

**(1995) 01 PAT CK 0026**

**Patna High Court**

**Case No:** Criminal Writ Jurisdiction Case No. 697 of 1994 (R)

Raj Kumar Mishra

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

**Date of Decision:** Jan. 2, 1995

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 413, 414

**Citation:** (1995) 1 BLJR 421

**Hon'ble Judges:** Nagendra Rai, J

**Bench:** Single Bench

**Final Decision:** Allowed

### **Judgement**

Nagendra Rai, J.

The petitioner has filed the present application for quashing a part of the order dated 21-9-1994 by which the appeal filed by the petitioner against the order of confiscation of the truck in question has been dismissed by the Deputy Commissioner, Ranchi (Respondent No. 2).

2. The facts necessary for disposal of the present application are that the truck in question, bearing registration No. BPV 8715, was seized by the police officer on the allegation that timber was being carried away on the said truck in contravention of the provisions of the Indian Forest Act (hereinafter referred to as the Act). A police case, being Hatia P.S. Case No. 261/92 under Sections 414/413 of the Indian Penal Code read with Sections 41/42 of the Indian Forest Act was registered against the petitioner and Ors.

3. The petitioner filed an application before the Chief Judicial Magistrate for the release of the truck which was rejected by him on the ground that a confiscation proceeding has already been initiated, as reported by the competent authority to him, under the provisions of the Act, as amended by Bihar (Amendment) Act 9/89. The petitioner challenged the aforesaid order Cr. W. J.C, No. 92 of 1994 (R). In that

case a counter-affidavit was filed on behalf of the State wherein it was stated that a confiscation order has already been passed by the authority on 16-12-1993. Thereafter, this Court finally disposed of the aforesaid criminal writ application on 26-4-1994 with an observation that the petitioner should file an appeal before the appellate authority against the order of confiscation.

4. The petitioner filed an appeal, being Appeal No. 5-R/15-94-95 before the Deputy Commissioner (respondent No.2) and made a prayer for passing an interim order for the release of the vehicle. The aforesaid prayer was rejected on 15-7-1994, against which the petitioner came to this Court in Cr. W.J.C. No. 421/94 (R), which was disposed of on 17-8-1994 with a direction to the appellate authority to consider the question of interim release of the vehicle after stating the reason. A further direction was also given by this Court to dispose of the appeal within four months. Thereafter, the impugned order has been passed, which has been challenged by the petitioner in the present criminal writ application.

5. Learned Counsel for the petitioner has challenged the impugned order on two grounds. Firstly, that the appeal was never heard on merit. As a matter of fact, the question of release of the truck, during the pendency of the appeal, was heard. However, the appellate authority, while disposing of the application filed for the release of the truck has also disposed of the appeal on merits. In other words, the appeal has been disposed of on merits without affording an opportunity of hearing to the petitioner; and, secondly, the appellate order does not show that the appellate authority has applied its mind to the allegation and the facts on the record before dismissing the appeal. In my view, this application can be allowed only on the second ground and as such it is not necessary to go into the first submission advanced on behalf of the petitioner.

6. Under the provisions of the Indian Forest Act, as amended by Bihar (Amendment) Act 9/90, appeal is provided u/s 53-A of the Act. From perusal of the order it appears that the appellate authority has only stated that he did not find infirmity in the confiscation order and the confiscating authority has considered the material elaborately. In my view, he has not disposed of the appeal in accordance with law. While disposing of the appeal, the appellate authority should consider the materials on the record and come to a definite finding after stating the reasons as to whether the order of the confiscating authority should be upheld or not. The order must show that he has applied his mind to the facts of the case. In the present case, it does not appear that he has noticed even the case of the Petitioner before dismissing the appeal. Accordingly, that part of the order, by which the appeal has been dismissed on merit, is set aside and the appeal is remanded to the Deputy Commissioner (Respondent No.2) to hear the appeal afresh and dispose of the same within six weeks from the date of receipt/production of a copy of this order

7. The application is allowed with the aforesaid observation.