

GAHC010098692022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./463/2022

RIZWAN PASHA @ MD. RIZWAN
S/O- SABIR, R/O- HOUSE NO. 13/60, ZAFARPUR, P..S MAINATHER TEH
BILARI, DIST. MORADABAD (U.P.).

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:THE DIVISIONAL FOREST OFFICER
OFFICE OF THE DIVISIONAL FOREST OFFICER
NORTH KAMRUP DIVISION
RANGIA
DIST.- KAMRUP
ASSAM
PIN- 781354.

3:THE FOREST RANGE OFFICER
PROTECTION SQUAD RANGE
RANGIA
DIST. KAMRUP (ASSAM)
PIN- 781354

Advocate for the Petitioner : MS G DEKA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 01.06.2023

Heard Ms. G. Deka, learned counsel appearing for the petitioner. Also heard Mr. D. Gogoi, learned standing counsel, Forest Department appearing for respondent Nos. 2 and 3 and Mr. B. Sarma, learned Additional Public Prosecutor appears for respondent No.1.

2. This Criminal petition is filed by the petitioner praying for quashing of the order dated 04.05.2022 passed by the Office of the Divisional Forest Officer, North Kamrup Division, Rangia in Offence Report No. PS/13 of 2020-21 dated 11/09/2020, whereby the "Halok sawn timbers" 146 pcs of volume 14.322 m3. along with vehicle No. UP -21-CN-6191, which is involved in OR No.PS/13 of 2020-21, dated 11.09.2021 was confiscated to the State of Assam.

3. Learned counsel for the petitioner submits that the petitioner is the owner of the vehicle and he is not at all involved in any of the forest offences alleged. Rather the vehicle was carrying a consignment of Blankets from Ludhiana to Guwahati. However, after unloading the goods in Guwahati and while returning from Guwahati, the vehicle was loaded with sawn timber without the knowledge of the owner of the vehicle. It is submitted that for the offences if any, committed by the driver of the vehicle, the owner should not be penalized

and the vehicle ought not to have been confiscated. It is submitted that the vehicle is lying in the open premises of the respondent No.2 and without proper care and parking, the vehicle will be damaged and will not be fit for use again.

4. The learned counsel for the petitioner submits that by an application dated 05.03.2022 filed by the petitioner, a prayer for release of the vehicle before the competent authority was made.

5. The petitioner also approached the competent authority and made oral prayers for release of the vehicle. However, without considering the prayers made by way of the application dated 05.03.2022 the respondent No.2 vide impugned order dated 04.05.2022 confiscated the vehicle along with the sawn timber. Being aggrieved the present petition has been filed.

6. Learned counsel appearing for the Forest department submits that there is no infirmity in the order passed however, there is a provision for alternative remedy prescribed under the Statute which is available to the petitioner and which can be resorted to by the petitioner.

7. Learned counsel for the Forest Department has referred to Section 49 C of the Assam Forest Regulation Act, 1891 to submit that there is a provision for appeal which may be preferred against any order passed under Section 49 (4).

8. It is submitted that the impugned order was passed under Section 49 (4) of the Assam Forest Regulation Act, 1891 (Amended 1995), therefore the appeal ought to have been

preferred by the petitioner. However, there is a limitation of 30 days within which any such appeal can be preferred.

9. Learned counsels for the parties have been heard. Pleadings on records have been perused.

10. It is seen that vide the impugned dated 04.05.2022 the respondent No.2 has passed an order confiscating the vehicle.

The relevant paragraphs are extracted below:-

FINDINGS

From the statement and cross examination of the accused, Sri Mudeen Ali, S/o Bachan Ali, Village — Karanpur, PS —Moradabad, Dist-Moradabad, Uttar Pradesh driver of the seized vehicle bearing registration no. UP-21-CN-6191, and deposition of the owner of the vehicle and Sri Pankaj Sarma, FR (the seizing officer and

1.0.)

and the other witness —

(i) It is proved that the accused Mudeen Ali, driver of the seized vehicle had committed a Forest Offence by transporting Hallok sawn timbers without valid transit permit thereby violating Transit rule under Section 40 of the Assam Forest Regulation, 1891 amended in 1995.

(ii) The accused Mudeen Ali, driver of the seized vehicle in his deposition before the I.O has admitted that informed about the transportation of timber to the owner of the Truck Rizwan Pasha.

(iii) The owner of the vehicle Rizwan Pasha, S/o Sabir, village - H/no.13/60, Zafarpur, PS — Mainather The Bilari, Dist —Moradabad, Uttar Pradesh owner of the seized vehicle bearing registration no. UP-21-CN-6191 in his deposition stated that he was not informed by his driver about transportation of the timber by his vehicle without permit. He could not produce any evidence in support of his claim and he was not involved in providing his vehicle for commission of offence. He claimed in his reply submitted to this office on 13th July/ 2021 (received on 13.07.2021) that his truck was loaded with blanket and came from Ludhiana to Guwahati. However, he could not produce any documents in support of his claim. It is

clear that he didn't take any precaution for his vehicle of not being used in commission of forest offence.

ORDER

Under the above mentioned facts, which are found to be true, and after cross examination of the witnesses, I, Sri Sunnydeo Indradeo Choudhary, IFS, the Authorized Officer & the Divisional Forest Officer, North Kamrup Division, Rangia, in exercise of power conferred U/S 49(4) of AFR 1891 (Amended 1995) Act to hereby pronounced the final order as follows.

