
(1994) 07 CAL CK 0014

Calcutta High Court

Case No: None

Gopal Mahato

APPELLANT

Vs

Divisional Forest Officer

RESPONDENT

Date of Decision: July 28, 1994

Acts Referred:

- Constitution of India, 1950 - Article 14
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Forest Act, 1927 - Section 20, 29, 44, 44(1), 44(2)

Citation: (1994) 2 ILR (Cal) 373

Hon'ble Judges: Arun Kumar Dutta, J

Bench: Single Bench

Advocate: A. N. Ghosh, for the Appellant; Himangshu De, for the Respondent

Judgement

Arun Kumar Dutta, J.

By this Revisional application u/s 482 of the Code of Criminal Procedure (hereinafter referred to as the Code), the Petitioner has prayed the Court for setting aside the seizure of his vehicle No. WB-37/1923 by the Divisional Forest Officer of Jalpaiguri under the Indian Forest Act, 1927, in the circumstances stated and for release of the same on the grounds made out therein.

2. The Petitioner contends that he is the registered owner of the aforesaid seized truck, bearing Registration No. WB-37/1923 and he maintains his family out of the income of the truck business. The truck in question was seized by the Forest Staff on April 5, 1994 for carriage of illegal timbers. The driver of the vehicle Sukhdev Das fled away leaving the truck in the custody of the forest staff. Even though the driver of the said vehicle has fled away at the time of the seizure of the vehicle, a criminal proceeding has been initiated against him, which is pending before the Chief Judicial Magistrate at Jalpaiguri. But no case has been started against him (Petitioner) as the owner of the vehicle. The Authorised Officer has thereafter issued a show-cause notice dated May 2, 1994, against

him calling upon him to show cause as to why the vehicle in question should not be confiscated to the State under the provisions of the Indian Forest Act. He has shown cause in the matter, as called upon to do so. But the authorised officer has not considered the same as yet and has neither released the vehicle on Bond. Hence, the instant application for the reliefs sought for.

3. Upon hearing the learned Advocates for both sides and perusal of the materials on record, it appears that the aforesaid vehicle in question had been seized by the concerned Forest Officer, along with the seized timbers, u/s 52 of the Indian Forest Act, 1927 (hereinafter referred to as the Act) as there was reason to believe that a forest offence had been committed in respect of the said forest produce. In terms of Section 59-A of the Act (as amended by the West Bengal Act) where a forest offence is believed; to have been committed in respect of timber or other forest produce which is the property of the State Government, the Forest Officer or the Police Officer, seizing the limber or other forest produce u/s 52(1), is required to produce, together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence before an officer of a rank not inferior to that of an Assistant Conservator of Forest authorised by the State Government in this behalf by Notification in the Official Gazette (which is referred to as Authorised Officer).

4. In terms of Sub-section (3) of Section 59-A where the Authorised Officer is satisfied that a forest offence has been committed in respect of such property, he may, whether or not a prosecution is instituted for the commission of offence, order confiscation of the property, together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence.

5. Sub-section (4)(a) thereof further provides that the Authorised Officer, after passing the order of confiscation, may order the seized property or any part thereof and such tools, ropes, chains, boats, vehicles and cattle to be sold by public auction if he is of opinion that it is expedient in the public interest to do so.

6. Section 59-B, however, provides that no order of confiscating any property or tools, ropes, chains, boats, vehicles or cattle shall be made u/s 59-A except after giving a notice in writing to the owner thereof or the person from Whom the same had been seized for showing cause as to why the same should not be confiscated after considering his objections, if any.

7. The Proviso thereto makes clear that no order confiscating any motor vehicle shall be made except after giving a notice in writing to the Registered owner thereof if, in the opinion of the authorised officer, it is practicable to do so and considering his objections, if any. Sub-section (2) of Section 59-B provides as follows:

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 59-A if the owner thereof proves to

the satisfaction of the authorised officer that such tool, rope, chain, boat, vehicle, or cattle was used in carrying the timber or other forest produce without the knowledge or connivance of the owner himself or his agent, if any, or the person in charge thereof and that each of them had taken all reasonable and necessary precautions against such use.

8. A question might naturally arise as to whether the aforesaid relevant provisions of the Act are ultra vires of Article 14 of the Constitution of India. The Supreme Court in *Divisional Forest Officer v. G.V. Sudhakar Rao* after scrutinising the relevant provisions in the context of the Andhra Pradesh Forest Act had observed as follows:

The change in the law was brought about with a view to prevent the growing menace of ruthless exploitation of Government forests by illicit felling of teak and other valuable forest produce by unscrupulous traders, particularly from the reserved forests by providing for a machinery for confiscation of illegally felled trees or forest produce by the forest authorities. u/s 45 of the Act as it then stood, where a person was convicted of a forest offence, the Court sentencing him was empowered to order confiscation to the Government of timber or forest produce in respect of which a forest offence was committed and any tool, boat, vehicle other than a cart drawn by animals, vessel or other conveyance or any other article used in committing such offence. Although there was a provision for seizure of such articles in Section 44 of the Act, there was no provision in the Act enabling the forest officers to confiscate such timber or forest produce and the implements, etc., used for committing forest offences even in a case where he was satisfied that a forest offence had been committed. In view of this, the Forest Department was finding it difficult to curb the forest offences effectively and quickly in spite of the fact that large scale felling and smuggling of forest produce was on the increase. Hence, it was thought necessary to empower the officials of the Forest Department seizing any property under Sub-section (1) of Section 44, instead of merely making a report of the seizure to a Magistrate, also to order confiscation of timber or forest produce seized together with all the tools, boats, vehicles, etc. used in committing such offence (Statement of Objects and Reasons). The intendment "of the Legislature in enacting Act 17 of 1976 was therefore to provide for two separate proceedings before two independent forums in the Act, one, for confiscation by a departmental authority exercising quasi-judicial powers conferred under Sub-section (2A) of Section 44 of the goods forming the subject-matter of the offence and the other for the trial of the person accused of the offence so committed.

9. The Supreme Court went on to observe:

A close, careful and combined reading of the various sub-sections of Section 44, Section 45 and Section 58A of the Act, as introduced or amended by Act 17 of 1976, leaves no doubt that the intendment of the Legislature was to provide for two separate proceedings before two different forums and there is no conflict of jurisdiction as Section 45, as amended by the Amendment Act, in terms curtails the power conferred on the Magistrate to direct confiscation of timber or forest produce on conviction of the accused. The

conferral of power of confiscation of seized timber or forest produce and the implements, etc. on the Authorised Officer under Sub-section (2A) of Section 44 of the Act on his being satisfied that a forest offence had been committed in respect thereof, is not dependent upon whether a criminal prosecution for commission of a forest offence has been launched against the offender or not. It is a separate and distinct proceeding from that of a trial before the Court for commission of an offence. Under Sub-section (2A) of Section 44 of the Act, where a Forest Officer makes report of seizure of any timber or forest produce and produce the seized timber before the Authorised Officer alongwith a report u/s 44(2), the Authorised Officer can direct confiscation to Government of such timber or forest produce and the implements, etc. if he is satisfied that a forest offence has been committed, irrespective of the fact whether the accused is facing a trial before a Magistrate for the commission of a forest offence u/s 20 or 29 of the Act.

10. In view of the aforesaid observations of the Apex Court it could not be held that the amended provisions of the Act are either unreasonable or that no guidelines have been laid down in that behalf. As indicated, before an order of confiscation is passed the Authorised Officer should be satisfied that a forest offence is committed in respect of the forest produce and that the vehicle was used in committing such offence. The Authorised Officer is expected to pass a reasoned order. He must give reasons in support of the order. He cannot proceed on his own ipse dixit. His order is subject to the scrutiny by the District Judge on appeal. Thus the power conferred is not un-canalised.

11. The relevant provisions of the Act being, what they are, an order of confiscation can only be passed after consideration the objections if any, of an owner of the vehicle or the registered owner of the motor vehicle, as the case may be. Therefore, the owner or the registered owner of a motor vehicle, as the case may be, has a right to prefer objection as to why the vehicle or motor vehicle, should not be confiscated. It will be open to the owner to prove to the satisfaction of the Authorised Officer in the confiscation proceedings that the person in possession of the vehicle or the motor vehicle, as the case may be, carried the forest produce without his knowledge or connivance or of his agent or any person in charge thereof. If he establishes those facts the vehicle cannot be confiscated.

12. After scrutiny of the relevant provisions of the Act a Division Bench of this Court In State v. Gurbachan Singh 1992 Cr.L.R. (Cal.) 385 has held that if an unauthorised act has been committed by the driver in course of his employment contrary to the terms of his employment while returning with the vehicle, such illegal act of the driver cannot saddle the owner with any liability, unless it is proved that the driver was the agent of the owner or he was the person in charge of the vehicle on behalf of the owner and that the vehicle was used in carrying forest produce illegally with the knowledge and connivance of the owner thereof.

13. While considering similar provisions relating to confiscation of vehicle, contained in Section 56(2a) of the Orissa Forest Act, 1972, the Orissa High Court in [Gurudev Singh Rai Vs. Authorised Officer-cum-Asst. Conservator of Forests and Another](#), had observed

that--

the judiciary would clothe itself with the power of law making, even interstitially, only in very exceptional cases where non-supply of words in a statute would result in so unjust a result which the Court's conscience would not permit. It is not beyond the competence of the High Court to read words in a statute which are not there. Section 56(2a) has visualised confiscation alone as the punishment to be awarded against persons like owner of a vehicle which had been used, in the commission of a forest offence and the power of ordering confiscation has also been made discretionary. The section has not provided for any other punishment to be imposed on the owner of the vehicle. Thus if in a particular case the authority may not feel satisfied that confiscation of the vehicle is demanded, keeping in view the magnitude of the offence, but the authority may also feel that some sort of punishment deserves to be inflicted on the owner, the Court may generally feel that a lacuna has been left in the Statute which must be supplied to implement the real intention of the Legislature. When such a defect comes to the knowledge of a Judge, he has to supplement written words, in such a situation by asking the question as to how the Legislature would have acted had it known about the defect in question and then to what the Legislature would have done according to the Judge. Thus if the deficiency in Section 56(2A) would have definitely provided for imposition of fine as an alternative punishment. Therefore, Section 56(2A) can be read to include power of imposing fine in lieu of confiscation of vehicle in appropriate cases.

