

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(CR). No. 276 of 2016

1. Akash Agrawal & Co., Through : The Chief Partner Akash Agrawal, S/o. Satbeer Agrawal, Aged About 30 Years, Plot No 285, Transport Nagar, Korba, Distirct -Korba Chhattisgarh.
2. Lalman Mishra, S/o. S.N. Mishra, Aged About 40 Years, R/o. Majan, Post -Khatkhari, Tahsil Hanmana, Distirct Rewa (M.P.)

---- Petitioners

Versus

1. State of Chhattisgarh, Through : Secretary, Department of Forest Mahanadi Bhawan, Mantralaya, Naya Raipur Chhattisgarh
2. The Chief Forest Conservator, Bilaspur Circle, Bilaspur Chhattisgarh
3. The Sub Divisional Forest Officer/Prescribed Authority, Katghora, Distirct- Korba Chhattisgarh
4. Joint Divisional Forest Officer/Authorized Officer, Katgora, Forest Division- Katghora, Distirct- Korba, Chhattisgarh

-----Respondents

For Petitioners	: Mr. Ashok Kumar Shukla, Advocate
For Respondent/State	: Mr. Anil S. Pandey, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

10/08/2017

Heard.

1. Counsel for the petitioners submits that petitioner No.1 is owner of the JCB bearing No.C.G.-12U-0654 and petitioner No.2 is the owner of tractor trolley bearing engine No. D81330, which were seized by

the forest authority on 30.11.2014 in connection with forest offence registered.

2. It is submitted that no prosecution has been launched by filing of complaint against any of the person accused in the complaint for forest offence registered till date, but respondent No.3 initiated proceeding for confiscation of the seized vehicles and the order date 19.12.2014 (Annexure P/1) was passed by confiscating the seized vehicles. Petitioners preferred an appeal before the appellate authority, respondent No.2 who has also dismissed the appeal vide order dated 28.03.2016 (Annexure P/6). A revision was preferred before the Sessions Judge, Bilaspur, which has also been dismissed vide order dated 22.09.2016 (Annexure P/8).
3. It is submitted by the counsel for the petitioner that impugned order is illegal, perverse and not sustainable in the eyes of law. It is a fact that no prosecution has been launched against the person accused in the forest offence. Petitioners, the owner of the vehicles were not present at the spot, when the vehicles were used for excavation of laterite, apart from that the place where the vehicles were being used had no signboard or any landmark to show that it was forest area. Principles of natural justice was not followed by the authorities and the Court below. Hence for these reasons, the order of confiscation, passed and maintained by the authorities and Court below is bad in law. Prayer has been made for exercising of inherent jurisdiction.
4. Counsel for the State has opposed the petition and the arguments submitted. It is submitted that the statement recorded by the

respondent No.3, are mentioned verbatim in the enquiry report (Annexure P/4), which shows that petitioners had knowledge that their machine and vehicle was used in forest area for excavating laterite, thus were used in commission of forest offence. Hence for these reasons, the order passed by the authorities and the Court below needs no interference.

5. Counsel for the petitioner has placed reliance on the judgment passed in case of ***Tirath Pasad Yadav Vs. State of C.G.***, reported in ***2012 (1) CG.L.R.W. 466, M/s. Anmole Motors and Another Vs. M/s. Shivam Motors Pvt. Ltd.***, reported in ***2012 (1) CG.L.R.W. 469*** of Chhattisgarh High Court. Reliance has also been placed on the judgment passed by the Hon'ble Supreme Court in case of ***B.S. Sandhu Vs. Government of India & Ors.***, reported in ***2014 (12) SCC 172, State of M.P. Vs. Azad Bharat Finance Company & Anr.***, reported in ***AIR 1967 276*** and the judgment of Bombay High Court in case of ***Laxman Kisan Mundhe Vs. Conservator of Forest, Thane and Ors.***, reported in ***1999 CRI.L.J. 553***.
6. I have heard the learned counsel for the parties and perused the documents placed on record.
7. State has not disputed that no prosecution has been launched in connection with forest offence registered.
8. Section 52 (3) of the Forest Act is relevant, which reads as under :-

“Section 52 (3) : Subject to sub-section (5), where the Authorised Officer upon production before him of property seized or upon receipt of report about seizure, as the case may be, is satisfied that a

forest offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded confiscate forest produce so seized together with all tools, vehicles, boats, ropes, chains or any other article used in committing such offence. A copy of order of confiscation shall be forwarded without any undue delay to the Conservator of Forests of the forest circle in which the timber of forest-produce, as the case may be, has been seized.

9. Section 52 (5) of the Forest Act is also relevant, which reads as under :-

“Section 52 (5) :- No order of confiscation under sub-section (3) of any tools, vehicles, boats, ropes, chains or any other article (other than timber or forest produce seized) shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of Authorised Officer that any such tools, vehicles, boats, chains or other articles were used without his knowledge or convenience or, as the case may be, without the knowledge or convenience of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission of forest offence.”

10. Clearly Section 52(3) and Sub-section 52 (5) read together provide that when the confiscating authority considers for confiscating the seized articles firstly he has to record his satisfaction that forest offence has been committed and secondly he has to give a finding that article seized were used with knowledge or in connivance of the persons concerned.

11. It is not disputed that petitioners were not present on the spot. On perusal of the order dated 28.05.2015 (Annexure P/4), passed by the respondent No.3, shows when spot was inspected, JCB machine was found excavating laterite and excavated laterite was being loaded on the tractor and trolley found on the spot. This work was being conducted by one Prahlad, S/o. Tikait Ram, who was a employee of M.K. Gupta. Some of the witnesses have stated that Prahlad was also employee of the petitioners. One witness Rampratap Singh (P.W.-11) has stated that he was employed as driver of JCB by the petitioner and it was on the instruction of the petitioner he was excavating laterite from the spot and that the tractor & trolley was operated by the son of petitioner No.2.
12. Witnesses were examined in defence, who has stated that villagers of the area pressurized the driver of the JCB machine and tractor to work for them and excavate laterite for the purpose of road construction. Hence, it is submitted even, if it amounts to forest offence, then the act was committed under the pressure of the villagers.
13. The order of respondent No.3 is a reasoned order including narration of all the witnesses, which clearly indicates that machine and tractor trolley were deployed in the forest area within the knowledge of the petitioners and thus they were used for excavation of laterite from the mine in the forest area clearly indicates commission of forest offence. Stringent law under the Indian Forest Act has been formulated with special purpose for protection and preservation of forest. Hence under these circumstances, the orders

passed by the Court below does not appear to suffer from any infirmity. The exercise of jurisdiction under Article 226 of the Constitution of India can be made only in the interest of justice and to give effect to the intention of legislature, which frames the law. Hence for these reasons, no reason is found to interfere with the impugned order. in the result the petition is devoid of any merits and it is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram