
(2012) 06 JH CK 0044

Jharkhand High Court

Case No: Writ Petition (C) No. 1835 of 2002

Mahendra Arya

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: June 18, 2012

Acts Referred:

- Bihar Forest Produce (regulation Of Trade) Act, 1984 - Section 20
- Forest Act, 1927 - Section 41, 42, 52

Citation: (2012) 2 EFLT 791 : (2012) 3 JCR 430

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: B.K. Dubey, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Aparesh Kumar Singh, J.

Heard Learned Counsel for the parties. This writ application is directed against the order dated 5.8.1992 passed by the Divisional Forest Officer. Chatra in Confiscation Case No. 7/91. the order dated 10.9.1996 passed by the appellate authority in Confiscation Appeal No. 56/95 and the order dated 20.8.2001 passed by the revisional authority confirming the orders passed by the confiscating authority and the appellate authority, by which the truck in question has been ordered to be confiscated.

2. The brief facts of the case are that a case was registered under the provisions of Sections 41, 42 of the Indian Forest Act, 1927 and Section 20 of Bihar Forest Produce (Regulation of Trade) Act, 1984 against the petitioner, who is the owner of the truck in question, and three other persons, one being the driver of the truck and other being the khalasi, alleging that kathabiscuits weighing 1775 kgs were seized from

the compartment of the truck on confidential information. The name of the owner of the truck i.e. the petitioner was ascertained from the office of the District Transport Authority, Hazaribagh and a seizure list was prepared, however, the signatures of the accused persons were absent from the seizure list. On the basis of said complaint the case was tried before the Court of Judicial Magistrate being T.R. No. 1293/95 against the petitioner and three other accused persons for the offences under Sections 41, 42 of the Indian Forest Act and Section 20 of the Bihar Forest Produce (Regulation of trade) Act. The trial Court, wide judgment dated 21st September, 1995 acquitted the accused persons including the petitioner from the aforesaid charges as the prosecution has failed to prove the charges beyond reasonable doubt against the accused persons. The learned trial Court in para 17 of the Judgment has also recorded that none of the accused persons were arrested at the place of occurrence along with the seized katha biscuits. It also appears that name of the petitioner, who is the owner of the truck, was only found from the District Transport office. The learned trial Court has also expressed serious doubt from the statement of the witnesses of the prosecution, specially PW 5, the Range Officer, as per whose deposition the names of the accused persons have been disclosed but their names were not shown in the seizure list and other prosecution witnesses have also not disclosed the name of the accused persons. The trial Court, after appreciation of the evidences, proceeded to acquit all the accused persons including the petitioner, who is the owner of the truck, by the judgment dated 21st September, 1995. It has been submitted on the part of the petitioner that the impugned orders have been passed by the concerned authorities without application of mind specially the order in revision, which has been passed on 20th August, 2001 after passing of the order of acquittal in the criminal case for the offences under Sections 41, 42 of the Indian Forest Act and Section 20 of the Bihar Forest Produce (Regulation of Trade) Act, 1984. The Learned Counsel for the petitioner has drawn the attention of the Court to the provision of Section 52 of the Indian Forest Act, which relates to seizure of property liable to be confiscated. It is submitted that for the same forest offences the petitioner and others have been acquitted from the charges by the trial Court in a criminal proceeding and there is no justification to up-hold the impugned orders of confiscation of the truck in question. He has also drawn the attention of the Court to a judgment delivered by this Court in the case of Shamim Ahmad v. State of Jharkhand and another, being CWJC No. 3535/2003 delivered on 15th March, 2011 and reported in 2011 (3) JLR 36 in support of his contention and submitted that on identical circumstances, in a case of acquittal for forest offence u/s 41, 42 of the Indian Forest Act, the orders of confiscation passed by the authorities have been quashed by this Court.

3. Learned Counsel for the respondents, however, submits that the truck in question was involved in illegal transportation of forest produce namely katha biscuits measuring 1775 kgs kept in the compartment of the truck for which the owner cannot claim immunity from liability. However, Learned Counsel for the respondents

has not been able to justify the order of revisional authority after the acquittal of the three accused persons including the petitioner. In view of the aforesaid facts and circumstances and the fact that the petitioner has been acquitted of the forest offences in a criminal proceeding by the trial Court relating to the same incidence and that no direct involvement of the petitioner, who is the owner of the truck, has been found, the impugned orders of confiscation are hereby quashed and the writ petition is accordingly allowed.