

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 286 of 2014**

- Shamiullah Ansari, son of Ahmad Hussain, aged about 43 years, caste Julaha (Musalman), residence of village Aasta, P.S. Aasta, Tahsil Manora, District Jashpur, Chhattisgarh

---- Petitioner**Versus**

- Authorized Officer and Additional Divisional Forest Officer, Jashpur, P.S. Jashpur, District Jashpur, Chhattisgarh

---- Respondent

For Petitioner : Shri CJK Rao, Advocate.

For Respondent : Ms. Smiti Sharma, Deputy Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order****Passed On : 01.05.2015**

1. The petitioner has assailed the legality and validity of the original orders passed by the Authorized Officer, the appellate orders passed by the Conservator of Forest and the Revisional order passed by the 1st Additional Sessions Judge, concurrently directing confiscation of the tractor-trolley bearing registration Nos.CG-14A/2786 and CG-14A/2787 respectively along with 74 numbers of Saal wooden logs, as the said vehicles were found illegally transporting the said wooden logs, a nationalized forest produce.

2. Facts of the case, briefly stated, are that at about 9.35 pm on 6.10.2012, forest guard Chandra Kumar went to village Nadar along with Mahesh Sahi and Krishna Ram. They found one tractor parked on the road wherefrom labourers were unloading the wooden logs. On verification, it was found that driver Harit Ram was neither possessed of any receipt nor any transit pass, therefore, the tractor trolley and wooden logs were seized and the Range Officer, Manora was informed. Seizure memo was prepared in the presence of villagers Chakradhari, Sukhram, Machhendra Ram, Jagdish and Mahesh Sahi.
3. Forest offence bearing POR No.5388/05 was registered and thereafter investigation was carried out. Statements of witnesses including Mukti Kujur, Chandra Kumar, the petitioner, husband of Sarpanch, Mahesh Sahi, Sukhram and driver Harit Ram were recorded. The petitioner was issued show cause notice by the authorized officer and on completion of the proceeding, the order of confiscation was passed by the Authorized Officer and thereafter appeal and revision preferred by the petitioner have also been dismissed.
4. Learned counsel for the petitioner would submit that one Aditya Narayan had borrowed the tractor from the petitioner, therefore, the petitioner had no knowledge or consent about loading or unloading of wooden logs and as such, the vehicle belonging to the petitioner is not liable to be confiscated. Learned counsel would refer to the statements

of witnesses to buttress his submission about lack of knowledge and consent on the part of the petitioner.

5. Per contra, learned State counsel would submit that burden to prove lack of knowledge or consent is on the petitioner which he has failed to discharge. The vehicle was not taken on rent by Aditya Narayan but the same was gratuitously lent to him. Therefore, it appears, the said defence appears to be an after thought.
6. Perusal of the statements of witnesses recorded before the Authorized Officer would reveal that the petitioner has put forth a case of renting out the vehicle to Aditya Narayan. However, no documentary evidence with regard to the said transaction of hiring has been produced by the petitioner. The vehicle appears to be registered for agricultural purposes, however, it was allegedly hired for non-agricultural purposes i.e. for loading of *Muram* and *Gitti*. The person who is said to have hired the vehicle i.e. Aditya Narayan was not present on the spot when the wooden logs were unloaded. Even driver Harit Ram was not present, as according to him, he reached the spot later on.
7. Material available on record further reveals that Aditya Narayan had instructed the driver to load the old wooden logs for transporting the same to his village Baherana. However, the vehicle was found to be loaded with freshly cut Saal wood logs. Therefore, it is clear that that the said Aditya Narayan wanted to transport the wooden logs but is

raising false plea that he instructed the driver to load old wooden logs. There is absolutely no evidence on record to indicate as to from which place to which place bricks, *Gitti* and *Muram* belonging to Aditya Narayan were to be transported. The petitioner's reply in the statement and the statements of Aditya Narayan and driver Harit Ram are conspicuously silent about this aspect of the matter.

