

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 13/08/2018****Order delivered on 08/10/2018****WP227 No. 2847 of 2008**

1. State Of Chhattisgarh, through the Sub Forest Divisional Officer, Geedam Sub Forest Division (Prescribed Authority) District. South Bastar, C.G.
2. The Conservator Of Forest Bastar Division (Appellate Authority), District - South Bastar C.G
3. The District Magistrate District Bastar, Jagdalpur Chhattisgarh.

---- Petitioners**Versus**

Smt. Bharti Jain W/o Shri Santosh Jain, Aged about 45 years, R/o. Main Road, Jagdalpur, District. Bastar, C.G.

---- Respondent

For Petitioners	:	Shri Dilman Rati Minj, Dy. GA.
For Respondent	:	Shri Keshav Dewangan, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**CAV Order**

1. By the instant writ petition, the petitioners are challenging the impugned order dated 08.04.2008 passed by Sessions Judge, Bastar, Jagdalpur, C.G in Criminal Revision No. 04/2008, whereby the learned Sessions Judge has allowed the application of respondent No.1 set aside the order of confiscation passed by the Prescribed Authority-Cum-Sub-Divisional-Forest Officer, Geedam, and confirmed by the Appellate authority i.e. Conservator of Forest, Jagdalpur Circle, Jagdalpur.
2. Brief facts of the case, are that on 17.01.2017 in evening one truck bearing registration number C.G.17 ZC- 0266 was found standing near the house of Ghasiram with forest produce i.e. fire wood of different species. The forest officials intercepted the truck and on his asking about papers for transportation of the wood, the driver of the truck (Santosh Kumar Jaiswal) and Ghasiram (owner of the fire wood) stated that they are not having any

papers or permits with them. After recording of the statement of truck driver Santosh Kumar Jaiswal and Ghasiram that they are not having papers for transportation of fire wood, forest offence POR. No. 607/23 dated on 17.01.2007 was registered and alongwith forest produce transporting vehicle truck bearing No. C. G. 17 -ZC – 0266 was also seized. Initially the statements of Santosh Kumar Jaiswal, Ghasiram, Sampatti, Mahipal and V.P. Shastri (Forest Guard) were recorded on 17.01.2007 and, thereafter, the intimation was sent to the owner of the truck by the Range Officer, Geedam on 04.02.2007. The Prescribed Authority sent intimation to the Magistrate about confiscation proceedings of the vehicle (truck) and, thereafter, the confiscation proceedings was initiated. For the proceedings of confiscation show-cause notices were issued to the respondent. Statements of the parties including the respondent herein were recorded on 20.03.2007 and statement of other witnesses were also recorded.

3. The Prescribed Authority arrived at a conclusion that Santosh Kumar Jaiswal and Ghasiram were involved in transportation of firewood on truck bearing No.CG17-ZC–0266 without having valid permit and further that the respondent (owner of the truck) has not taken any precaution to avoid illegal use of her vehicle. Further that she had also not taken any action against the driver of truck and accordingly passed an order of confiscation of the truck vide its order dated 20.8.2007.
4. Feeling aggrieved by the order passed by the Prescribed Authority the respondent preferred an appeal before the Conservator of Forest, Jagdalpur Circle, Jagdalpur, and the Appellate Authority has affirmed the order passed by the Prescribed Authority and dismissed the appeal vide its order dated 24.12.2007 against which the respondent preferred Criminal Revision before Sessions Judge, Jagdalpur, which was allowed and order of confiscation passed by the Prescribed Authority and affirmed by the Appellate Authority has been set aside.

5. Learned Counsel for the petitioners submits that the Prescribed Authority after following due procedure prescribed under law and after recording the evidences of the parties, passed an order of confiscation. He further submits that there is no evidence on behalf of the respondent that she has taken reasonable and necessary precaution to avoid use of her vehicle for commission of offence. He also submits that provisions of the Indian Forest Act, have been made with object to protect the forest and, therefore, strict view has to be adopted while dealing with the offence under the Indian Forest Act.
6. Per contra learned counsel for the respondent submits that respondent is owner of the truck bearing No. CG17-ZC-0266 and driver Santosh Kumar Jaiswal was engaged as driver by her for driving the truck. He further submits that truck was engaged for transporting stones ballast from crusher of Village- Gumda to railway lines which is passing little far from Village – Gumda where the truck was seized. He further submits that respondent has not engaged her vehicle for transporting the forest wood or she has not given the same on hire to any persons for transporting forest produce or wood from any place which is clear from the facts and evidence available on record and, therefore, the Revisional Court has rightly passed the impugned order keeping in view under the provisions of Sub-section (3) of Section 52A of Indian Forest Act, 1927 (for short, 'the Act of 1927').
7. I have heard the learned respective counsel appearing for the parties and perused the records as well as the records of confiscation proceedings produced by counsel for the State.
8. From bare perusal of the records of confiscation proceedings it is evident that near the place of accident at Village – Gumda Railway lines is being laid down as per the map prepared by Patwari. The records bear the statements of Ghasiram (owner of the wood) Santosh Kumar Jaiswal (driver), Smt. Bhartiya Jain (owner of the Truck) and other witnesses. From perusal of the