1) The seized Halok sawn timbers 146 pcs of volume 14.322 m3.along with vehicle 70. UP-24-CN-6191 involved in OR no, PS/13 of 2020-21, dtd. 11-09-2021 is hereby

***confiscated** to the State of Assam and the Forest Range Officer, protection Squad Range, Rangia is asked to form Lot of the above confiscated timbers within fifteen days from the issue of this order for immediate disposal of the same through e-auction to avoid damage to the timber and loss of Govt. revenue. He is also directed to keep the custody of the **confiscated** vehicle till further orders.*

This final order pronounced on this day of 2nd May/2022 under my hand and seal.

*Authorized Office &
Divisional Forest Officer
North Kamrup Division, Rangia."*

11. Perusal of the Assam Forest Regulation Act, 1891 (Amended 1995) reveals that there is a provision for an appeal under Section 49 C. There is also a provision for review under Section 49 B. The Section 49 B and 49 C reads as under:-

***"49-B. Review-** Any Forest Officer not below the rank of a Conservator of Forest specially empowered by the State Government in this behalf by notification in the Official Gazette may, suo-motu or on application by the aggrieved person call for and examine any record or any order under Section 49(4) and may make such enquiry or cause such enquiry to be made and*

may pass such order as he deems fit:

Provided that no order under this Section shall be made if in the meantime an appeal has been preferred under Section 49-C:

Provided further that no order prejudicial to any person shall be passed without giving him a reasonable opportunity of being heard.

49-C. Appeal- *Any person aggrieved by an order under Section 49(4) or Section 40-B may, within thirty days from the date of communication to him of such order prefer an appeal to the District Judge having jurisdiction over the area in which the property has been seized and the District Judge shall after giving a reasonable opportunity of being heard to the parties, pass such order either varying, confirming, modifying, annulling or setting aside the order appealed against and the order of the Court so passed shall be final.*

Explanation- The time required for obtaining the certified copy of the order of confiscation or the order passed under Section 49-B shall be excluded while computing the period of thirty days referred to in this Section."

12. The learned counsel for the petitioner submits that the order dated 04.05.2022 was received by the petitioner through registered Post after about a week later. Thereafter, the criminal petition was filed on 21st of May, 2022.

13. The learned counsel for the petitioner submits that the order passed by the Forest authority, has been impugned in the criminal petition because the application preferred by the petitioner seeking release of the truck remained pending and no orders had been passed thereon. It is the submission of the learned counsel for the petitioner that till date no specific orders have been passed on the application preferred before the District Forest Officer, North Kamrup Division, Rangia seeking release of the vehicle belonging to the petitioner

14. Having heard the learned counsels for the parties and upon careful perusal of the provisions of the Act as well as the

pleadings on record, this Court is of the view that a proceedings initiated under the provisions of Section 49 lay down the prescribed procedure for seizure of property liable to confiscation. From a perusal of the impugned order it is evident that the petitioner and the driver both appeared before the competent authority and an opportunity of hearing was given to them. Upon hearing the entire matter, the competent authority had passed the impugned order whereby the forest produces namely 146 nos. of Halok Sawn Timber of volume 14.322 m³ alongwith the vehicle stood confiscated.

15. Under Section 49 B, there is a provision for review which may be initiated *suo moto* by the Forest Official or on an application by the aggrieved party to call for and examine the records or any other order under Section 49 (4) and to make such enquiry and cause such enquiry to be made and pass such order as deemed fit.

16. It is seen that under Section 49 C, there is a provision for filing an appeal before the District Judge having jurisdiction over the area to which the property has been seized.

17. The District Judge upon giving a reasonable opportunity of hearing to the parties shall pass such orders as deemed appropriate and such orders of the Court so passed shall be final. An appeal under Section 49 C is required to be preferred within a period of 30 days from the date of communication of such order by the Forest Officials.

18. Upon a careful perusal of the impugned order dated

04.05.2022 passed by the District Forest Officer, North Kamrup Division, Rangia as well as the application stated to have been preferred by the petitioner before the District Forest Officer, North Kamrup Division, Rangia it is seen that the Forest Officials have issued Notice to the the driver as well as to the owner, namely the petitioner, who had both appeared before the Forest Officials. An opportunity of hearing was granted to the owner and thereafter a detailed order has been passed, whereby the the seized timber was confiscated along with the vehicle. Although no specific order has been passed on the application stated to have been filed by the petitioner, the prayer made in the application filed by the petitioner has in essence been dealt with by the Forest Officials in the impugned order dated 04.05.2022 and as such no separate order on the said application was called for. By the said order as discussed above, the vehicle of the petitioner has been confiscated.

19. Upon considering the matter in its entirety this Court is of the view that since there is a statutory remedy prescribed under Assam Forest Regulation Act, 1891 (Amended 1995) in the form of an appeal under Section 49 C, ends of justice will be met if the petitioner is relegated to file a departmental appeal under Section 49 C of the Assam Forest Regulation Act, 1891 (Amended 1995). The period of 30 days prescribed can be condoned in view the fact that within 30 days of passing the impugned order dated 04.05.2022 the petitioner had

approached this Court by filing the instant criminal petition which was filed on 21st May, 2023.

20. Under such circumstances, the criminal petition is disposed of and the petitioner is permitted to approach the departmental authorities as prescribed under Section 49 C and prefer an appeal. The delay is condoned enabling the petitioner to prefer an appeal under Section 49 C of the Assam Forest Regulation Act, 1891 (Amended 1995) within 30 days from today. If the appeal as prescribed under the Act is so preferred within a period of 30 days from today, the appellate authority will consider the appeal so preferred and dispose it on merits.

21. Criminal petition stands disposed of.

JUDGE

Comparing Assistant