

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 56 of 2018

1. Mukesh Agrawal S/o Chandra Kumar Agrawal, Aged About 29 Years
2. Chandra Kumar Agrawal S/o Bhalaram Aged About 52 Years
(Both are r/o Village Patrapali Saraipali, District Mahasamund Chhattisgarh)

---- Petitioners

Versus

- State Of Chhattisgarh Through Competent Authority And Forest Sub Divisional Officer, Saraipali, District Mahasamund Chhattisgarh

---- Respondent

For Petitioners	: Mr. Sanjay Agrawal, Advocate.
For State/Respondent	: Mr. Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

18-11-2019

Heard.

1. This petition has been brought being aggrieved by the order dated 14.11.2017, passed by the learned 8th Additional Sessions Judge, Raipur, C.G. in Criminal Revision No.89/2017 by dismissing the revision petition of the petitioners.
2. Learned counsel for petitioners submits that on 31.10.2010, the tractor No.CG 04 DM 4734 along with trolley, which was under the ownership of the petitioners, was seized by the Forest Department when the same was being used for transportation of forest produce e.i. timber. Forest offence was registered by P.O.R. No.2202/2017 and seizure was made under Section 15 of Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 (in short 'the Act' 1969). A proceeding was initiated before the Authorized Officer, Divisional Forest Officer, Saraipali in which the seized tractor and trolley were confiscated under the provisions of Section 15 of M.P. &

C.G. Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 on 15.03.2011. The appeal before the appellate authorities was also dismissed. In the meanwhile, the petitioners moved an application before Sub Divisional Officer (Revenue), Saraipali. The S.D.O. (Revenue) vide order dated 25.01.2011 (annexure P-2) ordered for release of tractor and trolley to the petitioners. The Forest Department preferred an appeal before the Collector of the District and the Collector vide order dated 31.05.2012 set aside the order of S.D.O. (Revenue). This order was again challenged by the petitioners in Second Appeal before the Additional Commissioner, Raipur then the Commissioner has passed order on 02.01.2014 by setting aside the order of Collector and restoring the order of S.D.O. (Revenue). It is submitted that subsequent to the completion of proceeding before S.D.O. Revenue and the Collector and the Commissioner of Revenue Division, the applicants moved an application for release of tractor and trolley before the Divisional Forest Officer but their application was rejected on 24.03.2014.

3. Subsequent to which, the petitioners then filed a writ petition Criminal No.45/2016 which was disposed off on 05.12.2016. The petitioners sought permission of the Court to withdraw the petition with liberty to challenge the order dated 15.03.2011 of authorized officer and the Appellate order dated 04.07.2011 in Revision Petition. On that basis, the Writ Petition (Criminal) was disposed off with the liberty as prayed for.
4. Subsequent to this, petitioners filed the Criminal Revision No.89/2017 before the Additional Sessions Judge, Raipur, which has been disposed off by the impugned order dated 14.11.201 by dismissing the Revision Petition. It is submitted that the procedure for confiscation as required under Section 15 of Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 has not been followed.

5. Placing reliance on the judgment of Supreme Court in ***State of Madhya Pradesh Vs. Suresh Kumar*** reported in **(1997) 9 SCC 647**, it is submitted that no opportunity was afforded to the petitioners for proving that the transportation of forest produce was done without their knowledge and in connivance. Hence, prayed that petition be allowed.
6. Learned counsel for the respondent opposes the petition and the submissions made by the learned counsel for petitioners in that respect and submits that the order passed by S.D.O. (Revenue) and other Revenue authorities are without jurisdiction. Clearly it is a case, in which the tractor and trolley of the petitioners were seized by Forest Department with respect to commission of a forest offence. The appeal that was filed by petitioners against the order of Authorized Officer has also been rejected by the Appellate authority vide order dated 04.07.2011 (annexure P-4). Therefore, there is no illegality committed in the procedure followed by the authorities of Forest Department. The order of confiscation in respect of the tractor and trolley belonging to petitioners is proper and needs no interference.
7. The only contention raised on behalf of petitioners which needs consideration is this that whether the petitioners were given proper opportunity as provided under Section 15 of Act, 1969. The other submissions made and grounds raised regarding the order of Revenue Authorities, has no force because very clearly it is the jurisdiction of Forest Department to initiate proceeding of confiscation and after such initiation there is a clear bar of jurisdiction under Section 15 (c) of Act, 1969 on the other Courts, Tribunal and authorities to pass any order with respect to the custody of seized articles.
8. On perusing the order of Authorized Officer, the facts reflected are these

that seizure of tractor and trolley was made from petitioner No.2 at the time, the same was used for transportation of timber from forest on 31.10.2010. At first, the petitioner No.2 claimed himself to be the owner of the tractor and trolley, however, later on it was disclosed that petitioner No.1 is the registered owner of the tractor and trolley.

9. On perusal of the order dated 15.03.2011 vide annexure P-3, it is found that the petitioners have participated in the proceeding of confiscation and they have even produced evidence before the Forest Officer in support of their claim. Therefore, after complete inquiry, the order was passed.
10. According to Section 15 (5) of Act, 1969, the Forest Officer is bound to follow the directions in this provision, according to which firstly, he has to send an intimation to the Magistrate having jurisdiction regarding the seizure made. Secondly, he has to issue a notice in writing to the person from whom the property is seized to appear before the Authorized Officer. Thirdly, he has to be afford an opportunity to the persons concerned for making representation against the proposed confiscation of the seized property and also provide proper hearing.
11. On perusal of the annexure P-3, an order dated 15.03.2011, it is found that notice was served upon the petitioners for submitting their explanations and thereafter they were afforded opportunity to make representation and also they were given opportunity for hearing in which the witnesses were produced by the petitioners' side before the order was passed. Therefore, it shows that the requirement of Section 15(5) of Act, 1969 has been complied with.
12. On the other hand, it is the burden of the persons claiming the release of vehicle or other articles that the Forest offence was committed without

the knowledge or in connivance of such persons concerned. In this particular case, the petitioner No.2 himself was involved in the alleged commission of offence and petitioner No.1 has given in writing to the forest official that the vehicle was in charge of petitioner No.2.

13.The reliance of the petitioners on ***State of Madhya Pradesh Vs. Suresh Kumar*** (Supra) does not give any guidance in favour of the petitioners. Therefore, I do not find any fault in the impugned order, which needs no interference. Hence, this petition is dismissed.

14.Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Monika