

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 2986 of 2011

Kamta Prasad Nag, S/o. Itwari Ram Nag, R/o. Vill. Andega, Teh Keshkal,
Distt. Bastar (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through : The Secretary, Forest Department, D.K.S. Bhawan, Raipur (C.G.).
2. The Conservator of the Forest (Appellate Authority), Kanker Circle, District- Kanker (C.G.).
3. Sub-Divisional Forest Officer (Competent Authority), Forest Sub-Division, Keshkal, District – Bastar (C.G.).
4. The Range Officer Forest Department Baderajpur, Tehsil – Keshkal, District – Bastar (C.G.).

-----Respondents

For Petitioner : Mr. Shobhit Koshta, Advocate

For State/Respondents : Mr. Jitendra Shukla, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

11/12/2019

1. Challenge in this petition is to the order dated 04.05.2011, passed by the Court of Additional Sessions Judge, Kanker in Criminal Revision No.11 of 2010 by dismissing the revision petition.
2. It is submitted by the learned counsel for the petitioner that the petitioner is registered owner of the tractor No.C.G.-05-/6125 and Trolley No.C.G.-05/6126, which was seized on 06.05.2009 in forest offence under Crime No. 96/16 for commission of offence under Indian Forest Act, 1927 and violating the provision under Chhattisgarh Abhivahan Vanopaj Niyam, 2001. The Authorized Officer/Sub-Divisional Forest Officer, Keshkal made an enquiry in the confiscation

proceeding and passed the order dated 20.11.2009, by which the seized tractor trolley were released in favour of the petitioner. This order was challenged before the Conservator of Forest and Appellate Authority, Kanker Circle, in Appeal No.147/2009, vide order dated 15.04.2010, in which the order of Authorised Officer was set-aside vide order dated 15.04.2010. This appellate order was challenged in revision petition before Sessions Court, Kanker and the revision petition has been dismissed by the impugned order.

3. It is submitted by the counsel for the petitioner that tractor and trolley belongs to the petitioner used for transportation of forest produce without his knowledge and connivance and he had also taken reasonable measure and precautions that his vehicle shall not be used for commission of any forest offence. The Appellate Court and the learned Revisional Court both have disregarded the evidence in enquiry and passed erroneous order. Therefore, the impugned order and the order of the Appellate Authority be set-aside and the order of the Authorized Officer/Sub-Divisional Forest Officer, Keshkal be restored.
4. State counsel opposes the petition and the submission made in this respect. It is submitted that no error has been committed by the revisional Court as well as by the appellate Court. The petitioner has clearly failed to establish that the vehicle under his ownership was used for commission of forest offence without his knowledge and connivance. Therefore, he is not entitled for any relief.
5. I have heard the learned counsel for the parties and perused the documents placed on record.

6. On perusal of the order passed by the Authorized Officer/Sub-Divisional Forest Officer, Keshkal, it is found that it is a complete enquiry report. There is no dispute that the vehicle in question was not seized from the possession of the petitioner. The petitioner was examined in the confiscation proceeding in which he has stated that he is owner of the tractor and trolley and used the tractor and trolley only for the agricultural purpose. On the date and time of the incident, he had given his tractor and trolley in the custody of his younger brother, who lives in Vishrampuri for his personal work. Thereafter, without the permission of the petitioner and his knowledge the Sarpanch of Gram Panchayat Honawandi Raful Mandavi used the tractor for transport of fire wood, which was stopped by villagers and then seized by the Forest Officials. His statement has remained un-rebutted. The driver of the tractor Sukhdev, from whom the seizure was made, has stated that he was using the tractor and trolley on the instruction given by his uncle Raful Mandavi. He did not know the owner of the tractor and trolley, which was again un-rebutted statement. Other witnesses, who were examined in the same proceeding have not stated anything to show that the petitioner had knowledge that his tractor was being used for transportation of fire wood. Therefore, on the basis of un-rebutted statement given by the petitioner, the authorized officer/Sub-Divisional Forest Officer, Keshkal has held that the petitioner deserves to be handed over the custody of the tractor and trolley.
7. The learned Appellate Authority as well as Revisional Court have ignored the evidence present in the enquiry made in the confiscation proceeding and passed the orders. Therefore, I am of this opinion that the impugned order and the order passed by the Appellate Authority both are erroneous and incorrect. Therefore, this petition deserves to

be and it is hereby allowed.

8. The impugned order dated 04.05.2011, passed in Cr.R. No.11/2010, passed by the Additional Sessions Judge, Kanker and the order of the Appellate Authority, Kanker Circle in Appeal No.147/2009, dated 15.04.2010 are set-aside and the order of the Authorized Officer/Sub-Divisional Forest Officer, Keshkal dated 20.11.2009 is restored according to which, the petitioner shall have entitlement to get the seized tractor and trolley in his custody as per the terms in the order passed by the Authorized Officer.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram