(2008) 12 AP CK 0016

Andhra Pradesh High Court

Case No: Writ Petition No. 13210 of 2002

Forest Range Officer		APPELLANT
	Vs	
K. Gopal Reddy		RESPONDENT

Date of Decision: Dec. 23, 2008

Acts Referred:

- Andhra Pradesh Forest Act, 1967 - Section 44(2)

Citation: (2009) 3 ALD 476 : (2009) 1 ALT 623

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: G.P, for the Appellant; M.P. Chandra Mouli, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.
The respondent is the owner of a lorry bearing No. AP 26 T 1990. The petitioner noticed that the said lorry was proceeding from Gollapalli Reserve Forest and after chasing for about five kilometers, he stopped it. On verification, it was found that the lorry was loaded with red sander logs. The driver and the cleaner of the said lorry have fled away in darkness.

2. Proceedings u/s 44(2-a) of the Andhra Pradesh Forest Act, 1967, were initiated before the Authorized Officer, Tirupathi. Through order dated 27.12.1995, the Authorised Officer directed confiscation of the lorry as well as red sander logs. Aggrieved by the confiscation of the lorry, the respondent filed A.S.No.63 of 1996 in the Court of IV Additional District Judge, Tirupathi. Initially, the appeal was allowed through judgment dated 11.03.1998. The petitioner filed W.P.No.7808 of 1998. The writ petition was allowed on 30.12.2001 and the matter was remanded to the appellate Court for fresh consideration and disposal, particularly, with reference to the evidence as to the lack of alleged knowledge on the part of the respondent. After the remand, the appellate Court allowed the appeal through

judgment dated 04.03.2002. Hence the writ petition.

3. Learned Government Pleader for Forests submits that admittedly, the lorry was loaded with red sander logs and could be stopped only after long chase and heavy burden rested upon the respondent to prove that he did not have the knowledge of the lorry having been used for transporting the contraband. She contends that the plea as to the alleged stealing of lorry was self-contradictory and the respondent failed to substantiate it. According to the learned Government Pleader, the appellate Court proceeded on incorrect principles of law and that the judgment under challenge cannot be sustained.

4. Sri M.P. Chandramouli, learned counsel for the respondent, on the other hand, submits that it was the consistent case of his client that the lorry was stolen when it was taken to Venkatagiri for loading neem logs. He contends that the driver made an oral complaint at the police station, the respondent submitted a written complaint in the Police Station, Gudur, and that the petitioner himself admitted the fact that the police were in search of the lorry.

5. It is matter of record that the lorry was found to have been loaded with red sander logs. The driver and the cleaner of the lorry fled away and thereby, the manner in which the wood came to be smuggled could not be elicited. The lorry, together with the loaded logs of red sander was seized. The respondent did not claim ownership of the red sander logs. However, since the lorry was utilized in transporting the same, it was liable to be confiscated. The respondent could have been riddled of this, if only the lorry was utilised for that purpose without his knowledge, and in spite of his precautions. Obviously, it is a negative fact and proof thereof has its own limitations. The only way is to verify as to whether the respondent has taken necessary precautions to ensure that the vehicle is not put to illegal use. Another aspect is to examine his conduct at the relevant point of time, which must disclose that he cannot be expected to be having knowledge about the factum of the vehicle being put to illegal activities.

6. The respondent pleaded that on the early morning of 25.02.1994, he received a phone call from a lorry broker at Venkatagiri for transporting the neem logs and on his instructions, the driver took the lorry from Gudur to Venkatagiri. He stated that on the morning of 26.02.1994, the driver came and reported that the lorry was stolen in the afternoon by someone and that the driver had given an oral complaint to the police at Gudur. He further stated that on 26.02.1994 he submitted a complaint to the P.S. Gudur. These facts, if found to be true, would in a way establish his ignorance about the vehicle having been used for illegal purposes, much less, its having been found loaded with red sander logs in the night of 25.02.1994.

7. The respondent as well as his driver deposed as witness repeated the facts mentioned above in their evidence. The transport broker from Venkatagiri supported this theory. However, the credibility of this witness cannot be much, since it is likely to be self-serving.

8. The then Forest Range Officer by name Krishna Reddy deposed as a witness on behalf of the department before the Authorised Officer. He narrated the sequence of events that led to stoppage of lorry and seizure thereof. According to this witness, the Sub-Inspector of Police, Gudur, came to the place where the lorry was located, on 27.02.1994 in connection with the report submitted by the respondent alleging theft of lorry. The relevant portion of his evidence, as summed up by the lower appellate Court, reads as under:

Then on 27.02.1994 at about 1.00 A.M., Sub-Inspector with his staff came from Gudur, stating that the lorry of Gopal Reddy was stolen and he made a report and he showed the records relating to O.R.340/93-94 and also panchanama to the Sub-Inspector and thereafter police went away.

9. From this, it is clear that the police received a written complaint from the respondent and they were in search of the lorry in the context of its alleged theft. If the respondent was aware of the fact that the lorry was loaded with red sander logs, the question of his submitting a complaint before the police, much less, the police conducting search of it does not arise.

10. It has already been observed that the nature of proof to establish absence of knowledge has its own limitations. Much has to be gathered from the attendant circumstances. The fact that the police itself conducted search of the lorry at the instance of the respondent discloses not only the absence of knowledge about the lorry having been put to illegal use of transporting red sander logs, but also his anxiety to trace and locate the vehicle.

11. The learned District Judge had examined the matter in detail and ultimately found that the respondent did not have the knowledge of the use to which the vehicle was put, and granted the relief of setting aside the confiscation of the vehicle.

This Court is not inclined to take a different view.

12. The Writ Petition is dismissed, in the circumstances, without costs. The vehicle shall be released to the respondent forthwith and not later than two weeks from today.