

(2008) 10 JH CK 0007

Jharkhand High Court

Case No: None

Md. Rahman

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Oct. 25, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226
- Forest Act, 1927 - Section 20, 33, 41, 42
- Penal Code, 1860 (IPC) - Section 413, 414, 420

Citation: (2009) CriLJ 1914 : (2009) 1 JCR 198

Hon'ble Judges: Dilip kumar sinha, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D.K. Sinha, J.

Petitioner has invoked the extra-ordinary writ jurisdiction under Article 226 of the Constitution of India for issuance of

appropriate writ/ writs, order/orders, direction/directions for quashment of the order impugned dated 19.2.2008, passed by the learned Chief

Judicial Magistrate, Chatra who refused to release the truck loaded with coal thereon of the petitioner bearing registration No. JH-09B-4141

seized in Simariya P.S. Case No. 76 of 2005, corresponding to G.R. Case No. 598 of 2005.

2. Prosecution story, in short was that the police raiding party on tip off, intercepted truck No. JH-09B-4141 which was carrying coal and that

attempted to escape at the sight of the police party. However, two persons were apprehended from the spot. On interrogation, one of the apprehended disclosed his name Md. Rahman who claimed to be the owner of the truck i.e. the petitioner in the present writ petition and the another disclosed his name Shiv Navain Pal, who claimed to be the driver of the another truck bearing registration No. BR-13G-4768. They disclosed the names of accomplice who escaped at the sight of the police party. On demand, no " document was produced by the petitioner- owner of the truck and therefore, the informant Officer-in-Charge of Simariya Police Station had reason to believe that the petitioner was carrying coal illegally on his truck with the nexus of other accused persons. The truck of the petitioner with the coal loaded thereon was seized in presence of the independent witnesses and the seizure list was prepared FIR was lodged for the alleged offence under Sections 420/413 and 414 of the Indian Penal Code, Sections 33/41 and 42 of the Indian Forest Act as also u/s 20 of the Forest Produce Regulation Act, which could be evident from the FIR.

3. Mr. Jitendra S. Singh, learned Counsel submitted on behalf of the petitioner that confiscation proceeding bearing Confiscation Case No. 2 of 2006 was initiated with respect to the seized truck and the coal loaded thereon in the Court of Authorised Officer-cum-Divisional Forest Officer, Chatra South Forest Division on the instance of the Investigating Officer of the instance case. In his causes shown the petitioner had pleaded before the confiscating authority that initially the alleged coal was being carried on a different truck bearing registration No. BR-13G-8375 from Sikni Colliery which was on its way to Giridih but during its journey, the truck developed some mechanical defects, as the truck suffered brake down, as unable to move further, the coal loaded thereon was transferred on the truck of the petitioner bearing registration No. JH-09B-4141 and the information in this regard was given to the Officer-in-Charge of Balumath Police Station. Consequent to which, written permission of the transfer of the coal on the truck of the petitioner was obtained, which could be evident from the endorsement made by the Officer-in-Charge of Balumath Police Station on the challan issued by the Sikni Colliery (Annexure-2).

4. Learned Counsel pointed out that the petitioner had produced repair parts purchase receipt of truck No. BR-13G-8375, issued by the Bharat

Motors, Balumath in order to substantiate his plea that he was carrying coal in his own truck bearing registration No. JH-09B-4141 on conversion

from truck No. BR-13G-8375. Petitioner had preferred a petition before the Chief Judicial Magistrate, Chatra on 4.8.2007 for release of his truck

No. JH-09B-4141 with the coal loaded thereon on the ground that the confiscation proceeding, which was initiated against the petitioner's truck

and others, was already dropped and the prosecution failed to establish that the coal was being carried illegally on the truck but the prayer for

release of his truck was rejected after six months on 19.2.2008 under the conjectures and surmises that the truck of the petitioner may be refused

for the same purpose and that the documents obtaining permission for the alleged transfer of coal from the truck No. BR-13G-8375 to the truck of

the petitioner was not produced before the Chief Judicial Magistrate.

5. Heard Mr. R.R. Mishra, G.P.-II on behalf of the respondent-State.

I find from the order dated 31.7.2007, passed by the Authorised Officer-cum-Divisional Forest Officer, Chatra South Forest Division that the

Confiscation Case No. 2 of 2006 against the truck of the petitioner and others was dropped mainly on the ground that the prosecution failed to

establish that the seized coal was forest produce and that the role of the truck owner in carrying coal from the forest and loading the same on his

truck could not be proved. It also could not be proved that the petitioner was a professional forest offender. The informant on the basis of

suspicion had intercepted the truck of the petitioner and therefore, benefit of doubt was given to the petitioner accordingly confiscation proceeding

was dropped.

6. I further find from the order impugned dated 19.2.2008, passed by the learned Chief Judicial Magistrate, Chatra that the Court failed to

appreciate that the truck in question was commercial vehicle which was seized on 25.9.2005 and was lying uncared in the Police Station premises

till February, 2008 and by that time, criminal case pending before him, arising out of Simariya P.S. Case No. 76 of 2005 could not be disposed of.

There was no impediment in the release of the truck of the petitioner in the backdrop as well that the prosecution failed to establish *prima facie* that the truck of the petitioner was carrying coal illegally from the forest area as the confiscation proceeding was dropped giving rise to a reasonable claim of the petitioner for the release of his truck during pendency of the G.R. No. 598 of 2005 without prejudice to its merit.

7. I find merit in this writ petition and accordingly truck No. No. JH-09B-4141 is directed to be released in favour of the petitioner on executing indemnity bond of Rs. 7,00,000/- (Seven Lakhs) and on production of connecting papers like registration/owner book in his favour, to the satisfaction of the Chief Judicial Magistrate, Chatra in Simariya P.S. Case No. 76 of 2005, corresponding to G.R. No. 598 of 2005 with the condition that the petitioner would not alienate the truck till disposal of the criminal case pending against him.

8. This writ petition is allowed.