

(1983) 12 KL CK 0022

High Court Of Kerala

Case No: O.P. No. 6346 of 1983

State of Kerala

APPELLANT

Vs

K.R. Pushpan

RESPONDENT

Date of Decision: Dec. 23, 1983**Acts Referred:**

- Kerala Forest Act, 1961 - Section 27, 61A, 61A(2), 61B(2)

Citation: (1984) KLJ 81**Hon'ble Judges:** V. Bhaskaran Nambiar, J**Bench:** Single Bench**Advocate:** P.V. Ayyappan, A.G., for State, for the Appellant; T.C.N. Menon and N. James Koshy, for the Respondent**Final Decision:** Allowed

Judgement

V. Bhaskaran Nambiar, J.

The State of Kerala challenges the order of the District Judge, Ernakulam, directing the release of a tempo van confiscated earlier by orders of the Forest authorities. The brief facts are these. The Tempo van, KRR 3769 belonged to Sri. P.D. Jose, the registered owner. It seems he has given it on hire to Sri K.R. Pushpan, the first respondent. The hirer has appointed his own driver and cleaner. On 10-2-1983 the cleaner who has a driving licence but no badge, took the vehicle out and it is said he had no permission of the hirer or the driver. It was not however an empty vehicle. It was loaded with freshly sawn timber pieces and the vehicle had some destination, for it was taken out to the public road, driven for some distance and intercepted by the public near a toll gate. It was thus not an innocent trip by an ignorant cleaner, though professedly the hirer disclaims any knowledge of the whole episode.

2. Criminal investigation commenced. Alerted, the forest authorities also swung into action. The forest authorities came to the conclusion that the timber pieces loaded in the van were portions of a "Pali" tree cut from the Malayattur reserved forest.

Confiscation proceedings were initiated u/s 61-A of the Kerala Forest Act. The Divisional Forest Officer is the authorised officer under the Act. He issued notice to the owner, the hirer, driver and others and passed an order confiscating the vehicle. He found that an offence u/s 27 of the Forest Act has been committed in respect of the sawn pieces found in the Tempo van, that the van was engaged for the transport of the said timber with the full knowledge of the person who was driving the vehicle, he was acting as the agent of the owner and the hirer and the vehicle itself was liable to be confiscated u/s 61 - A (2) of the Act.

3. This order thus binds, the owner, the hirer, the vehicle and others. An appeal was filed before the District Judge by the hirer alone, the first respondent. He did not implead even the owner of the vehicle. The District Judge reversed the order of confiscation and directed release. He found that the Cleaner had no authority to drive the vehicle, even though he was driving the vehicle during the course of his employment as a Cleaner, that no knowledge can be attributed to the owner or hirer, and taking into consideration the fact that the van was worth Rs. 80,000/- and was used for transporting illicit timber worth only Rs. 2001- the discretion exercised by the Divisional Forest Officer to confiscate was wrong and thus directed release.

4. Aggrieved by this order of the release of the vehicle, this writ petition is filed. The Divisional Forest Officer, the authorised officer moved this Court. The District Judge, Appellate Authority, was not impleaded. A preliminary objection that the primary authority under the Act cannot challenge the appellate authority's decision and that the District Judge, the Appellate Authority, has to be made a party to this proceeding was upheld by order dated 28-9-1983.

5. Thereafter the State of Kerala figures as the first petitioner and the District Judge has been impleaded. The defects have been cured and the petition has been heard on the merits.

6. Two questions arise for determination.

(a) whether the District Judge, sitting in appeal had jurisdiction to set aside confiscation of the vehicle without the owner on the party array.

(b) whether the District Judge has committed any patent error in releasing the vehicle.

7. Confiscation divests private ownership and possession and vests them in State ownership and control. The impact of the confiscation is intense and immediate. It affects the owner and arrests the user. When a vehicle is confiscated, it binds the owner and follows the vehicle in private hands.

