

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20400 of 2016

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Anuj Kumar son of shri Gauri Shankar Resident of Village Bodhchak, PS,
Wazirganj, District- Gaya

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary , Deptt of Forest, Bihar, Patna
3. The District Magistrate, Gaya
4. the District forest officer, Gaya
5. Forest Range officer, Wazirganj Forest Range

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar
For the Respondent/s : Mr. Navneet Kumar AC to SC17

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 05-03-2018 Heard learned counsels for the parties.

The present writ application has been filed for quashing the order dated 20.9.2016 passed by the Divisional Forest Officer-cum-Authorized Officer, Gaya in Forest Confiscation Case No. 31 of 2016, whereby the tractor bearing registration number BR 27B-2294 along with trailer bearing registration number BR27B-2295 loaded with hand broken stone chips have been confiscated under the provisions of Section 52(3) of the Indian Forest (Bihar Amendment) Act, 1989, Bihar Act 9 of 1990 (hereinafter referred to as 'the Act').

The factual matrix of the case is that the Forest Range Officer, Wazirganj Forest Range vide Complaint dated 4.6.2016 submitted before the Chief Judicial Magistrate to the effect that he received a secret information that stone chips were illegally being



taken away from the Kauakhoh Reserved Forest Area. Consequently, the Forest Range Officer along with the police party reached at the spot and found that stone chips were being loaded on a trolley of a tractor. On seeing the raiding party, the labourers started fleeing away but one person who was sitting on the steering seat of the tractor was apprehended on spot. He failed to produce any paper with regard to the stone chips, whereafter, the tractor and the trailer loaded with stone chips were seized under Section 52 of the Act. The said apprehended person who disclosed his name as Jitendra Kumar, son of Gouri Shankar Ram was arrested. Hence, the request was made for registering the complaint under Section 33(1b), 41 and 42 of the Act, leading to registration of Forest Case No. 50 of 2016. Consequently, Confiscation Case No. 31 of 2016 was initiated under Section 52(4)(a) of the Act and intimation was given to the learned Chief Judicial Magistrate, Gaya on 6.6.2016 for fixing the date of hearing on 18.6.2016.

From the impugned order it appears that the notices were issued to the affected person on 2.7.2016 and 23.7.2016 and on other dates but in spite of notices being issued on five occasions, none appeared, upon which, notice was published in the daily newspaper 'Prabhat Khabar' and 'Dainik Jagran' fixing the date of



appearance on 16.8.2016 but none appeared nor any body claimed the vehicle in question and ultimately, the impugned order dated 20.9.2016 was passed by the Divisional Forest Officer-cum-Authorized Officer, Gaya in Confiscation Case No. 31 of 2016, as contained in Annexure 2, which is under challenge in the present proceeding.

It is submitted by learned counsel for the petitioner that though the tractor was initially registered in the name of Md. Muslim Ansari but the petitioner purchased the same in March, 2012 but the ownership was not transferred and the tractor was not registered in the name of the petitioner, since the original owner failed to make payment of the loan amount to the Financer. However, the tractor was seized on 4.6.2016. It is further submitted that one Jitendra Kumar took the tractor to bring the stone chips purchased by one Sukul Manjhi for being used for repair of the house of Jitendra Kumar. Hence it was seized. It is further submitted that the stone chips have not been taken out from Kauakhoh Reserve Forest and hence it cannot be treated as forest produce. The tractor of the petitioner is rotting unnecessarily in open air and the petitioner is ready to furnish appropriate surety for the release of the same.

Though the writ application was registered on 22.12.2016



but no counter affidavit has been filed till date.

Learned counsel for the respondents State submits that there is a provision of appeal under Section 52A of the Act, against the order of confiscation, before the District Magistrate. Hence the present writ application is not maintainable.

Having heard learned counsels for the parties, this Court is of the view that the basic issue involved in the present writ application, is whether, in view of the specific provisions as contained in Section 52 of the Indian Forest Act substituted by Bihar Act 9 of 1990, when there is a specific provision of Confiscation, Appeal and Revision by the specified authority, whether this Court should exercise the discretionary jurisdiction under Article 226 of the Constitution of India for release of the vehicle and, secondly, whether the petitioner can file an appeal before the District Magistrate against the order of the Divisional Forest Officer-cum-Authorized Officer, Gaya when he was not made an accused nor the vehicle in question was either registered in his name on the date the seizure was made nor till date it has been registered, though the petitioner claims to have purchased the same.

In order to protect and improve the environment and ecology, the Forest Act, 1927 was enacted and consequently,



(Bihar Amendment) Act, 1989 (Bihar Act 9 of 1990) was brought in existence. By 42nd amendment, Articles 48A and 51A were incorporated in the Constitution of India imposing duty on State and every citizen of India to protect and improve the environment.

The above mentioned amendments in the Constitution reflects the intention of the Parliament that a duty has been cast not only upon the State but also upon every citizen of India to protect and improve the environment and natural resources of the Country and that is why through Bihar Amendment, the provision was made more stringent to protect the forest.

There is no doubt that no provision under any special Act can override the remedy of prerogative writs under Article 226 of the Constitution of India but the power or discretion under the said Articles has to be exercised on a well established principles and subject to certain restrictions. No writ can be issued to make a valid statutory enactment redundant and otiose.