8. In the considered opinion of this Court, the petitioner has failed to discharge the burden about lack of knowledge or consent regarding illicit transportation of nationalized forest produce. In any case, there is no pleading or proof that the petitioner had taken all reasonable and necessary precaution against illicit use of the vehicle.
9. Under Section 52 of the Indian Forest Act, 1927, the owner of the vehicle is required to prove that the vehicle was used in carrying timber or other forest produce without his knowledge or connivance or that of his agent and that he had taken all reasonable and necessary precaution against such use. Thus, owner of the vehicle is not only required to prove his lack of knowledge or connivance but he is required to prove lack of knowledge or connivance of his agent also.
10. In the present case, as per the statement of Aditya Naryan, driver Harit Ram was specifically asked to load wooden logs, although he says that the driver was asked to load **old** wooden logs. However, in view of the fact that the vehicle was found to carry freshly cut wooden logs, it

would clearly appear that the driver i.e. the agent of the petitioner was aware that the vehicle is being used for illegal transportation of timber.

11. Under Section 52(5) of the Indian Forest Act, 1927 the burden to prove, that the transportation of forest offence has taken place without the knowledge or connivance of the owner or of his servant or his agent and that all reasonable and necessary precautions had been taken against use of objects aforementioned for commission of forest offence, lies on the owner of the vehicle. Such findings about bonafides of the owner and his instructions to the driver to prove his innocence are pure finding of fact.

12. In the matter of **State of West Bengal and another Vs. Mahua Sarkar**¹, the Hon'ble Supreme Court has held that in proceedings for confiscation of the vehicle carrying illicit timber, the onus is on the owner of the vehicle to prove to the satisfaction of the authorized officer that the vehicle was used in carrying timber without his or his agent's knowledge or connivance and that all reasonable and necessary precaution against such use had been taken and further that the owner has to prove this on the basis of sufficient material and not on the basis of mere assertion. In the said case the authorized officer had passed an order of confiscation and the District Judge dismissed the appeal preferred by the vehicle owner. The order was set-aside by the High Court by allowing the writ petition filed by the vehicle owner. The

¹ (2008) 12 SCC 763

Hon'ble Supreme Court, while allowing the appeal, observed that the High Court erroneously allowed the writ petition filed by the vehicle owner without properly analyzing the position.

13. In the matter of **Khimji Vidhu Vs. Premier High School**², the Hon'ble Supreme Court has held that in exercise of its power and jurisdiction under Article 227 of the Constitution of India the High Court may correct errors of jurisdiction and the like but not to upset pure findings of fact, which fall in the domain of an appellate Court only.

14. In the matter of **B.K. Muniraju Vs. State of Karnataka and others**³, it has been held in para-22 thus:-

“22. It is settled law that a writ of certiorari can only be issued in exercise of extraordinary jurisdiction which is different from appellate jurisdiction. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice. In regard to a finding of fact recorded by an inferior tribunal or authority, a writ of certiorari can be issued only if in recording such a finding, the tribunal/authority has acted on evidence which is legally inadmissible, or has refused to admit an admissible evidence, or if the finding is not

2 (1999) 9 SCC 264

3 (2008) 4 SCC 451

supported by any evidence at all, because in such cases the error amounts to an error of law. It is needless to mention that a pure error of fact, however grave, cannot be corrected by a writ.”

15. In the matter of **Krishi Utpadan Mandi Samiti and another Vs. Ved**

Ram⁴, the following has been held in para-27:

“27. At any rate, the Samiti and the Deputy Director have concurrently held that the respondent Company has not been able to rebut the presumption under Section 17 of the Adhiniyam. We see no reason to interfere with that finding especially when the appraisal of the evidence by the said two authorities has not been shown to us to be in any way perverse to warrant interference with the same.”

16. In view of the above law laid down by the Hon'ble Supreme Court and the concurrent findings recorded by the Authorized Officer, the Conservator of Forest and 1st Additional Sessions Judge, directing confiscation of the tractor-trolley, no interference is called for in the matter.

17. In the result, the writ petition deserves to be and is hereby dismissed.

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