

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT APPEAL NO. 644 OF 2015

1. Chandra Kumar Agrawal, aged about 42 years, S/o Late Shri Bala Ram Agrawal, Agriculturist and Transporter.
2. Mohan S/o Dharmu Kenwat, aged about 32 years.

Both are resident of Village Paterapali, P.O. & P.S. & Tahsil Saraipali, Civil & Revenue District Mahasamud (C.G.)

... Appellants

Versus

1. The State of Chhattisgarh, through Secretary, Forest Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)
2. The Appellate Authority-cum-Conservator of Forest, Raipur Circle, Raipur, District Raipur (C.G.)
3. Sub Divisional Officer, Forest (General), an authorised authority, Forest Sub Division, Saraipali, District Mahasamund (C.G.)

... Respondents

For Appellant	:	Mr. Awadh Tripathi, Advocate.
For Respondents	:	Mr. B. Gopa Kumar, Deputy Advocate General.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per NAVIN SINHA, C.J.

25/01/2016

1. The present appeal assails order dated 30.1.2015 dismissing Writ Petition No. 1597 of 2005 declining to interfere with the orders for confiscation of Petitioners' tractor-trolley under Section 52 of the Indian Forest Act, 1927 passed by the authorised officer as affirmed by the Conservator of Forest as also by the Sessions Court in appeal.
2. Learned Counsel for the Appellants submits that for the same offence, a criminal prosecution under Section 379 IPC read with Section 16 of the Chhattisgarh Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 was also instituted and the Appellants have been acquitted by the Court of the Judicial Magistrate First Class, Saraipali, in Case No. 713 of

2001, dated 13.8.2003. The timber was validly purchased by the Appellants from one Gopal 3-4 years ago and with regard to which valid papers were shown by the driver of the tractor-trolley, the ownership of which was with the Appellants. In the circumstances, the Appellants may at best be liable for unauthorised transportation only but it cannot be said that the wood was being transported illegally.

3. Learned Counsel for the State has opposed the appeal submitting that the order with regard to the nature of the wood being freshly cut, affirmed by three consecutive authorities calls for no interference on facts. The acquittal in the criminal trial has no relevance to the issue for confiscation of the tractor-trolley for illegal transportation of what was freshly cut timber, and which speaks for itself.

4. We have considered the submissions on behalf of the parties.

5. The Appellants are stated to have had a transport permit which lapsed 3-4 years back. Their primary defence that they had purchased the wood 3-4 years ago from one Ganesh Timber has been factually disbelieved by the Conservator of Forest holding that the wood was wet and freshly cut. The defence that it was seasoned timber and not fresh timber therefore collapses. The onus shifts on the Appellants to demonstrate how they were in valid possession and were transporting the forest produce. Ownership of the tractor-trolley belonging to the Appellants is not in dispute. The driver is stated to have fled away when it was stopped for checking.

6. The exoneration in the criminal case was on benefit of doubt when prosecution witness itself did not appear. In any event, the accusation in the criminal case was under Section 379 IPC. It is not relevant to the present issue with regard to illegal transportation of freshly cut timber without any authorisation under the forest laws

regarding the same. Before the Learned Single Judge, the Appellants took a defence of purchase from one Ganesh Timber while in the criminal trial we find that they took a defence of purchase from villagers of village Kedapali.

7. The Learned Single Judge has therefore aptly relied upon 2008 (12) SCC 763 (State of West Bengal and Another v. Mahua Sarkar) to conclude that the onus lay on the Appellants to demonstrate that he was validly transporting the fresh cut timber with valid authorisation, a burden he failed to discharge. We find no reason to interfere with the same.

8. I.A. No. 1 of 2015 for condoning delay is allowed and the appeal is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge