

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7139 of 2016

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Hari Prasad Keshari S/o late Akalu Sao Resident of Village- Bhaluachatti, PS
-Barachatti, District Gaya.'

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The District Magistrate, Gaya.
3. The Divisional Forest Officer-cum-Authorized Officer, Gaya Forest
Division Gaya.
4. Raj Kishore Pandit Range Gaya Forest Division Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Baxi S.R.P. Sinha, Sr. Advocate
		Mr. Mrigendra Pratap Singh, Advocate
For the Respondent/s	:	Mr.Niraj Kumar Sinha, AC to PAAG-2

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 15-04-2019

Heard learned counsel for the petitioner and the State.

2. This writ application has been filed to quash the order
passed by the Principal Secretary, Environment, Patna in Revision
Case No. 8 of 2014 dated 17.02.2016.

3. Learned counsel for the petitioner submits that in this
case no offence under Section 33,41 and 42 of the Indian Forest
Act is made out. The vehicle bearing Registration No. JH-02L-
7475 of the petitioner was seized merely on suspicion and later on
confiscated by the authorized officer, respondent no. 3.

4. Learned counsel for the respondent has filed counter
affidavit, wherein, he has stated that in terms of Section 52 (5) of
the Indian Forest Act, the petitioner was required to prove that he



was not carrying any forest goods in the vehicle and aforesaid goods were not loaded with consent of the petitioner.

5. The case of the informant is that one Bolero pick-up van was intercepted on 07.01.2011 at about 2.00 PM while the concerned authority of Forest Department of Barachatti Range were on patrolling in the Forest. They saw a Bolero pick-up van was coming from Baraki Chapi Barachatti Forest Range. On seeing the police, they tried to escape but one of them namely Ramdeo Yadav was caught. The vehicle was loaded with 80 bags of charcoal. The vehicle along with 80 bags of charcoal were seized under Section 52 of Indian Forest Act and Sections 33, 41 and 42 of the said act. Thereafter, confiscation proceeding was initiated by Authorized Officer-cum-Divisional Forest Officer and notice was sent to owner of the vehicle regarding the Confiscation Proceeding against the seized vehicle.

6. Learned counsel for the petitioner submits that petitioner has accepted that he was owner of the vehicle. He has submitted during hearing of the confiscation case that one Nanhak Mian had forcibly loaded charcoal in the vehicle.

7. Learned counsel for the petitioner submits that even though such defence of the petitioner stated before Confiscating Officer was not accepted, but as per prosecution report, it appears



that he was not violating any of the rules under Section 33 of the Indian Forest Act.

8. Similarly, it has been argued that Section 41 prescribes penalty for breach of any rules made under Section 42 of the Indian Forest Act. Section 41 prescribed power to make rules to regulate transit of forest produce.

9. In the instant case, from the FIR itself, it appears that there is no case of the informant that any forest product was burnt by the petitioner and charcoal has been prepared by preserved forest trees. As per FIR, the vehicle of the petitioner was intercepted by forest patrolling team and on search they found loaded 80 bags of charcoal and no paper relating to those charcoal bags was produced. Thereafter, the vehicle along with charcoal were seized under Section 52(5) of the Indian Forest Act. Further, the petitioner, who was arrested has given defence before the authority that the charcoal was loaded on his vehicle forcibly by one Nanhak Mian. The Confiscating Officer has stated in the order that aforesaid Nanhak Mian is habitual offender, who was accused in other forest cases. Thereafter, on the basis of conjecture and surmises the confiscating officer has held that the vehicle owner, owner of charcoal and driver were operating together and were involved in commission of forest offences. The petitioner



preferred appeal before Appellate Authority. The Appellate Authority in mechanical manner has confirmed the order of the Confiscating Officer. Thereafter, revision was filed and revisional court confirmed the order of appellate Court.

10. In such circumstances, this Court finds that the orders contained in Annexure- 3, 4 and 5 are not in accordance with law and are accordingly, set aside.

11. The Authorized Officer-cum-Divisional Forest Officer (respondent no. 3) is directed to release the vehicle of the petitioner within a period of 15 days from receipt/production of copy of this order after proper verification of papers.

12. This writ application is, accordingly, allowed.

(Sanjay Priya, J)

khushbu/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	26/04/2019
Transmission Date	

