

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No.3316 of 2003**

Om Prakash Gupta, aged about 23 years, son of Shri Shyamsunder Gupta, Student and Agriculturist, Durrebanjari (Kallu Banjari), P.S. and Tah. Chhuria, Distt. Rajnandgaon (CG)

---- Petitioner**Versus**

1. The State of Chhattisgarh, through Secretary, Department of Forest, Dau Kalyan Singh Bhawan, Mantralay, Raipur (CG)
2. The Appellate Authority Cum Conservator of Forest, Department of Forest, Durg Circle, District Durg (CG)
3. The Sub Divisional Officer, Department of Forest (General), Authorized Authority, Rajnandgaon, District Rajnandgaon (CG)

--- Respondents

For Petitioner : Mr. P.K.C.Tiwari, Senior Advocate with Mr.Ashutosh Tiwari, Advocate

For State : Mr. Dhiraj Wankhede, Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

25/09/2017

1. By way of this writ petition, the petitioner calls in question the legality, validity and correctness of the order dated 2.9.2003 (Annexure P/1) passed by the First Additional Sessions Judge, Durg in Criminal Revision No.1/2003, by which the revision filed by the State was allowed and order of the Appellate Authority-cum-Conservator of Forest, Durg has been set aside and order of the Authorized Officer has been restored.

2. Mr.P.K.C.Tiwari, learned Senior Counsel along with Mr.Ashutosh Tiwari, learned counsel appearing for the petitioner, would submit that since search and seizure has been conducted by Forest Guard-Pyarelal Sahu, who was not authorized to affect seizure in view of the provisions contained in Section 15(3) of the Chhattisgarh Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 (for short "the Adhiniyam"), therefore, the entire confiscation proceeding is vitiated.
3. Per contra, Mr. Dhiraj Wankhede, learned counsel appearing for the State, would submit that Forest Guard-Pyarelal Sahu has only inspected the vehicle, but search and seizure was carried out by the authorized officer. He would further submit that no interference is called for in the impugned order.
4. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
5. To understand the rival contentions of learned Counsel for the parties, it shall be apposite to refer certain provisions of the Adhiniyam. Section 15(1) and 15(2) reads as under:-

"15. Search and seizure of property liable to confiscation and procedure therefor-(1) Any Forest Officer as may be notified by the State Government or any Police Officer nor below the rank of an Assistant Sub-Inspector or any other person authorized by the State Government may, with a view to securing compliance with the provisions of this Act or the rules made thereunder or

to satisfying himself that the said provisions have been complied with-

(i) stop and search any person, boat, vehicle or receptacle used or intended to be used for the transport of specified forest produce;

(ii) enter and search any place.

(2) When there is reason to believe that any offence under this Act has been committed in respect of any specified forest produce, (any forest officer an may be notified by the State Government or any Police Officer not below the rank of any Assistant Sub-Inspector) or any person authorized by the State Government in this behalf may, seize such specified forest produce along with all tools, boats, vehicles, ropes, chains or any other articles used in committing such offence under the provisions of this Act."

6. According to the above-stated provision, the State Government has authorized all Forest Officers for the purpose of sub-section (1) and sub-section (2) of the Adhiniyam vide notification dated 26.12.1990 published in M.P. Rajpatra (Asadharan), dated 28.12.1990.
7. On bare perusal of sub-sections (1) and (2) of Section 15 as well as the notification, it has become luminously clear that the 'Forest Officer', for the purpose of sub-sections (1) and (2) of Section 15 of the Adhiniyam is an authorized Officer to search and seize the property. In the present case, on bare perusal of the seizure memo, it is found that seizure of forest produce (kachua & saja lattha and teak wood) was made by Forest Guard-Pyarelal Sahu and, therefore, the seizure was not in accordance with law. Admittedly,

Pyarelal Sahu was not an authorized officer for the purpose of seizure, therefore, he was not empowered to seize the aforesaid forest produce and thus, the seizure of the alleged forest produce is without any jurisdiction and without any authority of law.

8. This Court in the matter of Bahadur Singh Vs. State of Chhattisgarh and Others¹ has clearly held that the Forest Guard is not a Forest Officer, therefore, he is not entitled to do so under the notification dated 26.12.1990 and observed as under:-

"7. On a reading of the provision contained in Section 15 of the Adhiniyam, as quoted above, it would be manifest that the search and seizure of the vehicle and the specified forest produce is to be conducted by any Forest Officer as may be notified by the State Government. The State Government has issued a notification dated 26.12.1990 authorizing all the Forest Officer for the purposes of Section 15 of the Adhiniyam.

8. In the case in hand, the original record of the case would indicate that the search and seizure was made by Shri Shankar Prasad Tiwari, a Forest Guard. Concededly, a Forest Guard is not a Forest Officer, therefore, the search and seizure conducted by him is not by a Forest Officer authorized to do so under the notification dated 26.12.1990."

9. In view of the aforesaid discussion, I am of the considered opinion that in the instant search and seizure giving rise to initiation of proceeding being by an forest guard, who was incompetent person, not being a Forest Officer, the entire confiscation proceeding is vitiated.
10. Consequently, the impugned order dated 2.9.2003 (Annexure P/1) passed by the First Additional Sessions Judge, Durg in Criminal Revision No.1/2003 is set aside and that the order of

1 2015 (2) M.P.H.T. 97 (CG)

the Appellate Authority-cum-Conservator of Forest is restored.

Since tractor and trolley are already in possession of the petitioner, no further order is required.

11. The writ petition is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-