It is well settled law that the High Court under Article 226 of the Constitution of India has a discretion whether to entertain or not to entertain a writ petition but the High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious remedy is available but the alternative remedy



does not operate as a bar in certain circumstances, such as, enforcement of any of the Fundamental Rights or where there is violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is under challenge as has been dealt in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors. reported in (1998) 8 Supreme Court Cases 1. Paragraph 15 of the judgment reads as follows:

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”



The issue of bar of Jurisdiction under Section 52C of the Act was also under consideration before a bench of this Court in the case of Enamul Haque and Ors. Vs. State of Bihar and Ors. and analogous cases reported in 1995(2) PLJR 153 where it was held that Section 52C of the Act ousts the jurisdiction of any Court except the Authorised officer, Appellate Authority and Revisional Authority referred to in sections 52,52A and 52B of the Act. However, in exceptional circumstances and for good reason such power can be exercised . Paragraph nos. 22 and 23 of the judgment read as follows:

“22. The next question is as to whether the bar created under Section 52C will also oust the jurisdiction of this Court. This question will not detain me for long as it is well settled by now that Articles 226 & 227 of the Constitution of India are not one of such provisions which can be changed by ordinary legislation. The power can be curtailed only by amendment in the Constitution. The State amendment brought by State Act cannot curtail or take away the power of this Court under Articles 226 & 227 of the Constitution of India is to be exercised on well established principles and not arbitrarily and it is subject to the certain self imposed restrictions. Its object is to see that authorities and tribunals act within the bound of their jurisdiction. No writ can be issued



to frustrate the object of the Act. Nor it can be to make a valid statutory enactment otiose and redundant. However, I do not mean to say that this Court is powerless to interfere in appropriate cases but such cases will be far and few.

23. In cases where on the face of material it appears that the confiscation proceeding is unjustified and wholly illegal then the helping hands of this Court will rescue the aggrieved persons but issuance of writ in all the cases releasing the vehicle or forest produce during the pendency of the confiscation proceeding before the authorised officer under the Forest Act will result in miscarriage of justice and will frustrate the object of the Act as stated above. When the parties approach this Court for release of the forest produce or the property including vehicles used in commission of the offence with regard to which the confiscation proceeding is pending, this Court is first instance will direct the confiscating agency to dispose of the proceeding at an earliest for the simple reason that once the confiscation proceeding is concluded the aggrieved person has right of appeal and the Appellate Court has power to pass an interim order. The provisions of Section 52 clearly shows that the legislature never intended that the forest produce and the articles used in commission of the offence should be released in course of confiscation proceeding. However, when there is unreasonable delay resulting in miscarriage of justice the Court in appropriate case may release the vehicle till the conclusion of the



confiscation proceeding with a clear stipulation that if an order for confiscation has been passed after conclusion of the confiscation proceeding the vehicle and the forest produce should be produced before the confiscating authority before filing an appeal as provided under Section 52A of the Act.”

Same view has been reiterated by the Supreme Court in the case of Section Forestor and Anr. Vs. Mansur Ali Khan reported in (2004) 1 Supreme Court Cases 293. Paragraph No. 6 reads as follows:

“6.While in regard to the power of the High Court to release the vehicle in a given set of facts cannot be disputed, this Court as noticed by the High Court itself has laid down that such power can be exercised for good reasons and in exceptional cases only. In the instant case, the only reason given by the High Court for the release of the vehicle is on the ground that same was in the custody of the officers for more than one year and there was no likelihood of immediate disposal of the pending case. This by itself, in our opinion, would not be a ground for the release of the vehicle because this would be the case in almost all such cases involving forest offence. In exceptional cases, the act itself has made a provision for interim release of the vehicle on the existence of certain conditions mentioned therein. In the absence of such conditions being fulfilled, we do not think that the High Court as a matter of course could pass mechanical orders releasing such vehicles.”

In the similar circumstances, a bench of this Court in the



case of Pramod Kumar alias Parmod Kumar Vs. State of Bihar (Cr. Misc. No. 45284 of 2016) considering the issue whether during the pendency of confiscation proceeding under the Act direction can be issued for release of the seized truck/vehicle in exercise of the inherent powers under Section 482 of the Cr.P.C., 1973, while considering several judgments of the Apex Court held that in view of the specific provision under Sections 52A to 52D of the Act, no release order can be passed in exercise of the said jurisdiction.

Hence, in view of the above discussions, this Court is not inclined to exercise the discretion in favour of the petitioner. Moreover, from the impugned order, it does not appear that the petitioner was a party before the Authorised Officer. Jitendra Kumar who was caught and was driving vehicle in question, has not come before this Court nor has he been made party in the present proceeding. As per own admission of the petitioner, the tractor and trailer in question were not transferred in his name. However, he claims that he had purchased the same from one Md. Muslim Ansari and paid the consideration amount. The provision of Appeal has been incorporated under Section 52A of the Act, which mandates that the appeal can be filed by any person aggrieved by an order of confiscation within thirty days of the order excluding the period consumed for obtaining certified copy



of the order of confiscation or if the fact of such order has not been communicated to him within thirty days of date of knowledge of such order. Hence, as per the above provision, the petitioner can prefer an appeal including the petition for provisional release of the tractor in question before the District Magistrate, Gaya.

In view of the above discussion, this application is disposed of with liberty to the petitioner to prefer an appeal within a period of four weeks from the date of receipt/production of a copy of this order along with an application for provisional release of the vehicle in question along with an application for condonation of delay, if any, which may be considered by the Appellate Authority in accordance with law keeping in view the fact that the writ application of the petitioner was pending before this Court.

(Dinesh Kumar Singh, J)

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