

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 473 of 1999**Judgment reserved on : 13.07.2018Judgment delivered on : 24.07.2018

Smt. Anjali Duggal, aged about 35 years wife of Shri Anil Kumar Duggal, Occupation business, Proprietor M/s Trishul Enterprises Ambikapur, Sarguja, M.P., R/o Kharasia Road, Ambikapur, P.S. & Tahsil Ambikapur, District- Sarguja, M.P.

---- Appellant**Versus**

1. State of M.P. through Collector Sargujar, Ambikapur
2. Shri T.S. Chhatwal, the then Collector Sarguja at present Additional Commissioner Excise, Motimahal, Gwalior, M.P.
3. Shri J.P. Sharma, Divisional Forest Officer, Kanker, District Bastar, M.P.
4. B.P. Singh, Assistant Conservator of Forest, North Sarguja Forest Division, R/o Pratappur Road, Forest Department Colony, Ambikapur, District- Sarguja, M.P.

---- Respondents

For Appellant	:	Mr. Anshu Tiwari, Advocate
For State	:	Mr. Sanjeev Pandey, G.A.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 03.06.1999 passed by District Judge, Surguja (Ambikapur), M.P. (Now C.G.) in Civil Suit No. 3-B/1993 wherein the said court dismissed the suit of the appellant for compensation regarding malicious act of the respondents.
2. The suit was filed by the appellant on the ground that respondent No. 2 to 4 detained a truck owned by the appellant bearing registration No. MP-23 B-3320 from 22.08.1992 to 22.11.1992. Tendu leaves were loaded in the said truck and it was being transported to Bangalore from Ambikapur.

3. As per the respondents, tendu leaves were transported in the night without license and tendu leaves of year 1992 was transported while the transit permit was granted for transporting the tendu leaves of the year 1991. Again, tendu leaves were found in excess of what is permitted by transit permit.
4. Learned counsel for the appellant submits that tendu leaves were loaded at Ramanujganj in presence of forest authorities and truck has crossed forest barrier of Ramanujganj, Balrampur and Pasta, therefore, detention of truck at Rajpur barrier is without reasonable or probable cause for alleged violation of forest law.
5. As per rule 43 of the M.P. Tendu Patta (Vyapar Viniyaman) Niyamavali, 1964, no tendu leaves can be transported after sun set and before sun rise unless written permission granted by the competent authority. Transit permit was granted in the name of one Ajay Kumar Gupta who deposed before the trial court as PW-3. As per the version of this witness, he was not obtained any permission for transporting the tendu leaves at night. He Again deposed that tendu leaves of the year 1991 were loaded in presence of forest guard Banarasi Ram but Banarasi Ram did not sign in any record and no certificate was issued by him, therefore, it is not established that tendu leaves of the year 1991 was loaded in the truck. Ajay Kumar Gupta further deposed that he purchased tendu leaves of the year 1991 from one Gyar Ahmed, but no documents were produced before the trial court regarding purchase of tendu leaves of the year 1991.
6. From the evidence of Ajay Kumar Gupta, Shiv Prasad Tiwari & Birendra Jaiswal, who were witnesses from appellant side, it is not established that tendu leaves of the year 1991 was purchased by the appellant and the same was loaded in the truck, therefore, it was not established that tendu

leaves of the year 1991 was loaded in the truck as per the permit granted to the appellant.

7. From the seizure proceeding of the truck, it is clear that the proceeding was recorded at 1.00 a.m. at night and forest officers were recognized for search and seizure as per section 14 (I) (ii) of the M.P. Tendu Patta (Vyapar Viniyaman) Niyamavali, 1964. Therefore, it cannot be said that the forest officers acted without reasonable or probable cause. Even if any barrier was crossed without finding fault, the same is not conclusive that no infringement of any rule was found in the barrier crossed by the truck. There is nothing on record that officers of the said barrier checked the truck and found no fault in transporting the tendu leaves therefore, crossing of some barrier by the truck is not conclusive evidence that tendu leaves was transported in accordance with law.
8. Compensation for malice act can be awarded only when malice on the part of any of the authorities established. In the present case, seizure was made for infringement of rules and from seizure it is apparent that tendu leaves were transported in the night without permit and therefore, it cannot be held that any officer has acted maliciously against the appellant. Once the vehicle was seized, the authorities and the appellant have to adopt procedure as prescribed by the forest act or any other act relating to the offence registered against the appellant and procedures are time taking. Therefore, if truck was detained for three months for completing the procedure prescribed in the act, the same does not confer right to the appellant to sue against the persons who have acted in accordance with law. When malicious act on the part of the respondent was not established the trial court was right in dismissing the suit and the same is not warranting any interference of this Court.

9. Considering the facts and circumstances of the case and the material available on record, this Court of the opinion that the trial Court is right in deciding in favour of the respondent and the same is not liable to be interfered with invoking jurisdiction of the appeal.
10. Accordingly, the decree in favour of the respondent and against the appellant is passed on the following terms and conditions:
- (i) The appeal is dismissed with cost.
 - (ii) Parties shall bear their own cost.
 - (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
 - (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge