

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2018

CORAM:

THE HON'BLE MR.JUSTICE N. ANAND VENKATESH

CRIMINAL REVISION CASE NO.527 OF 2011

AND

M.P.NO.1 OF 2011

Habibur Rahman

... Petitioner

..Vs..

Authorised Officer cum
The Assistant Conservator of Forest,
Salem.

.... Respondent

PRAYER:

Criminal Revision Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to call for records and to set aside the order of confiscation of the Benz Lorry bearing registration No.TNL 8588 by Judgment dated 22.07.2009 made in C.A.No.34 of 2007 on the file of the Additional Sessions Judge and Special Judge for E.C. Act cases, Salem, confirming the order dated 15.11.2006 in STOR No.1 of 1986 vide proceedings of the Assistant Conservator of Forests and Authorised Officer, Forest Protection squad, Salem by allowing the present Criminal Revision Petition.

For Petitioner : Mr.B.Vijaykumar

For Respondent : Mr.S.Thankira
Government Advocate (Crl. Side)

O R D E R

This Criminal Revision petition has been filed against the order passed in Criminal Appeal No.34 of 2007 by the Additional Sessions Judge and Special Judge for E.C Act cases, Salem, confirming the order of confiscation passed by the Assistant Conservator of Forests and Authorized Officer, Salem dated 15.11.2006.

2.The short facts that are necessary for the purpose of disposing this criminal revision petition are :-

On 04.01.1986 the lorry belonging to the petitioner was found illegally transporting Sandalwood weighing 1005.200 Kgs. of Sandalwood, which was valued at Rs.70,000/-. The Assistant Conservator of Forests, Forest Protection Squad, Salem, seized this lorry and the Sandalwood and produced six persons before the Judicial Magistrate, Salem. The learned Judicial Magistrate ordered the return of the seized property to the Assistant Conservator of Forests for safe Custody. Thereafter, the petitioner filed necessary petition seeking for return of the lorry and the same was ordered, after the petitioner furnished necessary security and also undertook to keep lorry in his custody.

3.The incident happened in the year 1986. However, confiscation proceedings under Section 49 of TN Forest (Amendment) Act 1992 was initiated by the Assistant Conservator of Forests and Authorized Officer only in the year 2006. The petitioner also participated in the proceedings and gave his explanation to the effect that he had entrusted the lorry to his brother-in-law and he was not aware that his brother-in-law was going to use the lorry for illegal purpose.

4.The Assistant Conservator of Forests and Authorized Officer after getting the explanation of the petitioner proceeded to conclude that the petitioner had failed to monitor the movement of his vehicle and it is the responsibility of the owner of the vehicle to take care to see that the vehicle is not used for illegal transport of Sandalwood. Since the vehicle has been used for transportation of Sandalwood, the Authorized Officer deemed it fit to pass an order to the effect that the lorry belonging to the petitioner will stand confiscated in exercise of Powers under Section 49 (A) of the TN Forests (Amendment) Act 1992.

5.Aggravated by the order passed by the Authorized Officer, the petitioner filed an appeal before the Special Court. The Special Court by an order dated 22.07.2009 confirmed the order passed by the Authorized Officer. In the said order, the appellate judge has not dealt with any of the points raised on the side of the petitioner.

6.One of the main grounds that was raised in the appeal was that the Assistant Conservator of Forests and Authorized Officer had no power to dispose of the seized vehicle. The incident took place in the year 1986 and therefore the amendment which came into effect in the year 1992 inserting Section 49(A) to the TN

Forest Act will have no application in the case and the Assistant conservator of Forests and Authorized Officer does not have the power to confiscate and sell the property. The Appellate Court took into consideration the fact that the proceedings were initiated only in the year 2006 by then the operation of Section 49(A) has come into force and therefore the Assistant Conservator of Forests and Authorized Officer had the power to proceed with enquiry and order confiscation and sale of the property.

7.The learned counsel for the petitioner contended that the incident took place in the year 1986 and after a period of 20 years, confiscation proceedings were initiated by the Assistant Conservator of Forests and Authorized Officer. The very delay in the initiation of the proceedings will vitiate the file proceedings. The learned counsel for the petitioner further contended that the petitioner had specifically given a statement to the effect that he had given the lorry to his brother-in-law and he was not aware that his brother-in-law had used the lorry for illegal purpose and for the said act of brother-in-law, the petitioner should not be punished.

8.The learned Government Advocate (Crl. Side) reiterated the stand taken before the Courts below and argued that there are no grounds to interfere with the orders passed by the Assistant Conservator of Forest and Authorized Officer as confirmed by the Special Court.

9.The conjoint reading of Section 49(A) and 49(B) of the TN Forests Act 1882 will make it clear that the owner of the vehicle has to prove that he had no knowledge of using the vehicle for the Forest offence. In the present case, admittedly, the petitioner was not present in the scene of occurrence. Even the Assistant Conservator of Forests and Authorized Officer gives a finding that the petitioner had no knowledge or connivance with the use of the vehicle by his brother-in-law, who illegally transported Sandalwood. Having given a finding to that effect, the Authorized Officer proceeds to order confiscation only on the ground that the petitioner failed to monitor the movement of his vehicle and it is his responsibility to ensure that his vehicle is not used for illegal transportation of Sandalwood. The test that has been applied by the Authorized officer goes beyond the scope of Section 49 (A). An order of confiscation is in the nature of punishment and therefore it is incumbent on the part of the Authorized Officer to find that the petitioner had the knowledge or had acted in connivance with the persons, who used the lorry for illegal

purpose. Unless there is a finding to that effect, confiscation can never be ordered under Section 49(A) of the Act.

10.The mere fact that a person fails to monitor the moment of his vehicle, which was given to an other person is not an offence and the misuse of the lorry by the person to whom it was handed over, cannot be attributed on the owner of the vehicle.

11.This vital aspect has missed the attention of both the Authorized Officer as well as the Appellate Court. The appellate Court without any discussion on this issue, has merely confirmed the order of the Authorized Officer.

12.This Court finds that the order passed by the Authorized Officer and confirmed by the Special Court is illegal and beyond the scope of Section 49 (A) TN Forests Act 1882. Accordingly, the order passed by the Assistant Conservator of Forests and Authorized Officer and confirmed by the Special Court is hereby set aside. This Criminal Revision Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsg1

To

1.The learned Additional Sessions Judge and
Special Judge for E.C. Act cases, Salem.

2.The Assistant Conservator of Forests
and Authorised Officer,
Forest Protection squad, Salem.

3.The Additional Public Prosecutor,
Madras High Court, Madras.

Copy To

The Section Officer,
Criminal Section, High Court, Madras.

+1cc to Mr.B.Vijaykumar, Advocate, S.R.No.39724

Cr1. RC. No.527 of 2011
and
M.P.No.1 of 2011

NA(CO)
CS/25/07/18