

(2006) 1 MhLj 606

Bombay High Court (Nagpur Bench)

Case No: Criminal W.P. No. 482 of 2002

Sardarkhan Pathan

APPELLANT

Vs

Range Forest Officer
and Others

RESPONDENT

Date of Decision: Sept. 16, 2005

Acts Referred:

- Customs Act, 1962 - Section 122A, 123
- Evidence Act, 1872 - Section 25
- Forest Act, 1927 - Section 52, 61A, 61B, 61C, 61D

Citation: (2006) 1 MhLj 606

Hon'ble Judges: R.C. Chavan, J; J.N. Patel, J

Bench: Division Bench

Advocate: R.P. Joshi, for the Appellant; M.P. Badar, Special Counsel for respondent Nos. 1 and 3 and D.B. Yengal, Additional Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

R.C. Chavan, J.

By this petition, the petitioner challenges the Appellate order passed by the learned Additional Sessions Judge, Pusad, upholding the order of Authorised Officer confiscating the tractor and trolley belonging to the petitioner.

2. Facts, which led to the eventual filing of this petition, are as under :

3. On 19-7-1999, two bullock-carts loaded with teakwood were intercepted by the Range Forest Officer, Bittargaon. They were seized by him and a forest offence was registered. The persons, who were accompanying the carts and teakwood, were arrested. Their statements were recorded. In the course of investigation, statements of three more persons were recorded on 23-8-1999 and the spot from where teak trees had been cut, was seen. The investigation revealed that the trees cut from that spot were loaded in

tractor bearing registration No. MH 26 C 1973 and trolley bearing registration No. MH 26 C 8380 belonging to the petitioner. The tractor and trolley were accordingly seized.

4. On 26-10-1999, the Forest Officer made a report to the Authorised Officer for confiscation of the tractor and trolley along with other articles. The Authorised Officer issued a notice to show cause as to why the tractor, trolley and other articles belonging to the persons concerned should not be seized. The petitioner and two others submitted replies. It was the petitioner's case that he was a nominal owner and the tractor and trolley in fact belonged to his brother. He further submitted that the tractor was not in order and, therefore, was lying with M/s Rainbow Tractors Limited, Wazegaon, from 5-7-1999 to 20-7-1999 for repairs. It was stated that the tractor was given on contract to one Sheikh Babbu. The petitioner denied that the tractor was used for illegal transportation of teak wood.

5. The Authorised Officer conducted necessary enquiry and after hearing the parties, by an order dated 17-8-2000, directed confiscation of the tractor, trolley, bullock-carts, etc. The petitioner's appeal to the learned Additional Sessions Judge, Pusa, came to be dismissed on 8-2-2002. The petitioner has, therefore, approached this Court by filing the present petition.

6. The petitioner assails the order passed by the learned Additional Sessions Judge on the ground that the learned Judge failed to see that the petitioner was not given a proper opportunity of being heard by the Authorised Officer. The statements relied on by the Authorised Officer were not supplied to the petitioner. The Authorised Officer ordered confiscation, though there was no material to do so, ignoring enough material placed on record to secure release of the tractor and trolley.

7. In the return filed by the respondent/State, it was pointed out that Balaji Chittalwad, Sundarsingh Rathod and Hanumanta Jadhao had admitted that they had loaded the tractor-trolley with teakwood on being instructed by the petitioner and that they took the tractor-trolley to Sardar Saw Mill. It was submitted that the plea that the tractor was not in order, was found to be false on enquiry, since it was revealed that 215 litres of diesel was purchased and loaded in the said tractor on 15-7-1999 when the tractor was supposed to be in the garage. Full opportunity to represent his case had been given to the petitioner, who had even engaged a lawyer to defend himself before the Authorised Officer. The statements of Datta Jewaliwar, driver, showed that the tractor and trolley had been used for transporting teakwood. Therefore, according to the respondents, there was enough material before the Authorised Officer to conclude that the tractor and trolley had been used in commission of a forest offence. Therefore, according to the respondents, confiscation ordered by the Authorised Officer and upheld by the learned Additional Sessions Judge, Pusa, does not call for any interference in exercise of this extra-ordinary jurisdiction.

8. We have heard Shri R.P. Joshi, the learned counsel for the petitioner and Shri M.P. Badar, the learned Special Counsel for the respondents. The contention of the copies of material relied on by the Authorised Officer not being made available to the petitioner, is unfounded. The respondents have filed on record an acknowledgment showing that all the copies of statements were duly received by the petitioner. They have also filed a vakalatnama on record showing that the petitioner was represented by an Advocate in the course of the proceedings before the Authorised Officer. Since the plea of fueling the tractor during the period when it was supposed to be in the garage was taken before the Authorised Officer, the material in respect of filling diesel in the tractor was naturally collected during the proceedings before the Authorised Officer. Therefore, there is no question of copies of this evidence being furnished to the petitioner along with the show cause notice. In view of this, the plea taken by the petitioner regarding inadequate opportunity being given to him has been rightly rejected by the learned Additional Sessions Judge.

9. To buttress the plea that adequate material to order confiscation was not available before the Authorised Officer, the learned counsel for the petitioner submitted that the statements relied on by the Authorised Officer were not admissible for ordering confiscation. He submitted that the statements had been retracted by their makers. As rightly countered by the learned counsel for the respondents, there is no record to show that the statements had been retracted prior to the conclusion of proceedings before the Authorised Officer, by the persons, who made them. The retractions seem to have been made in the form of affidavits filed in the Court of Additional Sessions Judge, Pusa, as may be seen from Annexure D to the petition. Now, if some material was not available before the Authorised Officer, there would be no question of Authorised Officer considering it.

