

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.3678 OF 2013

Mrs. Kavita Sandip Tandel,
age 27 years, Occ: Household,
R/at-Vikramgad, District- Thane.

...Petitioner

Versus

1. The State of Maharashtra

2. The Authorized Officer &
Assistant Conservator of Forest, Wild
Life Sanctuary Tansa, Shahapur,
District-Thane.

.... Respondents

Mr. S.A. Shaikh for Petitioner.

Mr. A.R. Patil, APP for Respondents -State.

CORAM:-M.L. TAHALIYANI, J.

DATED : 23rd MARCH, 2015.

Oral Judgment :

Heard. Admit.

2. By consent of the parties the petition is taken up forthwith for final hearing.

3. The Petitioner is aggrieved by the judgment and order passed by the learned Sessions Judge, Thane, in Criminal Appeal No.207 of 2011 whereby learned Sessions Judge has dismissed the

appeal filed by the Petitioner against the order of Authorised Officer-cum-Assistant Conservator (Wild Life Sanctuary) Tansa, Shahapur, Dist. Thane, passed under section 61A of the Indian Forest Act, 1927 (Maharashtra State Amendments).

4. The confiscation proceedings started followed by a seizure of Mahindra Bolero Jeep, bearing No.MH-04/ED-5284 under the Indian Forest Act (hereinafter called as 'the said Act'). Said Bolero Jeep was allegedly involved in forest offence punishable under section 26 of the said Act. The said Bolero Jeep was intercepted by the Forest Officers near Tansa and it was found that it contained 50 teak wood logs. There were three persons in the vehicle viz. 1) Harshad Subhash Thakare, 2) Baliram Mahadu Bhoir and 3) Rama Navsu Zugre. There was one more person who was also found on the spot where the vehicle was confiscated. None of them could produce valid documents in respect of teak wood and therefore, vehicle was seized under provisions of the said Act and matter was reported to Assistant Conservator of Forest, who initiated confiscation proceedings apart from the prosecution to be launched against the accused persons.

5. The Petitioner is admittedly the registered owner of the

vehicle. Therefore, she was also given opportunity of being heard during the course of confiscation proceedings. It need not be mentioned here that the confiscation proceedings under section 61A of the said Act are independent of the prosecution to be launched against the person who had violated the provisions of the said Act. In this regard it may be noted here that the Petitioner has not been made accused in the said forest offence.

6. After completion of enquiry as envisaged under section 61 and the succeeding sections, the authorised Officer came to the conclusion that the above stated Bolero Jeep needs to be confiscated to the State and he accordingly passed the order. Petitioner felt aggrieved by the said order and therefore she filed an appeal. As stated earlier appeal has been dismissed. Therefore, present writ petition has been filed by the Petitioner.

7. Heard learned counsel Mr. S. A. Shaikh on behalf of the Petitioner and learned APP, Mr. A.R. Patil on behalf of the State. Perused the orders. Mr. Shaikh has submitted that -

- (a) Petitioner was not given sufficient opportunity of being heard during the course of enquiry; and

(b) that the Petitioner has taken necessary care to see that the vehicle was not involved in any illegal activity.

8. I have gone through the orders passed by the authorised Officer and the learned Sessions Judge, Thane. Both of them have dismissed the plea of the Petitioner that the vehicle was given on hire to one Harshad Thakare. It was the case of the Petitioner before authorised Officer as well as before Appellate Court that she had purchased the vehicle after taking loan of Rs.5 lakhs from the Bank and that she was unable to pay the installments. She therefore, had given the vehicle on hire to Harshad Thakare. It was contended before the authorised Officer and the Appellate authority that she was not in any manner responsible or liable for the activities of Harshad Thakare. She only believed that Harshad Thakare will ply the vehicle as a passenger vehicle. Authorised Officer and the learned Appellate Court both took the view that the Petitioner has failed to prove that the vehicle was given on hire to Harshad Thakare. The finding given by the authorised Officer and the learned Appellate authority is that Harshad Thakare was driver of the Petitioner.

9. The grievance of the Petitioner that she was not given sufficient opportunity is baseless in as much as she was given notice as

contemplated under section 61B of the said Act and she had appeared before the authorised Officer.

10. Her stand before the authorised Officer was that she was not in any manner responsible for the activities of Harshad Thakare as the vehicle was in exclusive possession of Harshad Thakare. Learned counsel Mr. Shaikh has submitted that the vehicle was being plied as taxi and Harshad Thakare was not supposed to use the vehicle for any illegal purposes. It was submitted that since the vehicle was in exclusive possession of Harshad Thakare the Petitioner cannot be held vicariously liable for the activities of Harshad Thakare.

11. The Petitioner had failed to produce any document either before the authorised Officer or before the Appellate Court to prove that the vehicle was given to Harshad Thakare on hire. The liability of the registered owner of the vehicle under the said Act is absolute liability and burden cast upon the registered owner cannot be discharged by preponderance of probabilities. It is not the law that the registered owner has to probabalise his case. The law on the point is very well settled that registered owner of the vehicle has to prove his case before the authorised Officer that the vehicle was used for

forest offence without his knowledge and connivance. Hon'ble Supreme Court while dealing with the similar issue in the matter of **State of West Bengal Vs. Mahua Sarkar**¹ has said at para 9 as under :-

“9. The requirement is mandatory that the owner has to prove that he had no knowledge or had not connived. It is a matter which is within his knowledge. Mere assertion without anything else will not suffice. There is another requirement that either he or his agent, if any, or the person in-charge thereof had taken all reasonable and necessary precaution against such use. This aspect has to be established by the concerned person by sufficient material. As noted above, mere assertion in that regard could not be sufficient.”

12. As such, assertion of the Petitioner that vehicle was given to Harshad Thakare on hire basis cannot be accepted unless there is sufficient material to support the assertion. There was no oral evidence or any documentary proof either before the authorised Officer or before the Appellate Court to prove the assertions of the Petitioner. If there was no agreement in writing, the Petitioner at least could have examined some witnesses to show that vehicle was being plied by Harshad Thakare exclusively as a passenger vehicle. As such, in my opinion the Petitioner has failed to discharge burden cast upon

1 Reported at AIR 2008 SC 1591

her. The order of the authorised Officer therefore was absolutely correct. The Appellate Court has rightly confirmed the view taken by the authorised Officer. I do not find any substance in the petition.

13. The writ petition is dismissed accordingly.

(JUDGE)