statement given by the parties it is clear that all of them have categorically stated that the truck in question bearing No.C.G. 17 -ZC – 0266 while returning from crusher driven by Santosh Kumar Jaiswal was requested to transport the wood from agricultural field to the house by Ghasiram and when the truck was standing near house of Ghasiram at Kotapara, Gumda for its unloading, Forest Officials intercepted and started proceedings. Statements have been recorded on 08.03.2007. Statement of truck driver shows that when he reached near Village- Gumda after unloading the stone ballast near railway line one Ghasiram asked him to transport the forest wood from agricultural field to the house of one Sampatti, and on his request, driver Santosh Kumar Jaiswal permitted Ghasiram and Mahipal to load the Fire wood. Statement of Ghasiram further shows that he has no means of conveyance for transportation of forest wood, he stopped the truck coming from the side of railway line after unloading the stone ballast and requested him to transport his fire wood.

9. From the aforementioned, statements given by the parties it is clear that the truck was engaged in transportation of stone ballast from the crusher situated near Village- Gumda to the nearby railway lines.
10. Undisputedly, it is not a case that when the truck was seized at Village- Gumda, there was no stone crusher or railway line situated where stone ballast has to be unloaded and, therefore, the facts narrated by the witnesses in their statements cannot be said to be false. It also satisfies that the truck was engaged in transportation of stone ballast from crusher to railway line by the owner of the truck. There is no material or evidence on record that the truck was hired for the purpose of transportation of fire wood and same was within the knowledge of owner. There is also no material showing that the wood owner settled or paid any amount as transportation charges. Infact, record only shows that some wood was loaded from agriculture field on request.

11. Respondent has also stated that Santosh Kumar Jaiswal was engaged as driver of the truck and the vehicle was engaged for transportation of stone ballast from crusher to railway line. She further stated that she does not know as to how and when her driver has loaded fire wood on truck.

12. The provisions of Sub-section (3) of Section 52A of the Act of 1927 provides as under :-

“ (3). No order confiscating any property shall be made under sub-section (1) or sub-section (2) unless the persons from whom the property is seized and in case the owner of such property is known, such person is given--

(a). a notice in writing informing him the grounds on which it is proposed to confiscate such property;

(b). an opportunity of making representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation; and

(c). a reasonable opportunity of being heard in the matter.

13. From perusal of the aforementioned provisions, it is clear that confiscation of any vehicle can be ordered only when the owner of the vehicle fails to prove that the vehicle is being used without her knowledge.

14. In the case in hand, the material available on record i.e. statements of the villagers and driver in which they have clearly stated that the truck was engaged for transportation of stone ballast which shows that the owner of vehicle i.e. respondent was not aware about the illegal act of driver Santosh Kumar Jaiswal. It is also not the case that respondent (owner of the truck) had given the vehicle on rent for transportation of fire wood or any other articles, rather what emerges from the facts and materials available on record is that on the date of incident and even prior to that, the truck was engaged for transportation of stone ballast.

15. Though the Prescribed Authority has arrived at a conclusion that Ghasiram and Santosh Kumar Jaiswal were involved in transportation of fire wood at the relevant point of time, but the order of confiscation has been passed only on the ground that respondent -owner has not taken any action against the driver of truck after coming to know of his involvement in illegal transportation.
16. From material available on record the only inference which can be drawn is that the truck was engaged by the owner of the truck for transportation of stone ballast. The site of working is situated about more than 50 Km away from her residence and without her knowledge the fire wood was loaded in the truck by the driver and transported to the house of one Sampatti.
17. The Revisional Court after appreciating the evidence available on records in the light of provisions of Sub-section (3) of Section 52A of the Act of 1927 has rightly exercised the jurisdiction vested in it by law and passed the impugned order, which do not call for any interference. I do not find any infirmity or illegality in the order passed by the Court below.
18. In the result, this Court is of the opinion that the writ petition is without any substance, which is liable to be and is hereby dismissed accordingly.

Sd /-

(Parth Prateem Sahu)

Judge