

GAHC010110052022



**IN THE GAUHATI HIGH COURT
(The High Court of Assam: Nagaland: Mizoram &
Arunachal Pradesh)**

Crl. Rev. P. 276/2022

Akbar Hussain
S/O Anar Uddin
R/O Vill- Hawaithang
P.S. Dholai, Dist. Cachar.

Versus

1. The State Of Assam and Anr.
to be Rep. By The PP, Assam
2. Authorised Officer Cum Divisional Forest Officer
Cachar Division
Silchar
Pin- 78800

**BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

Advocate for the Petitioner	:	Mr. I.A. Hazarika
Advocate for the Respondents	:	Mr. P. Borthakur, (Addl. P.P.)
Date of Hearing	:	05.01.2023

Date of Judgment : **08.05.2023.**

JUDGMENT & ORDER (CAV)

1. Heard Mr. I.A. Hazarika, learned counsel appearing on behalf of the petitioner as well as Mr. P. Borthakur, learned Addl. P.P. for the State respondent no. 1. Also heard Mr. D. Gogoi, learned Standing Counsel appearing for the Forest Department, Assam.
2. The petitioner before us is Akbar Hussain. He is aggrieved by the judgment and order dated 07.03.2022 passed by the Additional District Judge, F.T.C, Cachar Silchar, Assam in Misc. Appeal No. 01/2021 dismissing the appeal preferred by the petitioner under Section 49-C of the Assam Forest Regulation of 1891 (the Regulation for short) and against the order dated 14.12.2020 passed by the Authorised Officer-cum-Divisional Forest Officer, Cachar whereby the truck bearing registration number MZ-03-7722 of the petitioner stood confiscated under Section 49(4) of the Assam Forest Regulation, 1891.
3. The genesis of the case was that on 24.05.2020 at around 7.30 P.M., on receipt of credible information about illegal transportation of forest produce, a group from the Range HQ of Hawaithang Range, Dholai proceeded towards Lailapur where they found one truck bearing registration No. MZ-9-03-7722 parked on the road side of NH 54 near the Lailapur Police outpost. The said truck was loaded with forest produce (sawn timber). The timber was unclaimed and also no permit of transit pass was available in violation of the provisions of Assam Forest Regulation of, 1891. The Officer in-charge of Dholai P.S. had already seized the forest produce along with the vehicle which was subsequently handed over to the Hawaithang Range vide order dated 17.06.2020 passed by learned Chief Judicial Magistrate

(CJM), Cachar at Silchar in Dholai P.S. Case No. 103/2020. The vehicle along with the forest produce were seized under Sections 40, 41, 49 of the Assam Forest Regulation of 1891 (New Amendment 1995). On 23.06.2020, the Seizing Officer served a general notice to locate the owner of the truck and on 24.07.2020, the petitioner appeared and claimed the seized vehicle as his vehicle.

4. The petitioner furnished the relevant documents of the vehicle but he denied the ownership of the seized forest produce stating that he was not aware of the transportation of the forest produce in his truck. It was submitted by the petitioner that the driver of the vehicle, without informing him loaded the timber, but the truck was not handed over to the petitioner.

5. The offence report was forwarded to the Authorised Officer-cum-Divisional Forest officer, Cachar Division, who issued notice to the petitioner under Section 31B in response to which the petitioner submitted his reply, denying the allegations against him. The Divisional Forest Officer is arrayed as respondent no. 2 in the present petition. On conclusion of the confiscation proceeding the opposite party no. 2 vide order dated 14.12.2020 under Section 49(4) of the Assam Forest Regulation, 1981 (as amended in 1995), confiscated the truck to the department.

6. The petitioner has submitted that he has purchased the truck by obtaining a loan from the State Bank of India and he has to deposit monthly instalment of Rs. 50,000/- to the Bank. He makes a livelihood through his truck. Prior to the incident, the truck was transported with bags of cement from Badarpur to Mizoram but the truck had to be halted and stationed due to the Covid pandemic and finally on 22.05.2020, the vehicle was arranged for its return to

Silchar. However, on 25.05.2020, the petitioner received the information from Dholai P.S. about the seizure of his truck with forest produce at Lailapur. When the driver of his truck was intercepted by the police, the driver escaped. The petitioner had no knowledge about the seized timber being loaded in his vehicle. The petitioner had repeatedly requested the O.P. no. 2 to release his truck but the O.P. no. 2 ignored his requests.

7. Against the order of O.P. no. 2 dated 14.12.2020, the petitioner preferred an appeal under Section 49(C) of the Assam Forest Regulation, 1891 before the learned Addl. District Judge, F.T.C. Cachar, which was registered as Misc. Appeal No. 1/2021. The appeal was dismissed by the learned Addl. District Judge.

8. The learned counsel for the petitioner has emphasised through his argument that the judgment and order dated 07.03.2022 is liable to be set aside because the learned Court below has ignored the fact that the confiscation of the truck by the respondent no. 2 was dehors the provisions of the AFR, 1891. A vehicle cannot be confiscated at the stage of inquiry. The petitioner was not involved in the transportation of the forest produce. The confiscation was made in violation of Article 301 of the Constitution of India as the confiscation affected the source of the livelihood of the petitioner. It is averred that in absence of finding of guilt confiscation of a vehicle is not sustainable in law. The case against the petitioner is pending in the Court of the CJM, at Cachar. The petitioner has prayed to set aside the impugned judgment upholding the order dated 14.12.2020 passed by the O.P. no. 2 and pass an order for custody of the truck, as the petitioner is willing to furnish any necessary bonds for custody of the truck. The learned Authorised Officer-cum-Divisional Forest Officer vide order dated 14.12.2020, confiscated the truck bearing registration no. MZ-03-7722. The present petitioner is not concerned about the Sawn timber which was found in

his truck. He is aggrieved by the order of confiscation.

9. It was observed by the Authorised Officer that during investigation, it was found that the driver of the vehicle collected the seized sawn timber from Mizoram area and the owner did not exercise reasonable and due precaution against use of his vehicle for commission of forest offence and thereafter, the officer passed an order for confiscation of the truck to the State. The impugned order dated 14.12.2020 also reflects that the truck was seized as per proper procedure on 20.06.2020. Notice was issued on 23.06.2020 and thereafter, the present petitioner appeared before the O.P. No. 2 to claim his vehicle i.e. the aforementioned truck.

10. The learned Additional District Judge held that the order dated 14.12.2020 vide OR No. DH/2 of 2020-21 DVL/22 of 2020-21, impugned by the present petitioner was appropriate. The Appellate Court spelt out sound reasonings while dismissing the Misc. Appeal No. 1/2021 preferred by the petitioner. It was observed by the learned Appellate Court that the Authorized Officer, after service of required notice of confiscation proceeding to the appellant and after perusing the materials produced before him together with the seized vehicle belonging to the appellant, held that the seized truck bearing Registration No. MZ-03-7722 was involved in forest offence of carrying 360 pieces of sawn timber without valid documents, and confiscated the vehicle to the Department under Section 49(4) of the Regulation (as amended) and the seized sawn timber without valid documents stood confiscated to the State of Assam. It was held that the appellant could not prove to the satisfaction of the Authorized Officer that the vehicle in question was used in commission of forest offence without his knowledge or connivance or abetment, as the case may be. The Authorized Officer, therefore, was fully justified in passing the order of confiscation of the seized vehicle bearing

registration No. MZ-03-7722 and the order is transitory in nature. As the appellant failed to make any attempt to prove or satisfy that the seized vehicle was used in commission of a forest offence without his knowledge or connivance or abetment and as the confiscation of the seized vehicle is temporary in nature, the impugned order was not held to be erroneous.

11. The learned counsel for the petitioner has relied on the decision of this Court in **Jogeswar Borah Vs. State of Assam and Ors.** reported in **2006 (3) GLT 162**, wherein, it has been held that:-

“That the Petitioner is not involved in any forest offence is a fact, which is not disputed. It is only the vehicle of which the Petitioner is the registered owner, that is involved in a forest offence. Admittedly and evidently, the trial of the offence in connection with which the truck of the Petitioner is involved has not come to an end, and, therefore, no order of confiscation under Regulation 51 and consequential appropriation of such property in the name of the -State have occurred. The confiscation of the property ordered by the Authorized Officer, therefore, must be understood by the Court to be confiscation under Regulation 49 of the Regulations, which is a temporary stage. In such a situation, when the truck is the source of livelihood of the Petitioner, it is difficult to visualize as to why it should have been retained beyond a reasonable time. In the circumstances noted above, the continued confiscation or retention of the truck of the Petitioner must be held by the Court to be wholly without authority of law and this Court must also hold that the concerned authorities at all levels have failed to exercise their quasi judicial discretion vested by the provisions of the Forest Regulations in a fair and unbiased manner.

6. The net result of the above discussion is that the Petitioner is entitled to have the truck released forthwith for which the concerned authority, whosoever he may be, in control of the vehicle is hereby directed to release the same immediately subject to execution of a bond by the Petitioner for production of the vehicle before any authority or Court, as may be required. Writ Petition is accordingly allowed in terms of the above observations and directions.”

12. The learned counsel for the respondent no. 2 has relied on decision of this Court vide order dated 30.08.2022 in **Deep Kumar Vs. The State of Assam and Another** in Crl. Rev.P. 172/2022, wherein, it has been held that the petitioner Shri Deep Kumar, has challenged the legality, propriety and correctness of the impugned judgment dated 07.03.2022, passed by the learned Additional District Judge, Silchar in Misc. Appeal

No.11/2020 and also the impugned order dated 14.01.2020, passed in O.R. No. LP/4 of 2019-20, DH/4 of 2019-20, DVL 51 of 2019-20 passed by the Authorized Officer-cum-Divisional Forest Officer, Cachar, Silchar. The confiscation order of the vehicle No. UP-74T-6001 was held to be correct and the petition was dismissed.

13. In the instant case, the impugned order dated 14.12.2020 of the Authorised Officer-cum-Divisional Forest Officer, Cachar clearly reveals that a criminal case has been registered in connection with the Forest offence being Dholai P.S. Case No. 103/2020. It appears that the trial of the criminal case in connection with which the vehicle was seized has not come to an end and no order of confiscation under Regulation 51 of the 1891 Regulation has been passed. The confiscation of the property order by the Authorised Officer, therefore, must be understood by the Court to be confiscation under Regulation 49 of the 1891 Regulation, which is an interim order of confiscation. The Chief Judicial Magistrate forwarded the seized forest produce along with the truck to the Authorised Officer. In the instant case, the petitioner has prayed for custody of the vehicle as he is not concerned with the Forest produce.

14. Through, the impugned judgment and order dated 14.12.2022 passed by the Addl. District Judge, Cachar, Silchar in connection with Misc. Appeal No. 01/2001, it has been held by the learned Addl. District Judge that the Authorised officer passed the order of confiscation under the relevant provisions of the Assam Forest Regulation, 1891 commencing from Regulation 49. No illegality or impropriety of the order dated 14.12.2022 could be detected. The truck bearing registration No. MZ-03-7722 was involved with forest offence carrying 360 pieces of sawn timber without valid documents. The petitioner could not prove to the

satisfaction of the Authorised Officer that the vehicle in question was used in commission of forest offence without his knowledge or connivance as the case may be. The order was indeed transitory, as it was passed under Regulation 49(4).

15. In **Jogeswar Borah's** case (supra), a Coordinate Bench of this Court passed an order for custody of a seized truck involved with a forest offence in connection with a writ petition being WP(C) 8779/2004, whereas, this instant petition is under Section 397/401 Cr.P.C, challenging the legality and propriety of the orders dated 07.03.2022 and 14.12.2022 respectively.

16. The order dated 14.12.2022 passed by the Authorized Officer-cum-Divisional Forest Officer, Cachar, Silchar reference OR No. DH/2 of 2020-21 and DVL/22/2020-21 clearly reveals that after the vehicle was found lying abandoned and unclaimed and after the same was forwarded to the Authorized Officer, the teak/sawn timbers were unloaded as per Regulation 40, 41 and 49 of the AFR VII of 1891. A general notice was served vide office Order No. 9 dated 23.06.2020 to trace out and locate the genuine owner of the vehicle. On 24.07.2020, the petitioner appeared before the Authorized Officer claiming his ownership of the seized vehicle no. MZ-03-7722. Notice was issued through Form No. 31(A) to the petitioner for producing the legality and proof of origin of the sawn timber and the vehicle seized in connection with the forest offence. The petitioner appeared before the Authorized Officer on 28.07.2020. He has stated that on 22.03.2020, he sent his vehicle loaded with 360 bags of cement from M/S Barak Valley Cement, Badarpur Ghat to Saiha, Mizoram by his vehicle no. MZ-03-7722. After delivery of the cement, the vehicle could not return back to Silchar due to stoppage of interstate movement on the outbreak of Covid-19. However, arrangements were made for the return journey of the vehicle to Silchar. On 25.05.2020, he was informed over

phone by the Dholai P.S. about the seizure of his vehicle.

17. It was held by the Authorized Officer that when the petitioner appeared before him, the petitioner could not convince him that he exercised reasonable and due precaution against the use of his vehicle against Commission of Forest Offence. Through his reply and deposition, the petitioner has stated that on his return journey from Silchar, his driver without his knowledge must have loaded the sawn timber into his vehicle. It has also been brought on record that the petitioner purchased his vehicle on loan acquired from the bank. He is an unemployed youth and his livelihood depends on his vehicle. The learned Addl. District Judge, Cachar, Silchar has also spelt out sound reasonings while dismissing the appeal and upholding the impugned order dated 14.12.2020 passed by the Authorized Officer. As the legality and propriety of the order was challenged, I deem it proper not to interfere with the order dated 07.03.2022 passed by the learned Addl. District Judge in Misc Appeal No. 01/2021. The impugned order dated 14.12.2022 passed by the Authorized Officer has been correctly upheld by the Appellate Court of the Addl. District Judge, Cachar, Silchar in Misc. Appeal No. 01/2021. It has also been observed by the Addl. District Judge that:-

“Considering the entirety of the matter, the appellant/petitioner is still at liberty to submit his grievances before the concerned Forest Authority and such Authority is also directed to consider such prayer to release the seized vehicle, in accordance with the law, if the appellant is otherwise entitled to interim custody of such vehicle, with intimation to the jurisdictional Court.”

18. I would like to reiterate that the order passed by the Authorised Officer on 14.12.2020 does not suffer from any illegality and impropriety and the Addl. District Judge vide order

dated 07.03.2022 in Misc. Appeal No. 01/2021 has correctly upheld the order of the Authorized Officer dated 14.12.2022 in OR No. DH/2 of 2020-21 and DVL/22/2020-21.

19. In terms of above, this petition stands dismissed.

JUDGE

Comparing Assistant