

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.507 of 2016

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Binod Yadav son of Ramjee Yadav resident of Village - Mahadeoganj, P.S. -
Nawanagar, District - Buxar.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Forest and Environment, Govt. of Bihar ,Patna
2. The Principal Secretary, Department of Forest and Environment, Government of Bihar, Patna.
3. The District Magistrate, Rohtas at Sasaram.
4. The Authorized Officer-cum-Divisional Forest Officer, Rohtas Forest Division, Sasaram, District -
5. The Forester, Tilauthu - Darigaon Forest Region, District - Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajani Kant Singh, Advocate.
For the Respondent/s : Mr.Harish Kumar GP-8

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 19-04-2019

Heard learned counsel for petitioner and the State.

This writ petition has been filed for issuance of an appropriate writ in the nature of *Certiorari* for quashing the order dated 11.12.2015, passed by Learned Principal Secretary, Department of Forest and Environment, Government of Bihar, Patna in Revision Case No. 11 of 2015 as contained in



Annexure-5 whereby and whereunder learned Principal Secretary, Department of Forest and Environment, Govt. of Bihar, Patna has been pleased to reject the revision of the petitioner affirming the order dated 28.2.2015, passed by learned District Magistrate, Rohtas at Sasaram in Forest Confiscation Appeal No. 21/2014 as contained in Annexure-4 and order dated 1.2.2014, passed by learned Authorized Officer-cum-Divisional Forest Officer, Rohtas Forest Division, Sasaram in Confiscation Case No. 81/2013 as contained in Annexure-3 arising out of Forest Case no. 43F of 2013 in which the truck bearing Registration no. WB- 23C/1205 has been seized and further for directing the respondent no.4 to release the truck bearing Registration No. WB-23C/1205 in favour of its owner within a specified period.

Learned counsel for petitioner submits that petitioner is driver of a Commercial Public Truck bearing Registration No. WB-23C/1205 and owner of the Truck is Md. Aurangzeb, son of Md. Haidar Khan. The vehicle was being managed by the Driver. The truck was loaded with stone materials. When the truck reached near Agarer Police Station,, the respondent no.5 with the assistance of Police personnel seized the truck on 2.8.2013. The petitioner produced the challan and requested to



release the vehicle, but the truck was seized and Forest case vide Forest Case no. 43F/2013 was registered on 2.8.2013 for illegal transportation of forest produce under Sections 33,41 and 42 of the Forest Act. It has further been submitted that after receiving the prosecution report of Forest Case no. 43F/2013, the respondent no.4 initiated a confiscation proceeding vide Confiscation case no. 81 of 2013, wherein, show cause was issued only against the petitioner, who was driver of the alleged truck. Thereafter, the petitioner filed his show cause in Confiscation case no. 81 of 2013 denying the allegation levelled in the prosecution report. By way of show cause, it has been submitted on behalf of the petitioner that truck was not seized from protected forest area, the stone materials were loaded from the District Aurangabad for which valid mining challan was issued and the vehicle did not violate any provisions of Forest Act. Md. Aurangzeb is said to be the owner of the seized truck, but no notice was issued against him by Confiscating Authority, so he could not file his show cause. In such circumstances, the petitioner, who is driver of the truck, is contesting the case. The respondent no.4 confiscated the truck being Registration No. WB 23C/1205 vide his order dated 1.2.2014 as contained in Annexure-3. Being aggrieved and



dissatisfied with the order dated 1.2.2014, petitioner preferred appeal before the respondent no.3 vide Forest Confiscation Appeal no. 21 of 2014 which was also dismissed on 28.2.2015. Thereafter, petitioner preferred revision vide Revision case no. 11 of 2015 before the respondent no.2 and the same was also dismissed on 11.12.2015 affirming the orders of Respondent nos. 3 and 4.

Learned counsel for petitioner submits that respondent authorities have failed to appreciate that the alleged loaded truck was not seized from protected forest area rather it was seized from Sasaram- Ara Road in front of Agarar Police Station. It has further been submitted that from the prosecution report itself it is admitted fact that only stone materials were loaded on the truck which was not forest produce because the stone materials are minor minerals and its removal are punishable U/s 40(2) of the Mines Minerals Concession Rules 1972 and, therefore, the Confiscation proceeding was bad in law. He further submits that Forest Department was required to give specific description of plot number from where the stone materials were loaded and that place must be notified U/s 29 and 30 of the Forest Act, but in the instant case there is nothing on record to show the place from where the stone materials



were loaded. It has further been submitted that respondent no.5 has no authority to seize the vehicle out of forest area.

