

Court No. - 8

Case :- WRIT - C No. - 1941 of 2022

Petitioner :- Hari Mangal Singh

**Respondent :- State Of U.P Thru. Prin. Secy.
Forest Deptt. Lko. And 2 Others**

Counsel for Petitioner :- Pankaj Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia,J.

1. Heard learned counsel for the petitioner, learned Standing Counsel for the State and perused the material brought on record.

2. The present writ petition has been filed by the petitioner challenging the order dated 15.02.2021 whereby the vehicle of the petitioner bearing no. U.P. 50-AT/2777 (Pick-up) (hereinafter referred as vehicle) was confiscated in exercise of power under Section 52 (A-1) of the Indian Forest Act as well as appellate order dated 07.12.2021 whereby the appeal preferred by the petitioner was dismissed.

3. The facts in brief are that on 03.10.2020, an order of detention came to be passed alleging therein that the vehicle in question was trying to flee away and was stopped by the Range Officers and a case was registered under Section 26, 41, 42, 52 of the Indian Forest Act. The petitioner was called upon to show cause as to why proceedings may not be initiated against the detained goods. In the said show cause notice it was also alleged that on the vehicle in question, dry Sagwan wood was being transported after theft. The petitioner gave a reply to the said show cause notice and denied the allegation and specifically stated that he was carrying the wood from a tree cut from his land and was for personal purpose but was illegally detained. After submission of the reply, an order came to be passed confiscating the vehicle mainly on the ground that after submission of the reply of the petitioner a fresh report was called from the Forest Range Officer on 31.10.2020 and

12.02.2021, wherein Range Officer had said that the petitioner was not stating the correct facts, as in two contentions of the petitioner were firstly that the petitioner had stated that he had got the wood cut from his own land and in the other statement he had stated that he had cut the wood from another property Gata No. 213. Finding the said contentions contradictory, the version of the petitioner was disbelieved and the confiscation order was passed. The appeal thereafter preferred by the petitioner was dismissed on the same ground and reasoning. As regards the other cases referred in the appellate order against the petitioner to form a view that the petitioner was habitual offender, it is argued by the counsel for the petitioner that neither were the cases made a part of the show cause notice nor is the petitioner aware any of the said cases.

He places reliance on the judgment of this Court in the case of ***Santosh Kumar Chaurasia Versus State of U.P. Principal Secretary Environment, Forest and Climate Change, Lucknow and 2 others, 2022:AHC-LKO:23742***. In the said case this Court had analyzed the scope of powers under Sections 52, 52-A and 52-B of the Indian Forest Act (as amended in the State of Uttar Pradesh) and this Court had recorded as under:-

"Section 52-A of the Act provides for steps to be taken after the order of seizure and for producing the sized goods before the Divisional Forest Officer, who is authorized to pass an order after recording the reasons with regard to the custody, possession, delivery, disposal or distribution of such property and further authorizes the concerned officer in case of vehicles to confiscate them.

A plain reading of the Section 52-A makes it clear that the power conferred upon the Divisional Forest Officer to take action for confiscation only on being satisfied that a 'forest offence' is believed to have been committed in respect of any forest produce, which is the property of the State Government. The said condition precedent prescribes that prior to the passing of the confiscating order, it is essential to come to a conclusion that a 'forest offence' is believed to have been committed.

Admittedly, proceedings with regard to the allegation of 'forest offence' have not been

adjudicated so far. The petitioner had specifically raised a plea that he had given the vehicle in question for hire and had no concern with the goods being transported therein. The order of the authorized officer confiscating the goods does not record that the vehicle in question was used in the 'forest offence', which according to the prescribed authority was being committed in respect of a forest produce. The order merely records that the goods in question, being transported, were the government property. He further erred in disbelieving the version of the petitioner that he had given the truck on hire merely because the petitioner did not disclose as to who had booked the truck in question.

Considering the order passed under section 52-A of the Act confiscating the Truck coupled with the fact that the proceedings for adjudicating the 'forest offence' have not culminated so far, clearly the divisional forest officer has erred in passing the order of confiscation. The divisional forest officer in terms of the mandate of section 52-A of the Act was clearly empowered to make an order with regard to the custody, possession, delivery and disposal of such property in addition or in alternate to the power of confiscation. No reasons have been recorded as to why the divisional forest officer considered it necessary to confiscate the goods when the trial regarding 'forest offence' is yet to have started. The appellate authority is equally silent as to why the order of confiscation came to be passed when the proceedings for establishing 'forest offence' are pending. The appellate authority has in fact recorded that the appellant failed to establish that he was not involved in the offence. The said finding clearly is erroneous inasmuch as the question of the offence having been committed is yet to be established. "

In the present case also no reasons to believe have been recorded while detaining the vehicle nor has any finding being recorded that the woods in question were a forest produce or were a government property. In view thereof, the confiscation order and the appellate order being contrary to the mandatory provision cannot be sustained and are quashed. The respondents are directed to return the confiscated vehicle to the petitioner on his furnishing the proper proof of ownership of the vehicle in question.

The present writ petition stands ***allowed.***

Order Date :- 12.10.2023/Arun