14. Following the aforesaid decision of the Orissa High Court, a learned Single Judge of this Court in *Pijush Kanti Mondal v. State of West Bengal* 1993 C.Cr.L.J. (cal.) 243 has held that the fact that the authorised officer has not the power to impose fine u/s 59-A in lieu of confiscation of vehicle does not, however, in any way restrict or impair the power of the High Court to pass appropriate order in a fit case u/s 482, Code of Criminal Procedure, for securing the ends of justice. The very fact that Section 59-A by its own terms, in view of the use of the word "may" therein, gives a discretion to the Authorised Officer not to confiscate a vehicle even when the Authorised Officer is satisfied that a forest offence has been committed in respect of any forest produce which is the property of the State Government and which has been produced before him clearly indicates that an order of confiscation u/s 59A is not a "must" even when the other conditions of the said section are satisfied. The Authorised Officer although not empowered to impose a fine u/s 59-A in lieu of confiscation may still choose in view of the exceptional facts and circumstances of any case, not to order confiscation under the said section. The very fact that the exercise of the power of confiscation given in favour of the Authorised Officer u/s 59-A is rather discretionary and not mandatory leaves ample opportunity for the High Court, in the facts and circumstances of any particular case, to impose fine in lieu of confiscation of a vehicle in exercise of its inherent power u/s 482, Code of Criminal Procedure, where the High Court feels it necessary to do so for securing the ends of justice even where the provisions of Section 59-A are attracted and an order of confiscation has been passed by the Authorised Officer under that section.

15. I am in complete agreement with the views taken by the Division Bench of the Orissa High Court and by the learned Single Judge of this Court on the point for much the same reasons discussed above.

16. In view of the discussions above, the vehicle in question seized by the Forest Officers concerned may or may not be eventually confiscated even if the Authorised Officer is satisfied that a forest offence has been committed in respect of the seized property. And, even if confiscated, the same might as well as be returned back to the owner/registered owner thereof by imposing fine in lieu of confiscation, in the circumstances indicated above, if so considered fit and proper to do so.

17. In the instant case the vehicle in question appears to have been seized on April 1-5, 1994. The Notice u/s 59-B of the Act upon registered owner of the vehicle in question, calling upon him to show cause as to why the same should not be confiscated, appears to have been issued on May 2, 1994. There is no knowing when the Confiscation Proceedings is likely to be concluded. The vehicle in question cannot certainly be allowed to be deteriorated by being kept immobile in the custody of the Forest Department for an indefinite period, exposed to rain and sun, uncared and unattended, to make it a June, to the prejudice of the owner/registered owner thereof, if the same is not eventually confiscated, or directed to be returned back to him on payment of fine in lieu of confiscation, who, could not be otherwise compensated thereof. If confiscated, the State is also likely to be prejudiced by allowing the vehicle to deteriorate and depreciate in value, fetching lesser price when sold in auction in the circumstances stated above. If the vehicle seized, on the other hand, is returned back to the registered owner thereof on bond on condition to produce the same before the Authorised Officer concerned, as and when called for, for being dealt with in the relevant Confiscation Proceedings, neither he nor the State is likely to be prejudiced in any way, because it is likely to be taken care of by him (registered owner) for keeping it mobile and road-worthy in his own interest. In case it is eventually confiscated, it would fetch higher value, when sold in auction to fill the coffer of the State, which would ensure to its benefit.

18. In the aforesaid premises, I direct the Authorised Officer concerned, having the custody of the seized vehicle bearing Registration No. WB-37/1923, to return back the same, along with all relevant papers seized in respect thereof, excepting the Registration Certificate, to the registered owner thereof on his furnishing Bond for the sum of Rs. 2 lakhs only, with one surety of like amount, to his (Authorised Officer's) satisfaction, on condition to produce the same, as and when called for and on further condition that the vehicle in question shall not be taken away from the boundary of the State of West Bengal till the Confiscation Proceedings is disposed of. The Registration Certificate in respect of the vehicle in question shall be kept in the custody of the Authorised Officer till the disposal of the Confiscation Proceedings, who shall give certificate/receipt therefor to the registered owner for enabling him to ply the vehicle, in the meanwhile. The registration certificate may, however, be made over to the Registered Owner temporarily for renewal of tax token and/or certificate of fitness etc. in respect of the vehicle in

question, if so required, to be returned back by him (registered owner), as soon as done with.

19. The seized vehicle must be released by the Authorised Officer in terms, of this order within three days from the furnishing of Bond by the Registered owner and acceptance of-the same.

20. The Confiscation Proceedings should also be disposed of by the Authorised Officer, as early as possible, preferably within a period of two months from the date of communication of this order.

21. The Revisional application is, accordingly, disposed of with the directions hereinabove given.