Learned counsel for the State has submitted that owner of the vehicle never appeared either before the Confiscating authority or before the appellate authority as well as revisional authority for release of the truck in-question. The driver has filed the necessary petition for release of the truck . He further submits that in terms of provisions contained in Section 52(5) of the Indian Forest Act, 1927, the owner and the driver/agent of the said seized vehicle has to prove that the said vehicle was used without the connivance and the knowledge of them and it has to be proved that both the owner of the said seized vehicle and the driver/agent have taken all reasonable and necessary precautions against the misuse of the said vehicle in the commission of any forest offence. The Appellate Court as well as the Revisional Court has taken note in the order that owner has never appeared for release of the vehicle. Driver has submitted before the appellate as well as Revisional Authority that stone materials were loaded from District Aurangabad for which valid challan was issued. The truck was not seized from protected forest area. No plot number from where stone were alleged to be loaded illegally has been mentioned in the



prosecution report.

The revisional Court has mentioned in the impugned order that the Challan produced by the revisionist/petitioner was examined in which no signature was found in the column of signature of lease holder. In column no. 8 the date and time has been mentioned as 1.8.2013 at 7 AM, whereas, in Column -9 name of purchaser was not mentioned and only Ragunathpur was written. In truck number, overwriting was done and name of owner was written as Aoshan Khan. In signature of the driver column Vinod Kumar was written. At the time of seizure challan was not produced and nothing was submitted in this regard during appellate stage or at the time of initiation of confiscation proceeding.

Learned counsel for the State has pointed out Annexure-3 which is order passed by the Authorized officer-cum Divisional Forest Officer, Rohtas Forest Division, Sasaram, wherein, it is mentioned that driver of the truck has appeared and submitted that he was having valid document, but no any document was produced. The driver has further stated that Aurangzeb is the owner of the truck. In support of such statement he did not produce document before the authority. Both the Appellate as well as the Revisional Authority have dismissed the appeal and



revision on the ground that owner has never appeared for release of the truck in-question. The driver, who was the petitioner, did not produce any valid challan at the time of search and seizure of the alleged truck in question.

Learned counsel for petitioner has submitted that his main argument in the case is on legal point that the seized articles were not the forest produce rather they were mines and minerals. Therefore, there was no application of Forest Act. Therefore, the initiation of the confiscation proceeding was bad in law.

He further submits that there is no any mention in the confiscating order that the alleged stones carried on truck were loaded from the protected forest area. There has been no any material before the Confiscating Authority to doubt the genuineness of the challan as the same was never got verified and no verification report was available on the record.

He further submits that both the Appellate as well as Revisional Authority have failed to consider all the legal questions raised by the petitioner. The truck has been confiscated on the ground that driver was found violating the provisions of Sections 33, 41 and 42 of the Indian Forest Act.

Section 33 of the Indian Forest Act prescribes for



penalties for acts in contravention of notification under Section 30 or of rules under Section 32. Similarly, Section 41 is power to make rules to regulate the transit of forest produce and Section 42 is penalty for breach of rules made under Section 41.

Therefore, this Court, on pure question of law, as submitted by the petitioner, is satisfied that confiscation of the vehicle on the ground mentioned by the Confiscating Authority was not in accordance with law. Both the Appellate as well as Revisional Authority have failed to take into consideration the aforesaid questions of law while passing the impugned order(s).

In view of such, the impugned orders as contained in Annexure-3, 4 and 5 are set aside.

The owner of the truck bearing Registration no. WB-23C/1205 is directed to file fresh application before the Confiscating Authority for release of the vehicle. The Confiscating Authority will pass fresh order in accordance with law after considering all the questions of law and facts raised by the owner of the vehicle as discussed in this judgment. The owner of the vehicle will file necessary petition before the Confiscating Authority for release of the vehicle within a period of one month from the date of this order. The Confiscating



Authority will pass appropriate order in accordance with law within a period of two months from the date of filing of the petition by the owner of the vehicle.

The writ petition is, accordingly, allowed with the direction made above.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	27.4.2019
Transmission Date	

