

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 724 of 2016**

Kamal Narayan Chandrakar S/o Shri Badrinarayan Chandrakar Aged About 50 Years R/o Village Banpachari, P.O. Patewa, Civil & Revenue District Mahasamund, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh Through D.F.O. Forest Division Mahasamund, District Mahasamund, Chhattisgarh. Civil & Rev. District Mahasamund, Chhattisgarh.
2. Chief Conservator of Forest Forest Circle, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Mayank Chandrakar, Advocate.
For Respondent/State	:	Shri Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

15/11/2016

1. The present petition under Section 482 CrPC has been filed assailing the order dated 14.03.2016 passed by the 7th Additional Sessions Judge, Raipur, in Criminal Revision No.288/2015 whereby the revisional court has rejected the revision petition upholding the orders passed by the Chief Conservator of Forest as well as the Divisional Forest Officer confiscating the vehicle belonging to the petitioner.
2. It is a case where the dispute revolves around a Tractor and Trolley bearing registration No.CG-04-DB-7907. The petitioner is the registered owner of the said Tractor. According to the petitioner, the said Tractor was given on rent by the petitioner to one Vasudev Bhoi

on a monthly rent basis and for which he had also executed an agreement with the said Vasudev Bhoi. On 21.06.2014, the forest officer seized the said Tractor for illegally transporting timber from the forest area and initiated a proceeding under the Forest Act against the Vasudev Bhoi i.e. the person to whom the said vehicle was given on rent by the petitioner. The said person later on, is said to have pleaded guilty and compounded the offence and the authorities concerned has imposed a fine of Rs.1000/- against Vasudev Bhoi. Subsequently, the authorities concerned is said to have initiated a confiscation proceeding under Section 52 of the Indian Forest Act, 1927, in respect of said Tractor belonging to the petitioner and the Divisional Forest Officer i.e. the authorized authority, vide his order dated 28.11.2014 (Annexure P/5) has ordered for confiscation of the said Tractor & Trolley.

3. The said order of Divisional Forest Officer was put to challenge by way of an appeal before the Chief Conservator of Forest who also vide his order dated 22.04.2015 rejected the appeal holding it to be barred by limitation leading to filing of Criminal Revision before the 7th Additional Sessions Judge, Raipur where the matter was registered as Criminal Revision No.288 of 2015. The revisional court also vide its order dated 14.03.2016 rejected the revision petition upholding the two orders passed by the Divisional Forest Officer as well as the Chief Conservator of Forest. It is these three orders which are under challenge in this petition under Section 482 CrPC.
4. Learned counsel appearing for the petitioner submits that it is a case

where the admitted facts which has been pleaded before the Divisional Forest Officer and the Chief Conservator of Forest and which has not been properly appreciated by these two authorities as well as the revisional court is the fact that the said Vasudev Bhoi was transporting timber without knowledge of the petitioner whatsoever and that he had already given the said vehicle on rent and he was only concerned with the monthly income that he was getting from the said Vasudev Bhoi to whom he had given his Tractor on rent.

5. According to the petitioner, in view of Clause-5 of Section 52 of the State amendment in the Forest Act, no order of confiscation could have been passed in case if the offence is said to have committed by a person without the knowledge or connivance of the actual owner. This provision of law has not been properly appreciated by the two authorities as well as by the revisional court and the orders deserve to be set aside/quashed.
6. State counsel, however, opposing the petition drew the attention of the court to the order passed by the Divisional Forest Officer as well as the Chief Conservator of Forest and submitted that a case for confiscation was made out against the petitioner inasmuch as, indisputably, it was the vehicle belonging to the petitioner which was found involved in committing an offence under the Forest Act by illegally transporting timbers from the forest area. He further submits that the case against the petitioner also stands established from the admission of guilt by person using the vehicle and fine was also imposed against the said person which further establishes the

commission of offence. Therefore, the orders passed by the authorities concerned and the revisional court does not warrant any interference.

7. Having considered the submissions put forth on either side and on perusal of record what would be necessary to appreciate at this juncture is clause-5 of Section 52 i.e. state amendment in the Forest Act, 1927, which for ready reference is reproduced as under :

“5. No order of confiscation under sub section (3) of any tools, vehicles, boats, ropes, chains or any other article (other than timber of forest produce seized) shall be made if any person referred to in clause (b) of sub section (4) proves to the satisfaction of authorized officer that any such tools, vehicles, boats, ropes, chains or other articles were used without his knowledge or connivance or as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of objects aforesaid for commission of forest offence.”

8. If we take into consideration the aforesaid provisions of law and peruse the records, what clearly reflects is that, there was an agreement of rent between the petitioner i.e. the registered owner and the accused Vasudev Bhoi in respect of Tractor & Trolley belonging to the petitioner. Indisputably, the offence has been compounded by the payment of fine imposed upon by the said Vasudev Bhoi. The present petitioner was never an accused in the forest proceedings. The petitioner was admittedly the registered owner of the said Tractor & Trolley and it is also not established by the authorized authority that the said Vasudev Bhoi was being illegally used for transporting timbers

with the knowledge of the petitioner or with his connivance. In the absence of any proof on the part of the authorities of the forest department establishing knowledge or connivance of the petitioner, it cannot be said that the petitioner was in knowledge of the commission of the offence particularly when there was a rent agreement between the petitioner and the said Vasudev Bhoi against whom forest offence was registered.

9. In view of the aforesaid factual matrix of the case and also in view of provisions of clause-5 of Section 52 of state amendment in the Forest Act, 1927, this court has no hesitation in holding that confiscation order passed by the Divisional Forest Officer which has been later on affirmed by the Chief Conservator of Forest as well as by the revisional court is not sustainable in law. The same deserves to be and is hereby quashed/set aside.
10. It is directed that the petitioner shall be entitled for the release of the vehicle i.e. Tractor & Trolley bearing registration No.CG-04-DB-7907 forthwith.
11. The petition is accordingly allowed.

Sd/-
(P. Sam Koshy)
Judge