

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION NO. 28004 OF 2011

ORDER:

Heard Sri Ramakrishna, Assistant Government Pleader for petitioner and Sri V.V.N. Narayana Rao for second respondent. By consent the Writ Petition is disposed of. Therefore, the facts and questions of law are not considered and findings on merits are recorded.

2. The petitioners pray for writ of Certiorari calling for the records relating to and connected with Forest Appeal No. 3 of 2010, dated 22.6.2011 on the file of Principal District Judge, Visakhapatnam and quash the same as arbitrary and illegal and consequently set aside the order dated 22.6.2011 passed in Forest Appeal No. 3 of 2010.

3. Learned counsel appearing for the parties have made detailed submissions on the impugned judgment in Forest Appeal No. 3 of 2010 of the Principal District Judge, Visakhapatnam and the proceedings of the Chief Conservator of Forests, Visakhapatnam Circle, Visakhapatnam in Proceedings No. 3299/2010/11 dated 4.9.2010. The Assistant Government Pleader assailing the judgment in Forest Appeal No. 3 of 2010 contends that the judgment of the Principal District Judge is not based upon the material

available on record and the Appellate Court has committed serious illegality in incorporating what is not borne out by the record. In other words, the objection is that the admissions of second respondent are not properly extracted and consequently the findings recorded either on fact or law are completely vitiated and the impugned judgment is liable to be set aside.

4. Sri V.V.N. Narayana Rao while admitting that the Appellate Court has committed a mistake in excerpting the admission of RW-2 tries to sustain the judgment in Forest Appeal No. 3 of 2010 by relying upon the finding recorded by the Chief Conservator of Forests, Visakhapatnam Circle, Visakhapatnam.

5. With the assistance of learned counsel appearing for the parties, I have perused the findings recorded by the Chief Conservator of Forests, Visakhapatnam Circle in proceedings dated 4.9.2010 and also the findings recorded by the Principal District Judge, Visakhapatnam in Forest Appeal No. 3 of 2010. Though the counsel tried to persuade this Court to look into the material available on record and record findings on the alleged forest offences, I am of the view that the same amounts to re-examining or reappreciating the material available on record like an Appellate Authority or Court and I am not inclined to undertake such an exercise in exercise of

the jurisdiction of this Court under Article 226 of the Constitution of India. As it is admitted by the counsel for second respondent that the excerpting of admission suffers from misreading of material on record, this Court is of the view that the judgment in Forest Appeal No. 3 of 2010 can be set aside on the short ground that the findings are based upon erroneous excerpting admissions of second respondent. Likewise the consideration and the disposal of appeal by the Chief Conservator of Forests do not show sufficient reasons while confirming the order of Divisional Forest Officer, Narsipatnam in D.O.R.No. 01/10-11/(NSP)/N8. Hence, both the orders are set aside and the matter remitted to Chief Conservator of Forests, Visakhapatnam Circle, Visakhapatnam for fresh consideration and disposal in accordance with law.

6. Sri V.V.N. Narayana Rao submits that the vehicle i.e., Maruthi Omni Van bearing registration No. AP 31 AB 3125 has already been released in favour of second respondent subject to few conditions as imposed in the order dated 31.12.2013.

7. Therefore, the release of vehicle is subject to same conditions as are imposed in the order dated 31.12.2013 of Divisional Forest Officer, Visakhapatnam, pending disposal of the appeal by the Chief Conservator of Forests,

Visakhapatnam Circle, Visakhapatnam. It is needless to observe that the Chief Conservator of Forests, Visakhapatnam Circle, Visakhapatnam, examines the issues of fact and law and proper findings are recorded on the alleged forest offences committed by second respondent.

8. With the above observation, the Writ Petition is disposed of. No order as to costs. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

JUSTICE S.V. BHATT

DATE: 28.03.2016

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