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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No.6612 of 2007**

1. Bhagwan Kushwaha, S/o Shri Satyanarayan Kushwaha, aged about 56 years, R/o Village Kedarpur, Ambikapur, Police Station & Tahsil Ambikapur, District Surguja (CG).
2. Smt. Pan Kumari, W/o Bhagwan Kushwaha, aged about 50 years, R/o Village Kedarpur, Ambikapur, Police Station & Tahsil Ambikapur, District Surguja (CG).

---- Petitioners**Versus**

1. State of Chhattisgarh, through Collector, Ambikapur, Surguja, District Surguja (CG).
2. Prescribe Authority & Sub-Divisional Forest Officer, Ambikapur, District Surguja (CG).
3. Forest Ranger, South Surguja, Forest Division, South Surguja, Ambikapur.
4. Conservator of Forest, Surguja, Division Ambikapur, District Surguja (CG).

--- Respondents

For Petitioners : Mr. Manoj Paranjpe, Advocate

For State : Mr. Dhiraj Wankhede, Govt. Advocate

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

27/07/2017

Heard.

(1) By way of instant writ petition, the petitioners call in question the legality, validity and correctness of the order passed by the Learned Sessions Judge, Surguja whereby the revision preferred by the petitioners has been dismissed and order passed by appellate authority under Section 15-A of Chhattisgarh Vanopaj (Vyapar Viniyam)

Adhiniyam, 1969 has been affirmed.

(2) Facts of the case in brief is that the petitioners' tractor bearing Registration No.M.P.27B/1128 and trolley No.M.P.26B/1129 were seized at about 4:00 p.m. on 09.09.2005 by Shri Mahajanlal Sahu (Forest Guard) on suspicion that the vehicle is involved in illegal transportation of forest product. The Forest Guard conducted search and seizure operation and prepared seizure memo affecting seizure of 10 pieces of Saal wood from the trolley and tractor, which was plied by the driver of the petitioners namely Raju Chouwan and thereafter, notice was issued to the petitioners under Section 52(3) of the Indian Forest Act, 1927 to show cause as to why the vehicle should not be seized for which reply was filed by the petitioners herein that they were not aware in respect of the act committed by the driver.

(3) The Prescribed Authority-cum-Sub Divisional Forest Officer, Ambikapur, District Surguja completed the proceeding and passed the order dated 20.10.2005 for confiscation of the tractor and trolley. It was found that the tractor and trolley was involved in transportation of Saal wood without any lawful authority. Against that order, the petitioners preferred an appeal before the Appellate Authority. The Appellate Authority by its order dated 19.09.2006 has dismissed the appeal and upheld the order of the Prescribed Authority -cum-Sub Divisional Forest Officer, Ambikapur.

(4) Feeling aggrieved against the order passed by the Appellate Authority, the petitioners have preferred a revision before the Sessions Judge, Surguja, which has also been dismissed by the learned Sessions

Judge, Surguja by its impugned order dated 15.06.2007 and upheld the order of the authorized officer and appellate authority against which, this writ petition under Article 226/227 of the Constitution of India has been filed by the petitioners herein.

(5) Mr. Manoj Paranjpe, learned counsel appearing for the petitioners would submit that since search and seizure was conducted by the Forest Guard, who was not authorized to affect seizure in view of the provision of Section 15 (3) of the Chhattisgarh Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 (for short "the Adhiniyam"), therefore, the entire confiscation proceeding is vitiated.

(6) Per contra, Mr. Dhiraj Wankhede, learned counsel appearing for the State would submit that the Forest Guard only inspected the vehicle but the search and seizure was carried out by the authorized officer and further submit that no interference is required in this petition.

(7) I have heard learned counsel for the parties and perused the impugned order with utmost circumspection.

(8) 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 and 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."

(9) According to the above said 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.

(10) 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 the Saal wood was made by Mahajanlal Sahu, Forest Guard and, therefore, the seizure was not in accordance with law. Admittedly,

Mahajanlal Sahu is not an authorized officer for the purpose of seizure, therefore, he was not empowered to seize the wooden logs and thus the seizure of the alleged saal wood is without any jurisdiction and without any authority of law.

(11) This Court in the matter of **Bahadur Singh Vs. State of Chhattisgarh and Others reported in 2015 (2) M.P.H.T. 97 (CG)**, decided on 17.12.2014 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, which states as under in paragraphs 7 & 8:-

"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."

(12) 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.

Consequently, all the orders including that of Prescribed Authority-cum-Sub Divisional Forest Officer, Surguja, Appellate Authority and Sessions Judge, Surguja deserve to be and are hereby quashed leaving the parties to bear their own costs. Tractor and trolley be returned to the petitioner.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-