

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL WRIT PETITION NO. 596 OF 2014

Santosh s/o Chaitram Patil,
age 52 years, occ. Round Officer,
Forest Development Corporation of
Maharashtra Ltd., R/o Dara
(West Forest Project) Taloda,
At Post, Tq. Taloda,
District Nandurbar

...Petitioner

VERSUS

Budha s/o Manga Kharde,
age 45 years, occ. Vehicle owner,
R.O. Kansai, Tq. Shahada,
District Nandurbar

...Respondent

.....
Shri P.L.Shahane, advocate for petitioner
Shri S.U.Choudhary, advocate for respondent
.....

CORAM : V.M.DESHPANDE, J.

DATED : 22nd July, 2015

ORAL JUDGMENT : -

1] Rule. Rule is made returnable forthwith.

2] Heard finally with the consent of Shri P.L.Shahane, learned counsel for the petitioner and Shri S.U.Choudhary, learned counsel for respondent.

3] The challenge in this Writ Petition is to the judgment and order, passed by the learned Additional Sessions Judge, Shahada, dated 13.5.2014 in Criminal Revision Application No. 10 of 2014, by which the learned Revisional Court allowed the Revision filed on behalf of the respondent and thereby set aside the order, passed by the Judicial Magistrate, First Class, Shahada, below Exh.1, in Miscellaneous Criminal Application No. 39 of 2014, which was filed by the present respondent under Section 457 of the Code of Criminal Procedure for return of the vehicle. By the impugned order, learned Revisional Court has directed that unregistered vehicle of Tata ACE make 2014 bearing chasis No.MH-442064DVP82661 be released in favour of respondent on he executing supratnama bond of Rs.Four Lacs with the condition that the said vehicle will be produced in the court as and when required.

4] The factual matrix, giving rise to this petition, can conveniently be stated as under :-

The petitioner is the Forest Officer. On 10.2.2014, when he was on patrolling duty, he noticed that certain notified forest produce were transported in a vehicle. The said vehicle was not registered with the Regional Transport Officer. Therefore, the said vehicle was not having any registration. The petitioner intercepted

the said vehicle and forest offence bearing No. 1 of 2014 was registered on 11.2.2014 against three persons, who were found travelling in the said vehicle.

On 12.2.2014 those persons were produced before the learned Judicial Magistrate, First Class, Shahada and they were sent in the forest custody remand and such remand was up to 14.2.2014.

On 24.2.2014 the petitioner submitted a report to the authorised officer as envisaged under Section 61-A of the Indian Forest Act.

On 1.3.2014 the authorised officer issued notice to the accused persons who were found travelling in the seized vehicle. By the said notice, it was intimated to them that the vehicle is liable for confiscation.

In the meanwhile, on 10.3.2014, an application was moved by the present respondent under Section 457 of the Code of Criminal Procedure before the learned Magistrate for return of the vehicle on supratnama. The said application was registered as Application No. 39 of 2014. The said application was contested by the present petitioner. Learned Magistrate, Shahada on 20.3.2014 rejected the said application on the ground of jurisdiction in view of initiation of the proceedings before the authorised officer about the confiscation of the vehicle.

The said order was questioned before the Revisional Court, and as observed in the opening paragraph, the Revision was allowed.

5] The submission of the learned counsel for the respondent herein is that, when the application under Section 457 of the Code of Criminal Procedure was moved before the learned Magistrate, on that day, confiscation proceedings were not initiated, therefore, the order passed by the learned Magistrate dismissing his application on the ground of jurisdiction is contrary to law. He submitted that the learned Revisional Court has rightly noticed that the notice about confiscation was issued against the present respondent on 2.4.2014. As such, much earlier of initiation of confiscation proceedings, the application under Section 457 of the Criminal Procedure Code was moved. Except this, no other point was raised by the respondent before this court. He, therefore, submitted that the judgment and order, passed by the learned Revisional Court is perfectly justified warranting no interference in the extra ordinary jurisdiction of this court.

6] At the time of interception of the vehicle on 10.2.2014 containing forest produce, the vehicle in question was not registered with any registration authority. Thus, it is clear that at the time when the vehicle was seized, that time the name of the registered owner of the said vehicle was unknown. Three persons were found to be travelling in the said vehicle. Those persons were arrested. Their identity was established. A notice dated 1.3.2014 was issued by the authorised officer against the said three named persons. The said notice contains as follows : -

" वर उल्लेख केलेप्रमाणे सदर गुन्हे कामात स्वतः मालकीचा वरील वाहनाचा उपयोग केला आहे. सदर प्रकरणातील पंचनामा व आपल्या जबाबावरून हि अवैध तोडीची जळावू लाकडे आपल्या संगनमताने व संमतीने तोड करून आपले मालकीचा वरील वाहनातून वाहतूक केला आहे. तरी वरीलप्रमाणे वाहन सरकार जमा करण्यास तुमचेकडून काही हरकत अगर तक्रार असल्यास हि नोटीस मिळाल्यापासून १० दिवसांच्या आत खालील स्वाक्षरी करणारे अधिकारी यांचे समक्ष हजर राहून किंवा लेखी कळवावे. दिलेल्या मुदतीचे आत तुमचेकडून काही तक्रार किंवा हरकत आली तरच ती विचारात घेतली जाईल व वाटल्यास तुम्हाला तशी बचावाची संधी देण्यात येईल. अन्यथा मुदतीनंतर आलेली कोणतीही तक्रार किंवा हरकत विचारात घेतली जाणार नाही. याची नोंद घ्यावी."

Admittedly, on 1.3.2014 when notice for confiscation was given by the authorised office to those three persons, that time it was not within the knowledge of the authorised officer that the respondent is owner of the vehicle. The reason for not knowing the name of the present respondent as owner of the said vehicle is simple, since the vehicle till that time was not registered by the respondent with any State Registration Authority. It is also not in dispute that a reply was filed to the notice, dated 1.3.2014 by the persons named therein. The reply notice is dated 13.3.2014. In the said reply notice, for the first time, it was made known to the authorised officer that the owner of the vehicle is the present respondent. Thus, for the first time, after 13.3.2014 the authorised officer got the knowledge that the respondent is the owner of the vehicle which is liable for confiscation. After getting the knowledge about the ownership of the vehicle that is liable for confiscation, the authorised officer on 2.4.2014 issued notice to the respondent, the said fact is also undisputed.

7] Thus, it is clear that when the notice for confiscation was given to the respondent on 2.4.2014, the proceedings under Section

457 of the Code of Criminal Procedure were already initiated.

Merely because the notice to respondent dated 2.4.2014 was given, could it be said that initiation of the proceedings for confiscation were subsequent to the application under Section 457 of the Code of Criminal Procedure, is the question before this court.

8] Section 61-G of the Indian Forest Act, 1927, as it is applicable to the State of Maharashtra, is as under : -

“ 61G. Bar of jurisdiction in certain cases : - Whenever any timber, sandalwood, firewood, charcoal or any other notified forest produce which is the property of the State Government, together with any tool, boat, vehicle or cattle used in committing any offences is seized under sub-section (1) of Section 52, the authorised officer under Section 61A or the officer specially empowered under Section 61C or the Sessions Judge hearing an appeal under Section 61D shall have, and notwithstanding anything, to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, any other officer, court, tribunal, or authority shall not have, jurisdiction to make orders with regard to the custody, possession, delivery, disposal or distribution of such property and any tool, boat, vehicle or cattle. ”

From the aforesaid provision, it is clear that once the proceedings for confiscation are initiated, then the Magistrate has no power to pass the order for return of the seized vehicle or the other commodity. The present case is peculiar one. At the time of seizure of the vehicle, the vehicle was unregistered. It is nobody's case that on the date of seizure the forest officer was knowing the

identity of the owner of the vehicle.

9] The petitioner vide communication, dated 24.2.2014 to the authorised officer has brought to his notice about the seizure of the vehicle and also prayed to the authorised officer for initiation of the confiscation proceedings. Even on this date, the name of respondent was not surfaced. After getting the intimation about the seizure of the vehicle, which was carrying forest produce, the authorised officer on 1.3.2014 has issued notices to the accused persons who were named in the first information report.

The relevant vernacular portion of the said notice is also reproduced in the preceeding paragraph. On 1.3.2014 also it was not within the knowledge of the authorised officer that the present respondent is the owner of the vehicle. Since on 1.3.2014 the authorised officer was unknown about the identity of the respondent that he is the owner of the vehicle, it was not expected from him to issue notice to the respondent about the initiation of the confiscation proceedings under Section 61-A of the Indian Forest Act.

10] The notice dated 1.3.2014 is replied by the noticees therein, accused in the forest offence. The said reply to the notice is dated 13.3.2014. In the said reply dated 13.3.2014, the noticees brought to the notice of the authorised officer that the present respondent is the owner of the vehicle which is subject matter of confiscation proceedings. Thus, for the first time, after the receipt of reply dated 13.3.2014, the authorised officer got the knowledge

about the ownership of the vehicle sought to be confiscated, immediately the notice, dated 2.4.2014 is issued.

Initial date for confiscation proceedings cannot be treated as 2.4.2014, however, it has to be treated from 1.3.2014. Merely because of the notice, dated 2.4.2014, it cannot be termed that the confiscation proceedings were not initiated prior to filing of the application under Section 457 of the Code of Criminal Procedure. The notice, dated 1.3.2014 is clear. By the said notice, the authorised officer has put to the notice of the persons named in the said notice that the confiscation proceedings are initiated. Since on that day the identity of the present respondent was not disclosed, his name was not appearing in the said notice.

11] In that view of the matter, the learned Judicial Magistrate, First Class, in my view, has rightly reached to the conclusion that the learned Magistrate has no jurisdiction to consider the application under Section 457 of the Code of Criminal Procedure in view of initiation of confiscation proceedings. The learned Revisional Court, in my view, has misdirected himself while considering the case of the petitioner, resulting into miscarriage of justice.

12] In that view of the matter, the impugned order cannot stand to the scrutiny of law. That leads me to pass following order.

ORDER

- (i) Criminal Writ Petition No. 596 of 2014 is allowed.
- (ii) The judgment and order, passed by the Additional Sessions Judge, Shahada, on 13.5.2014 in Criminal Revision No. 10 of 2014 is hereby quashed and set aside.
- (iii) The order, passed by the Judicial Magistrate, First Class, Shahada, dated 20.3.2014, below Exh.1, in Miscellaneous Criminal Application No. 39 of 2014 is restored.
- (iv) Rule is made absolute in above terms.

(V.M.DESHPANDE, J.)