

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

Writ Petition No.3554 of 2018

ORDER

The writ petitioner Chittampally Prakash is claiming as driver of Innova vehicle bearing No.AP29 AL 0369 filed writ petition against the 4 respondents viz; the Principal Secretary, Forest Department, State of Telangana, the Conservator of Forests, Warangal Circle, Warangal, Forest Divisional Officer(for short, 'the FDO'), Mahadevpur and the Forest Range Officer(for short, 'the FRO'), Kataram, Mahadevapur Division, impugning against the order passed by the 2nd respondent- Conservator of Forests, dt.01.12.2017.

2. The prayer in the Writ Petition reads as follows:-

“to issue appropriate orders more particularly one in the nature of Writ of Mandamus declaring the order of Respondent No.2 vide RC.No.2968/ 2017/ MS,dt.01.12.2017 in upholding the order of Respondent No.3 vide proceeding No.65/ S5/ 2017, dt.09.08.2017 without issuing notice of enquiry is illegal, arbitrary and against the principles of natural justice and pass such other order or orders.”

3. The averments in the supporting affidavit are that the vehicle in question was seized on 12.03.2017 during vehicle check by the Forest officials and produced before the R.4-Forest Range Officer alleging that the writ petitioner was carrying clandestinely and illegally 15 Nos. of rough squared logs in the vehicle and the 3rd respondent-FDO on 09.08.2017 allegedly obtained his signatures on several papers without saying anything to him and passed confiscation order without issuing any show cause notice to him and the staff of R.3-FDO asked him to file appeal before the Conservator(2nd respondent) and obtained his signatures. The appeal was preferred on

29.08.2017 and also Writ Petition No.34057 of 2017 was filed where by order dt.11.10.2017 interim custody was ordered subject to bank guarantee and even bank guarantee from SBI on 21.11.2017 obtained and approached the R.3-FDO to accept and release the vehicle pursuant to the High Court's order which was not complied and meantime on 27.12.2017, the petitioner-Prakash was served with copy of the order in appeal vide Rc.No.2968/ 17/ MS,dt.01.12.2017 passed by the 2nd respondent-Conservator(Impugned order herein) rejecting the appeal and the notice of the enquiry along with the rejection order, dt.26.12.2017 issued by the R.3-FDO proceeding No.65/ 2017/ S5 simultaneously without opportunity which is illegal and liable to be set aside as not only against the principles of natural justice but also against the fundamental rights.

4. So far as the impugment of the orders is concerned, the original record called for and examined and it shows, the R.3-FDO order in RC.No.65/ S5/ 2017,dt.09.08.2017 speaks that from perusal and examination of the records of enquiry in relation to the case POR No.888/ 18,dt.12.03.2017 of the FDO, Mahadevpur offence File No.49/ C/ KTM/ 2017 together with Innova bearing No.AP 29 AL 0369 produced by the Forest Range Officer-R.4 with all references in the matter including depositions of the accused under Sub Section 2(A) of Section 44 of the Forest Act, 1967 showing during patrolling at Garepally village road, near Govt.Hospital, a Innova vehicle supra was found and they stopped and on search found 15 Nos. of rough squared logs and when asked for valid permit for such transportation, the writ petitioner-Ch.Prakash(driver), disclosed his name and identity and not

produced any permit for said teak timber for the clandestine transport, thereby the Forest Beat Officer with Staff seized the logs along with vehicle and registered crime u/ secs.20,29 and 44 of the A.P.Forest Act, 1967(for short, the Act') based on the panchanama proceedings of apprehension, disclosure and seizure and report is submitted on 13.03.2017 with the record and produced the seized vehicle and the logs before the FDO-R.3 for further action u/ sec.44 of the Act, and a show cause notice was issued in reference No.65/2017/ S5, dt.24.03.2017 again on 20.04.2017 and on 07.07.2017 to the Writ Petitioner-Prakash (accused) through Forest Range officer, Kataram-R.4, and the same was served on the Writ Petitioner-Ch.Prakash at his address, 8th inclave colony, Tarakaramanagar of Peddapally and also on the owner of the vehicle from the registration particulars through P.Bharath Reddy that was obtained from the Transport Department and they failed to appear despite service of the show cause notice much less any reply and it clearly established of the vehicle was used in commission of the offence contrary to Rules 3 and 5 of the AP Forest Produce Transit Rules, 1970 by reproducing the said Rules in saying even reasonable opportunity is given failed to turn up much less to explain and thereby established involvement of accused in the illegal transportation of the forest produce which has become unlawful trade, the vehicle is confiscated along with the teak logs by referring to right of appeal in 30days available to the Conservator of Forest. The order copy is received by the Writ Petitioner-Ch.Prakash on 18.08.2017. The original record also shows the Writ Petitioner-Ch.Prakash received the notices on 18.08.2017 and what he pretended of there are no notices and his signatures obtained

and appeal also as if cause prepared baseless and untenable and for never such a whisper made much less even in the earlier writ petition pending appeal in asking for interim custody of the vehicle. A perusal of the record shows the service and when opportunity given by service of notice to appear and explain and failed to explain much less at the time of seizure not even produced any permit but for to consider whether the vehicle is liable for confiscation or not from the order of confiscation passed by the R.3-FDO, there is nothing to consider any complaint of non-affording an opportunity and violation of principles of natural justice or effecting any fundamental right. Leave it as it is in the appeal before the Conservator of Forest and record shows even service of notice and he has submitted his statement that was recorded in the appeal proceedings though no such statement and opportunity further is contemplated for no material filed before the R.3-FDO, but for to consider in the appeal, the correctness of the impugned order of the R.3-FDO, the R.2-Conservator even afforded opportunity. What is the version in the very statement given by the Writ Petitioner-Accused Ch.Prakash is that on that fateful day-12.03.2017 he attended for paddy crushing and harvesting work by operating crushing machine and some persons there acquainted asked and when offered to supply wood for a lesser rate for construction purpose of house and thereby to supply these logs secured by him, transporting clandestinely and that was apprehended and seized and he is a poor man living by avocation of driving and he is ready to pay whatever the penalty to be imposed and asked to release the Innova vehicle supra. The statement of R.4-FRO and Forest Beat Officer substantiates the clandestine dealing of the wood by the writ

petitioner. His further version from the record before the appellate authority shows on 13.03.2017 his vehicle owner Masipeddi Ravinder (in fact as per the transport records vehicle owner's name is different) of Siddipet, sent him to Phaliyela village from Godavari Khani to drop passengers on hire and while returning, some unknown persons when offered the teak logs, he purchased for a lesser price and it was seized in the transit and the owner of the car not known this fact. Their version is some unknown persons in the transit when coming on that way stopped him and threatened and asked to carry the logs without cutting and he carried and he was caught. Any of the versions in one voice says there is no permit and he is clandestinely carrying logs. It is not even his version that anybody threatened and loaded the logs. None others are there in the vehicle even to come with such version.

5. However, the fact remains that the appellate authority in passing the confirmation or reversal or modified order as only to consider the order of the primary authority passing order of confiscation is sustainable or not and contrary to it, he cause recorded the statements. If at all it was to do, the appellate authority could have remanded the matter to the primary authority to cause record the statements and give fresh disposal setting aside the confiscation order.

6. In fact, seizure is different from forfeiture and confiscation. Seizure is a temporary forcible taking of possession until passing of final orders for release of the property or for forfeiture or confiscation of the property subject to gravity and proof of the

occurrence with reference to the enabling provisions. So far as confiscation or forfeiture of the property concerned, it is permanently depriving right over the property of the lawful owner entitled and once such is the case, there must be a prima facie finding with reasonable enquiry by affording opportunity of the vehicle liable for forfeiture/ confiscation. If the offence is compounded, the vehicle involved in the offence on payment of fees/ fine may not again be liable for confiscation from compounding of the very offence in which the vehicle involved is concerned. No doubt, there is no compounding of the offence herein, leave about from any enabling provision for compounding under the Forest Act. However, the fact remains that the owner of the vehicle is other than the person involved in the crime but in fact, the driver Ch.Prakash-Writ Petitioner in whose application for release of the vehicle order passed dismissing and in ordering confiscation that is confirmed in appeal and what is the notice stated given to the so called registered owner mentioned is different from the who is the registered owner from the very records of the Forest Officials referred by this Court and discussed supra. Once such is the case, it must be known whether the acts of the driver are knowingly cause done by the owner or without his knowledge and the vehicle is then liable for confiscation or not in the standpoint of view of the entitlement of third party owner not at use of the vehicle though it is plying through the driver to attribute any deemed knowledge for no statutory provision otherwise that could be rebutted by the owner of the vehicle and once such is the case, it is owner's right to claim the vehicle available before passing any order of confiscation of vehicle on the application of the driver.

7. Having regard to all the above, the Writ Petition is disposed of. The procedure adopted by the authority in the appeal in question filed by the present writ petitioner, since unsustainable and not sanctioned by any specific provision of law that could be brought to the notice of the Court by the learned Govt. Pleader for Forest, the same is set aside by remanding the matter to the primary authority to give fresh disposal by giving fresh notice to the owner of the vehicle also who got right to participate if at all prove any innocence of him in use of the vehicle by the driver/the Writ Petitioner, without his knowledge clandestinely in commission of the forest offence in cause transporting in the vehicle the teak logs so that the decision can be arrived afresh with a clear finding of the vehicle is liable for confiscation or forfeiture or release by imposing any penalty or the like.

Registry to return the record to the learned Govt. Pleader for Forest Department, Telangana State.

Consequently, miscellaneous petitions if any pending in this Writ Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: .03.2018.
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