

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2440 of 2015

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Sugandh @ Sugandh Yadav, Son of Lallan Yadav, Resident of Village-
Golabad, P.S- Naugarh, Distt. - Chandouli (U.P), Pin Code-232111.

.... Petitioner

Versus

1. The State of Bihar
2. The Secretary, Environment and Forest Department, Government. of Bihar, Patna-800013.
3. The District Magistrate, Kaimur ,Bhabua.
4. The District Forest Officer, Kaimur , Bhabua.
5. Assistant Conservator of Forest, Kaimur Forest Division at Bhabua.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Radha Mohan Pandey

For the Respondent/s : Mr. AC to AAG-11

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

6 29-09-2015 Heard Sri Radha Mohan Pandey, learned counsel for
the petitioner and learned AC to AAG-11.

The petitioner, invoking writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, has prayed for setting aside the order dated 15.12.2014 passed by the Revisional Authority-cum- Secretary, Environment and Forest Department, Govt. of Bihar in Forest Confiscation Revision Case no.09 of 2014, whereby the revisional authority has set aside the order dated 31.01.2014 passed by the District Magistrate, Kaimur, Bhabua in Forest Confiscation Appeal No.3 of 2013-14. The appellate authority i.e. the District Magistrate by the said order had set aside the order dated 24.08.2013 passed in Confiscation

Case no.2 of 2013 passed by the Authorised Officer-cum- D.F.O., Forest Division, Kaimur.

Short fact of the case is that the petitioner's vehicle i.e. Pick-up Van No.UP-67T/6372 was seized on 05.03.2013 on an allegation of carrying 20 Kg Piyar Guthali(Chirounji Seeds), 1 ½ Kg Indrajawa and 5 Kg Lakhan allegedly as forest produce. After the seizure, a forest case was instituted. Besides instituting criminal case vide Forest Case no.21F of 2013 under Sections 33, 41, 42 of the Indian Forest Act, 1927(Bihar State Amendment Act, 1989) and under Sections 27,29,51 of the Wild Life (Protection) Act, 1927, a confiscation proceeding was initiated vide Forest Confiscation Case no. 2 of 2013. In the confiscation proceeding, the petitioner being owner of the vehicle in question appeared and filed his written statement taking plea that the offence committed was not earlier known to the petitioner nor it was a case of connivance. It was claimed that the petitioner had given his vehicle to one Sri Amerika Yadav, who was a Khalasi for running the vehicle as public passenger vehicle and at the time of seizure, the vehicle was being run/ driven by one Sri Kailash Sah. Before the confiscation authority, the petitioner was also examined and in his examination, he had made specific statement that he had given his vehicle to Amerika Yadav, Khalasi for



running the vehicle on rent. On the date of occurrence, the vehicle was being driven by Sri Kailash Sah. It was claimed that the petitioner was not having any knowledge regarding carrying of such alleged forest articles. Similarly, Sri Amerika Yadav was also examined, who also took specific stand that he was not knowing about carrying of such articles. A plea was taken that passengers had carried the said articles on the vehicle. Besides this, a specific plea was taken before the confiscating authority that even the seized articles were not forest produce and, as such, there was no violation of any provision of Forest Act. However, learned Divisional Forest Officer by its order dated 24.08.2013 confiscated the vehicle with seized articles.

Aggrieved with the order of the confiscation, the petitioner being the owner of the vehicle in question filed an appeal vide Forest Confiscation Appeal no.3 /2013-14. Before the appellate authority also same plea was taken that whatever occurrence had taken place, that was not within the knowledge of the petitioner nor the seized articles were forest produce. Considering the facts and circumstances, particularly the fact that carrying of seized articles were not within the knowledge of the owner of the vehicle i.e. the petitioner, the learned appellate authority set aside the order of confiscation. The appellate

authority i.e. the District Magistrate has also recorded that the Department has completely failed to establish that the seized articles were forest produce. After the order of the appellate authority, the Department preferred a revision vide Forest Confiscation Revision Case no.9 of 2014, however the revisional authority has set aside the order of the District Magistrate.

The petitioner aggrieved with the order of the revisional authority has approached this Court invoking its writ jurisdiction.

Learned counsel for the petitioner reiterates that the petitioner was not at all knowing about carrying of seized articles on his vehicle. It has also been reiterated that the seized articles were not forest produce and, as such, according to learned counsel for the petitioner, even seizure was itself illegal. He submits that the learned Collector had examined the matter in detail and after being satisfied that the vehicle was being used to transport the passengers and without the knowledge of the owner of the vehicle the seized articles were being carried and also the materials seized were of meager quantity has set aside the order of the confiscation. According to learned counsel for the petitioner, even before this Court, the Department has not brought on record any notification, which covers the seized articles to be forest produce. Accordingly,

he makes a prayer for setting aside the order impugned i.e. order passed by the revisional authority.

Learned counsel for the State has vehemently opposed the prayer of the petitioner. By way of referring to the averments made in the counter affidavit, he submits that in view of Section 2(4) of the Indian Forest Act, 1927, the seized articles are forest produce. He submits that since the seized articles were forest produce, there is no illegality or irregularity either in the orders of the Divisional Forest Officer or the revisional authority.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. In the counter affidavit, learned counsel for the State has also brought on record deposition of the petitioner, who was examined as Witness no.2 in the confiscation proceeding as well as Sri Amerika Yadav, who was examined as Witness no.1. Sri Amerika Yadav in his deposition has made categorical statement that seized vehicle was given to him for running the vehicle in between Semra village and Bhabua and on the date of occurrence, the passengers had boarded the vehicle along with certain bags of rice etc. He has also stated that he was not knowing about seized articles. Similarly, the petitioner in his deposition, in the confiscation proceeding, has reiterated that he had given the vehicle on rent to Sri Amerika



Yadav. He noticed about the seizure of the vehicle on the next date of the seizure. The driver Sri Kailash Sah was also examined as Witness no.4. In his deposition, he had made categorical statement that seized articles were concealed in the bag of rice. In his cross-examination, he has stated that the vehicle in question was given by the owner of the vehicle to Amerika Yadav on monthly rental of Rs.3500/-. On the basis of aforesaid evidences, particularly statement made by the petitioner, it is evidently clear that whatever had been done was not within the knowledge of the petitioner, who was owner of the vehicle. Meaning thereby that in the confiscation proceeding, sufficient materials were brought to show that it was not done either within the knowledge of the petitioner or with the connivance of the petitioner. For the purposes of seizure, in this context, it is relevant to mention here that Section 52 of the Indian Forest Act (Bihar Amendment Act) makes it clear that in case the confiscating authority is satisfied that the vehicle was used in commission of offence without the knowledge of the owner, certainly no confiscation order can be passed. On perusal of the order of the District Magistrate, the Court is satisfied that the learned District Magistrate had rightly set aside the order of confiscation passed by the Divisional Forest Officer. The learned District Magistrate has held that it was done

without the knowledge of the petitioner. Of course, the revisional authority has set aside the order of the District Magistrate, in the order impugned, learned revisional authority has not bothered to discuss the reason for setting aside the order of the District Magistrate. Even before the revisional authority, no any new material was brought on record to satisfy the revisional authority that everything was done within the knowledge of the petitioner.

In view of facts and circumstances, particularly the evidences brought on record, which suggest that the articles were being carried without active connivance or knowledge of the petitioner, the order impugned i.e. the order of the revisional authority is liable to be interfered with. Accordingly, order dated 15.12.2014 passed by the Revisional Authority-cum- Secretary, Environment and Forest Department, Govt. of Bihar in Forest Confiscation Revision Case no.09 of 2014 is hereby set aside and the order 31.01.2014 passed by the Collector in Forest Confiscation Appeal no.3 of 2013-14 is restored.

The writ petition stands allowed.

(Rakesh Kumar, J)

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