10. The learned counsel for the petitioner submitted that the statements could not have been considered by the Authorised Officer, since there is no provision making such statements admissible, as has been provided for in other legislations pertaining to investigation carried out by the authorities other than police. Reference was made to the provisions of the Customs Act. The Customs Act, 1962 contains elaborate provisions relating to searches, seizures, arrests, summoning and examining persons, etc. As regards confiscation, the Act provides for procedure for adjudication in Section 122A. Section 123 shifts the burden to prove that the goods are not smuggled, on the person from whose possession they were seized or the person, who claims to be the owner, as the case may be. The Forest Act, 1927 too prescribes elaborate procedure in the form of Sections 52 and 61-A to 61-G regarding confiscation by forest officers. Clause (2) of Section 61-B lays down that no order confiscating any vehicle, etc. shall be made if the owner proves to the satisfaction of the Authorised Officer that such vehicle, etc. was used without the knowledge or connivance of the owner and person in-charge. The expression chosen for achieving a result may be different, but ultimately even the provision of Clause (2) of Section 61-B of the Forest Act would cast the burden on the owner. It is not

necessary that the legislature must use identical expression in all enactments providing for confiscation. The phraseology used would depend on the object to be achieved in the concerned fact situation.

11. The contention that statements recorded before the Forest Officer would not become admissible ipso facto, is fallacious. First, it must be seen that the Authorised Officer, considering confiscation of a vehicle, is conducting a quasi-judicial enquiry and does not require evidence in the strict sense to be tendered before him. Secondly, just as Authorised Officer is not a Criminal Court, the Forest Officer tendering material in support of prayer for confiscation is not a Police Officer. The learned special counsel for the respondents drew our attention to the decision of this Court in *Dr. Emerico D'Souza v. State through The Deputy Conservator of Forest*, reported in 1995 Forest Law Times 72. It was observed therein that a statement to a Forest Officer is not hit by Section 25 of the Evidence Act and can be read in evidence, as Forest Officer is not a Police Officer.

12. A quasi-judicial authority would be prevented from considering any material only if it is shown that consideration of such material is barred by any specific provision of law. Statements recorded by the Forest Officer do not fall in the category of "confession", since a confession could be made only by a person, who is accused of an offence confessing to his crime. Statements of some of the persons considered by the Authorised Officer in this case would be at the best akin to admissions or former statements of witnesses, which would suggest an inference as to a fact in issue or relevant fact, namely, use of the tractor and trolley in commission of a forest offence. Therefore, there was no impropriety on the part of the Authorised Officer in considering the statements recorded by the Range Forest Officer. The learned counsel for the petitioner submitted that the consequences of relying on such statements would be giving freedom to the Forest Officers to concoct any statement they please and say that it was a statement made by the person concerned. He submitted that in a case like the present one where the tractor and the trolley were not actually caught with the contraband articles, reliance on such statements is extremely dangerous.

13. We quite appreciate the anxiety of the learned counsel for the petitioner. But then one must realise that with many tractors and trolleys around, when the Forest Officers chose the tractor and trolley of the petitioner for proposing confiscation, there must be some good reason for doing so. It cannot be said and has not been said that they had whimsically or maliciously picked up the tractor and trolley of the petitioner by concocting false statements for eventual confiscation. We find that no mala fides are alleged by the petitioner. In the absence of any malice being shown or alleged, there would be no reason for us or the learned Additional Sessions Judge to look at the proceedings before the Authorised Officer with suspicion.

14. The order passed by the Authorised Officer exhibits an exemplary endeavour of considering and efficiently dealing with all aspects of the matter. Therefore, the learned Additional Sessions Judge obviously did not find any deficiency in the order of the

Authorised Officer to revoke it.

15. The learned counsel for the petitioner submitted that the adjudication by the Authorised Officer is like being a Judge in his own cause, since the information seeking confiscation is laid before the Authorised Officer by his own subordinate. He submitted that since the Authorised Officer belonged to the same Department, his deciding the question of confiscation would amount to being a Judge in his own cause. We are afraid that such a plea is not open to the petitioner. When a departmental authority is prescribed to exercise quasi-judicial powers, the officer exercising those powers acts independently. In this case, the Authorised Officer was satisfied that a forest offence had been committed and that the tractor and trolley had been used in committing such offence.

16. The learned Special Counsel for respondents relied on a decision in [State of M.P. Vs. S.P. Sales Agencies and Others](#), wherein it has been held by the Supreme Court that the power of confiscation cannot be said to be in any manner dependent upon launching a criminal prosecution. The condition precedent for initiating the confiscation proceedings is commission of the forest offence. Since the satisfaction of the Authorised Officer in this regard does not seem to be vitiated in any manner, the learned Additional Sessions Judge rightly refused to intervene in the manner.

17. The learned counsel for the petitioner lastly submitted that if a judicial review of the impugned decision is not possible, we may at least consider a review of the process of decision-making. As the foregoing discussion would show the process of decision-making too did not disclose any infirmity to warrant exercise of this extra-ordinary jurisdiction by us. Apart from complying with the principles of natural justice, the Authorised Officer has also complied with the requirements of Sections 61-A to 61-G of the Forest Act by giving full opportunity to the petitioner after supplying the petitioner all the relevant material. He has neither neglected to consider the relevant material nor was he swayed by any extraneous considerations. We find that both the Authorised Officer and the learned Additional Sessions Judge, who heard the appeal from the order passed by the Authorised Officer, have considered requirements of law and applied law correctly to the facts, which were unfolded before them. Therefore, we see no reason to intervene in the matter.

18. The petition consequently fails and is dismissed. Rule stands discharged.