8. In this case the registered owner of the vehicle has accepted and acquiesced in the order of confiscation. He can therefore no longer put the vehicle on the road. If he cannot do so, his agent, the hirer also cannot use the vehicle. If this be the correct position, can the hirer, without reference to the owner, and without the

owner even on the party array, obtain any order which will enable only the hirer to ply the vehicle, but not the owner. The hirer cannot have any rights higher than the registered owner. The rights of the hirer end with those of the owner. In this case therefore, when the hirer, filed the appeal without the owner even on the party array, the appellate authority could not grant relief to the hirer which is plainly inconsistent with the confiscatory order against the owner which has become final. Conflicting orders or decisions in respect of the same subject-matter are destructive of juristic approach and thought and cannot be countenanced in law. It is, therefore, clear that the order of the appellate authority the District Judge cannot be sustained on this account.

9. It is contended that the hirer is vitally interested in the case, for he has to pay the hire charges and if the vehicle cannot be put on the road, it is he and not the owner who suffers. If the vehicle itself is lost, if it can no longer be put on the road, the liability to pay hire charges may not arise if the principle of frustration of contract can be applied. It is however unnecessary to decide that aspect in this proceeding.

10. The counsel for the first respondent then contended that the owner of the vehicle was only a proper and not a necessary party to the appeal and a non-joinder was not fatal to the proceeding. He also stated that the State had acquiesced in the non joinder and did not raise this question before the appellate authority and therefore cannot be allowed to raise this point in writ court for the first time. If the relief granted by the appellate authority could not have been granted in favour of the appellant, it is no answer to state that the question is one of mere non joinder. It is a question of jurisdiction to grant the relief claimed by the party and jurisdiction is not conferred by acquiescence when there is none.

11. Even on the merits I am not satisfied that the vehicle should have been released. Relying on [Sat Pal Vs. State of Haryana](#), the learned counsel for the 1st respondent submitted that as the timber transported was of insignificant value, confiscation of a vehicle worth Rs. 80,000/- was disproportionate to the crime committed. In this case, there is no evidence regarding the value of the timber seized. In the decision of the Supreme Court the relevant passage reads thus:-

In the instant case there are special circumstances which clearly attract the application of the proviso and the order of confiscation ought not to have been passed by the Magistrate. To begin with, the appellant was not a party to the proceedings as he was not given an opportunity to show cause to the Court the circumstances under which the order of confiscation could be passed. Secondly, the truck of the appellant was a very valuable property and to order its confiscation merely because an attempt was made to export cattle fodder through it, would indeed be a very harsh order so as to work serious injustice to the appellant. Thirdly, there is no evidence to indicate that the truck which was used to carry the fodder was hired with the knowledge or concurrence of the appellant.

In this case the procedure prescribed and the principles of natural justice were applied and followed. The circumstances are telling and revealing. The owner, hirer and the driver remain in the background. The Cleaner, who also holds a driving licence, drives the vehicle - not an empty vehicle, but loaded with timber. When was the timber loaded in the vehicle? Who loaded the timber? Where did this timber come from? - from a nearby reserved forest where fresh felling was noticed. The lorry is taken out, not by a novice, but by a driver and not for pleasure, but for profit. The onus is on the owner to prove that the vehicle was used for transporting illicit timber without his knowledge and without his connivance and that he had taken all precautions against such use. Section 61B(2) of the Act reads thus:

Without prejudice to the provisions of sub-section (1) no order confiscating any tool, rope, chain, boat vehicle or cattle shall be made u/s 61A if the owner of the tool, rope, chain, boat, vehicle or cattle proves to the satisfaction of the authorised officer that it was used in carrying the timber, charcoal firewood or ivory without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the tool rope, chain, boat vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use.

The owner did not discharge this burden. Forest cannot be denuded and forest wealth cannot be dissipated. Pretended ignorance cannot cover resourceful attempts and protect sharp practices. Lenient view in such case is bound to affect public interest and will indirectly set this as an accepted pattern for illicit transport of forest produce. The District Judge committed a grave and patent error in setting aside the confiscation, exceeded the jurisdiction conferred on him and the order Ext. P2 in C.M. Appeal No. 36 of 1983 dated 22-7-1983 of the District Judge, Ernakulam is thus set aside and the order of the Divisional Forest Officer, Malayattoor, Ext. P1, No. C.1227/83 dated 12-5-1983, is restored. The Original Petition is allowed and the State will be entitled to its costs from the 1st respondent.