

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P. No.5585 of 2016

and

W.M.P.No.4914 of 2016

The Government of Tamil Nadu
Represented by its Secretary,
Environment and Forest Department,
Secretariat, Fort St. George,
Chennai - 600 009. ... Petitioner

Versus

1. A.Kannan
2. The Principal District Judge,
Villupuram. ... Respondents

This Writ Petition is filed under Article 226 of the Constitution of India to issue writ of Certiorari calling for the records on the file of the learned Principal District Judge, Villupuram, 2nd respondent in Criminal R.P. No.36 of 2014, dated 28.08.2014 and quash the same.

For petitioner : Mr.M.Santhana Raman
Special Government Pleader
For respondents : Mr. S. Sivakumar for R1
R2 - Court

ORDER

The first respondent herein is the owner of the vehicle - Mahendra Maxi Cab bearing Registration No.TN 30 AC 7402 and the same has been intercepted by the petitioner department during a routine check up and found that the vehicle was having several loads of red sanders and other trees. Therefore, the department detained the driver of the car by name Elumalai and a case was registered in STOR No. 1 of 2013 under Sections 41, 21 (d) & (e), 35 (b), 36 R/w & 56 a, b, e, d of Tamil Nadu Forest Act 1882 and Rule 10 of Tamil Nadu Timber Transit Rules 1968. Upon registration of the case, the said Elumalai who drove the vehicle was arrested and remanded to judicial custody. Thereafter, on information, the petitioner department issued a

show cause notice to the first respondent under the Tamil Nadu Forest Act, 1882 and directed the first respondent to submit an explanation in person on 22.05.2014 at 11 a.m. However, the first respondent did not turn up. The District Forest Officer therefore sent a reminder on 09.06.2014 to the first respondent and the first respondent had appeared on 20.06.2014 and produced a written explanation. The petitioner also filed a petition for return of vehicle by filing CrI.M.P. No.2642 of 2014 under Section 457 of Criminal Procedure Code before the learned Judicial Magistrate, Kallakurichi and the said application was dismissed on 16.05.2014 on the ground that the Judicial Magistrate has no power under the provisions of Tamil Nadu Forest Act to release the vehicle. Aggrieved by the said order, the first respondent has filed Criminal RP No.36 of 2014 before the Principal District Judge, Villupuram. The learned Principal District Court passed an order on 28.08.2014 directing the petitioner herein to return the vehicle to the custody of the first respondent with certain conditions. As against the said order passed by the Principal District Judge, Villupuram, the present Writ Petition is filed by the petitioner/Government.

2. According to the learned Special Government Pleader appearing for the petitioner, the department has conducted an enquiry into the offence alleged against the petitioner and on conclusion of the enquiry, an order of confiscation under Section 49 and 49(b) of the Forest Act was passed vide proceedings No.1 of 2013, dated 30.06.2014. According to the learned Special Government Pleader, if the first respondent is in any manner aggrieved by order of confiscation passed by the department, he ought to have approached the Principal District Sessions Court within 30 days time as stipulated in the Tamil Nadu Forest Act. However, without exhausting such remedy, the first respondent herein filed the Petition under Section 457 of Cr.P.C. for custody of the vehicle and on it's dismissal he has filed the Criminal Revision Petition No.36 of 2014. According to the learned Special Government Pleader, the Principal District Court without properly appreciating the contentions urged on behalf of the department has erroneously allowed the revision filed by the petitioner. Thus, according to the learned Special Government Pleader, the order passed by the learned Principal District Judge is without jurisdiction and contrary to the express bar contained under Section 49 of the Tamil Nadu Forest Act 1892.

3. On the above contentions, this Court heard the learned counsel for the first respondent, who has submitted that after lapse of 18 months from the date on which the second respondent has passed an order dated 28.08.2014 directing the petitioner to release the vehicle, the present writ petition has been filed

and it is not maintainable. Further, if the petitioner is aggrieved by the order dated 28.08.2014 alternative remedy is available before the appellate authority but without exhausting the same, the present writ petition is not maintainable. The second respondent considering the fact that the vehicle kept in the open is exposed to sun, heat, dust has ordered the vehicle to be released to the first respondent herein. By reason of release of the vehicle, no prejudice would be caused to the petitioner department in continuing the proceedings initiated under the Forest Act. Above all, the second respondent has ordered to release the vehicle to the first respondent with a specific condition not to alienate the vehicle and therefore the prejudice said to have caused to the petitioner is untenable. The learned counsel for the respondent therefore prayed for dismissal of the writ petition.

4. Heard both sides. The learned Principal District Judge has considered the revision petition filed by the first respondent by relying upon Section 49 G of the Tamil Nadu Forest Act, 1892 which reads as follows :-

"....The lower Court being Judicial Magistrate Court has rightly dismissed the application under Section 49 G of the Act. But the Act has provided ample powers and jurisdiction to this Court under Section 49D of Tamil Nadu Forest Act, 1892 either to pass or modify such orders, and the power to be exercised by this Court u/s. 49 D of the Act is with utmost care and caution and sparingly. But if this Court has not permitted the revision petitioner being accused to take the interim custody of the vehicle its utility would certainly be diminished by its exposure to Sun, Air and Rain and further whether revision petitioner is guilty is to be proved by the prosecution only at the time of trial proceedings and further it is for the trial court to decide whether due procedure has been complied with before the confiscation of the vehicle by the Forest Authority and further it is to be decided by the trial court whether revision petitioner has committed the offence punishable under the Act and same has been proved beyond reasonable doubt.

5. In the light of the said provisions, the District Sessions Court has proceeded to hold that it has ample power to pass orders for the relief as prayed for by the first respondent. However, even before passing the said order on 28.08.2014, it is stated that the petitioner department has passed the confiscation order on 13.06.2014. A perusal of

the order passed by the Principal District Judge would indicate that the department has stated that confiscation proceedings have been initiated. However, the learned Principal District Judge did not consider the same, while ordering to return the vehicle to the custody of the first respondent. In this context, the learned Special Government Pleader has filed the order of confiscation dated 30.06.2014 passed by the department before this Court . The learned Special Government Pleader appearing for the petitioner relied on the Order passed by this Court in identical circumstances in W.P. No.9237 of 1999, dated 16.07.2009, wherein in paragraphs 6, 7, 8 and 9, it was held as follows:-

6. Now, coming back to the facts of the case, it is contented by the learned Special Government Pleader that the first respondent had full knowledge that the vehicle would be used for illegal purpose and therefore the order of the Sessions Judge is liable to be set aside. A perusal of Section 49-D(2) of the Act, would make manifestly clear that it is the duty of the owner of the vehicle to prove to the satisfaction of the Authorised Officer that the vehicle was used in carrying timber without the knowledge or connivance of her.

7. The learned counsel for the petitioner placed reliance on the decision of the Supreme Court in State of West Bengal Vs Mahua Sarkar(2008(12) SCC 763) wherein while dealing with a similar provision in the West Bengal Forest Act, the Supreme Court has held as follows:

"So under Section 59-B(2), it is the owner, who has to prove that the vehicle was used in carrying timber or other forest produce without his knowledge or connivance or that of his agent. This requirement is mandatory. It is a matter which is within his knowledge. There is another requirement that either he or his agent. If any, person in charge thereof had taken all reasonable and necessary precaution against such use. These aspects have to be established by the person concerned by the sufficient materials Mere assertion without anything else will not be sufficient."

8. From the above judgement, it could be seen that the owner of the vehicle has got burden to prove not only the absence of knowledge, but also that he had taken all precautions against the illegal use of

the vehicle.

9. Keeping in mind the above principle, if the facts are looked into, the claim statement made by the first respondent would show that he has only pleaded that the lorry was used for illegal purpose without his knowledge. He has not stated in the claim statement that he had taken all precautions to prevent the lorry being used for such illegal purpose. No evidence whatsoever is let in on behalf of the first respondent to discharge the above burden to prove both the aspects. Except mere assertion, no other material evidence, either oral or documentary, has been played to prove the above aspects. But, the lower Court has considered only the burden in respect of absence of knowledge. A perusal of the order of the lower Court would reflect that the lower Court has not considered that the first respondent had not taken any such precaution to prevent the lorry from being used for such illegal purpose. Thus, the impugned order of the lower Court is not sustainable.

10. In the result, the writ petition is allowed. The order of the lower Court in Crl. A. No.27 of 97 is set aside and the order of confiscation passed by the Authorized Officer is restored. No Costs.

6. As rightly pointed out by the learned Special Government Pleader, if the first respondent is aggrieved by the confiscation order, he has to approach the learned Principal District Sessions Court under Sections 49 and 49B of the Act. But in present case, the petitioner has filed the revision against the order passed in Criminal M.P. No.2642 of 2014 under Section 457 Criminal Procedure Code to return the vehicle to his custody. In such an event, the learned Principal District Sessions Judge, ought not to have entertained the criminal revision against the order passed under Section 457 of Criminal Procedure Code. I find force in the said submission of the learned Special Government Pleader.

7. Therefore, the present impugned order passed in RP No. 36 of 2014 is without jurisdiction. The confiscation order was passed prior to the order passed in the revision petition by the second respondent. The aforesaid confiscation order was not placed before the second respondent, at the time of passing the order in the revision petition.

8. The present impugned order passed by the second

respondent namely the learned Principal District Sessions Court is without jurisdiction to entertain the revision.

9. In the light of the Tamil Nadu Forest Act 1892, when the order is passed without jurisdiction, this Court can exercise its power under Article 226 of the Constitution of India to interfere with the order passed by the second respondent. Hence this writ petition is maintainable.

10. It is evident from the above order passed by this Court that Section 49-D(2) of the Forest Act requires the first respondent herein, who is owner of the property to plead and prove that he has no knowledge about the vehicle being used for illegal purpose or in contravention of the Forest Act. The first respondent can only prove the same before the appropriate authority in the confiscation proceedings initiated against him. In any event, when it is brought to the notice of the second respondent that confiscation proceedings have been initiated and an order of confiscation is passed on 30.06.2014 itself, the second respondent ought to have directed the first respondent herein to prove his innocence before the authorised officer and consequently rejected his claim for release of the vehicle to his custody. In such view of the matter, I hold that the writ petition filed by the petitioner deserves to be allowed and accordingly it is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi2

To

The Principal District Judge,
Villupuram.

+1cc to Mr.S.Sivakumar, Advocate, S.R.No.19126
+1cc to the Government Pleader, S.R.No.19226

W.P.No.5585 of 2016

KS(CO)
RS(11/05/2017)