argued that the trial Court had committed illegality while partly allowing the suit. The trial Court had not

appreciated the evidence in proper perspective. Thus, the impugned judgment and decree deserve to be set aside.

7. Counsel for the respondent argued that the judgment and decree are in accordance with the law and do not call for any interference.

8. Points for determination :-

There are following points for determination in this case -

(1) Whether the seizure dated 07.10.1992 of the said vehicle was illegal ?

(2) Whether at the time of the Supurdnama said vehicle was in damaged condition due to the negligent act of appellant No. 2 ? (3) Whether

respondent is entitled to get Rs. 43,500/- compensation as to damages along with interest from appellants.

(4) Whether respondent's suit is barred under Section 74 of Act of 1927.

(5) Relief and costs.

Point for determination No. 4 : Findings with reasons :-

9. For convenience, point for determination No. 4 is being decided first.

10. As per the provisions of Section 74 of the Act of 1927 no suit shall lie against any public servant for anything done by him in good faith under this

Act.

11. Respondent has filed the civil suit for the compensation alleging that seizure was illegal, said vehicle was damaged due to the negligent act of

appellant No. 2. Thus, it could not be said that the suit is barred under Section 74 of the Act of 1927.

Point for determination No. 1 : Findings with reasons :-

12. PW-5 Anil Kishore Mishra says in para 1 of his statement given on oath that the said seizure of 07.10.1992 was illegal.

13. DW-1 D.D. Patel, A.C.F., Bhupdevpur says in para 3 of his statement given on oath that six months after furnishing the solvency respondent

again did not furnish the solvency, thus, the vehicle was seized on 07.10.1992.

14. There is no such evidence on record on strength of which it could be said that said statement of DW1 D.D. Patel is not believable. Moreover,

PW1 Satish Pandey says in para 4 during his cross examination that this is true that said vehicle was seized on account of commission of offence

punishable under the Act of 1927. Moreover, P.W. 5 Anil Kishore Mishra says in para 12 during his cross- examination that he does not remember

that the period of the furnished solvency was till 28.08.1991. On 04.02.1992 and 17.02.1992 opportunities were given to him to furnish new solvency.

In these circumstances, this Court disbelieves the aforesaid statement of para 1 of PW 5 Anil Kumar Mishra and believes the aforesaid statement of

para 3 of D.W. 1 D.D. Patel.

15. After the appreciation of the evidence discussed herebefore and concerned admitted fact, this Court finds that, the seizure dated 07.10.1992 of the

said vehicle was not illegal. Therefore, the finding of the trial Court that the seizure dated 7-10-1992 was illegal, is set aside.

Point for determination No. 2 : Findings with reasons :-

16. P.W. 5 Anil Kishore Mishra says in paras 3 and 5 that when his vehicle was seized on 07.10.1992, it was in good condition but at the time of

Supurdnama the vehicle was in damaged condition. Some accessories were missing. Appellant No.2 had not cared the aforesaid vehicle as a prudent

man. The damage was caused due to negligent act of appellant No.2.

17. P.W. 1 Satish Pandey says in paras 1 and 2 of his statement given on oath that when the said vehicle was seized it was in good condition. When it

was given to respondent in Supurdnama he saw that said vehicle was in damaged condition, its some accessories were missing.

18. P.W. 2 Vinod Verma says in para 1 and 2 of his statement given on oath that on 03.10.1992 he had taken photographs of the vehicle of the

respondent and on 05.06.1993 he had also taken the photographs of the said vehicle at Forest Depot, Belladula.

19. P.W. 3 Rambali Vishwakarma and P.W. 4 Mahesh Kesharwani say in para 1 of their statement given on oath that said vehicle was in damaged

condition.

20. D.W. 1 D.D. Patel says in paras 3 and 5 that said vehicle was kept in shed in safe custody. The vehicle was given on Supurdnama on same

condition as it was seized.

21. As per the alleged panchnama Ex. P-1 dated 07.10.1992 the said vehicle was in bad condition and some accessories were missing.

22. As per the negatives Ex. P-2, Ex. P-3 and Ex. P-4, one Maruti van was in good condition. As per the negatives Ex. P-6 to Ex. P-20 one Maruti

van was in bad condition. Though in receipts Ex. P-5 and Ex. P-36 the vehicle No. is not mentioned but on the factor of probability this Court finds

that negatives Ex. P-2 to Ex. P-4, Ex. P-6 to Ex. P-20 belong to the said vehicle.

23. Looking to the above mentioned fact and circumstances of the case, materials placed on record, this Court believes on the aforesaid statement of

para No. 3 and 5 of P.W. 5 Anil Kishore Mishra, para 1 and 2 of P.W. 1 Satish Pandey, para 1 of P.W. 3 Ram Bai Vishwakarma and P.W. 4

Mahesh Kumar Kesharwani, Ex. P-2 to Ex. P-4, Ex. P-6 to Ex. P-20 regarding the said vehicle and disbelieves para 3 and 5 of D.W. 1 D.D. Patel.

24. After appreciation of the evidence discussed herebefore, this Court finds that, respondent succeeded to prove that at the time of the Supurdnama

said vehicle was in damaged condition due to the negligent act of appellant No. 2.

Point for determination No. 3 : Findings with reasons :-

25. This has been earlier decided that at the time of Supurdnama said vehicle was in damage condition due to negligent act of the appellant No. 2.

26. As per the cash memo Ex. P-37 respondent had paid 9,100/- to Gopal Vishwakarma, Lohari Garage on 15-9-1993 on account of repairing of the

said vehicle. As per case memo Ex. P-38 he had paid Rs. 14,480/- to Mahesh Automobile Works on 12-9-1993 on account of repairing. As per cash

memo Ex. P-39, he had paid Rs. 3,180/- to Mahesh Automobile Works on 12-9-1993 on account of repairing of said vehicle. As per the case memo

Ex. P-40 he had paid Rs. 1,800/- to Krishna Auto Electric Works for purchasing battery on 8-9-1993. As per cash memo Ex. P-41 he had paid Rs.

2,300/- to Ashok Seat Maker on 15-9-1993. As per Ex. P-42 he had paid Rs. 1,200/- to Tiwari TV Corner on 18-9-1993 for purchasing Tap Recorder

with speaker.

27. There is no such evidence on record on the strength of which it could be said that Ex. P-37, P-38, P-39, P-40, P-41, P-42 are not believable. Thus

this Court believes on Ex. P-37, P-38, P-39, P-40, P-41, P-42.

28. After appreciation of the evidence discussed herebefore this Court finds that the appellant had spent Rs. 9,100 + 14,480 + 3,180 + 1,800 + 2,300 +

1,200 = Rs. 32,060/- (round off Rs. 32,000/-) for repairing of aforesaid vehicle.

29. This has been earlier decided that seizure of the said vehicle on 7-10-1992 was not illegal. Thus, respondent is not entitled for any amount as

compensation during the period 16-2-1993 to 5-6-1993 on account of deprivation of use of said vehicle.

30. During the repairing period of the said vehicle, the respondent could not use it. For this period Rs. 6,000/- is just and sufficient amount. Thus, this

Court finds that the respondent is entitled Rs. 6,000/- as compensation for not using the said vehicle during the repairing period.

31. After the appreciation of the evidence discussed hereinabove this Court finds that respondent is entitled to get Rs. 32,000 + 6,000 = 38,000/-

compensation for damages along with interest from appellants. Thus, this Court affirms the finding of the trial Court regarding this point for

determination to the above extent. Point for determination No. 5 : Findings with reasons :-

32. After complete and full appreciation of the evidence, this Court finds that appellants have partly succeeded to prove their case, thus, appellants are

ordered to pay Rs. 38,000/- (Rupees thirty eight thousand only) jointly and severely to the respondent. They shall also pay him interest at the rate of

9% per annum from the date of presentation of plaint i.e. 16-2-1996 till realization of said amount.

33. The impugned judgment and decree of the trial Court are affirmed to the above extent.

34. Appellants shall bear their own costs as well as costs of respondent.

35. A decree be drawn up accordingly.