

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
WPCR No. 399 of 2019

- Jashram Kaushik S/o Mr. Kawalnath Kaushik, Aged About 44 Years, R/o Village Mulmula, Tahsil Kondagaon, District- Kondagaon, Chhattisgarh., District : Kondagaon, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, through the District Magistrate, Kondagaon, Chhattisgarh., District : Kondagaon, Chhattisgarh
2. Zonal Officer, Dahikonga, Tahsil Kondagon, District- Kondagaon, Chhattisgarh., District : Kondagaon, Chhattisgarh
3. Devesional Forest Officer, Village Mulmula, Tahsil Kondagaon, District- Kondagaon, Chhattisgarh., District : Kondagaon, Chhattisgarh
4. Sub Divisional Forest Officer, East Kondagaon, Sub Divisional Forest Kondagaon, District- Kondagaon, Chhattisgarh., District : Kondagaon, Chhattisgarh

-----Respondents

For Petitioner	: Shri Raza Ali, Advocate
For Respondents/State	: Shri Arijit Tiwari, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

17/09/2019

Heard.

1. Instant petition has been brought under Article 226 of the Constitution of India praying for quashment of order dated 18-01-2016 passed by respondent No.4, order dated 26-07-2016 passed by Chief Conservator Forest and appellate authority Kanker upholding the confiscation order passed by respondent No.4 and for quashing the order dated 28-01-2019 of Additional Sessions Judge (FTC) North Bastar Kanker by which the revision petition was dismissed.

2. It is submitted that the petitioner is registered owner of the tractor which was seized in the forest offence No.12546/01 for transportation of forest produce. The petitioner has handed over the said tractor and trolley in custody of driver Raju S/o Bodaku and the tractor and trolley was used only for agricultural purposes. The petitioner had permitted his driver Raju to take the tractor after completion of work to Village Maalgaon where his friend Bhagirathi lived and to stay for the night. The incident that took place on 13-10-2015 was not in the knowledge of the petitioner, neither it was done in his connivance. Driver Raju has given a statement to the authority that it was on asking of Bhagirathi he had been to forest for bringing firewood and thereafter the vehicle and firewood were seized by the Forest officials. None of the other witnesses examined have made statement that the petitioner had knowledge that this vehicle would be used for illegal transportation of forest produce and neither the said transportation was done in his connivance, despite that the confiscation order dated 18-01-2016 has been passed by the confiscation authority, which has been mechanically confirmed by the appellate authority in order dated 26-07-2016, further, the revisional Court has also without considering the factual aspects has dismissed the revision petition. Therefore, it is prayed that this petition be allowed and order of quashment of all the impugned orders be passed with order to release the vehicle in favour of the petitioner.
3. Learned counsel appearing for respondents submits that the forest produce can be transported only during day hours and in this case the same were being transported during night, which is against the provisions in Rules under the Van Upaj (Vyapar Viniyaman) Adhiniyam. The confiscation authority, the appellate authority and the revisional

Court have very clearly held that there had been implied consent of the petitioner for use of the vehicle under his ownership for transportation of the forest produce illegally. Therefore, he is not entitled for any relief from this Court.

4. Heard learned counsel for the parties and perused the documents.
5. On perusal of the statement that have been recorded of the witnesses that have been examined in the confiscation order passed by the confiscation authority which has been confirmed by the appellate authority order as well as in the revisional order, it is found that the petitioner had given implied consent to the driver Raju for taking the vehicle to Village Maalgaon for stay at night only. There is no statement or statement made by any witness that the petitioner had knowledge that his vehicle would be used for bringing firewood from jungle.
6. Section 52 of the Indian Forest Act 1927 has amended by M.P. State Government and the same has been adopted by this State provides for confiscation proceedings and the Sub-section 5 of the same Section is as under :-

“(5) No order of confiscation under sub-section (3) of any tools, vehicles, boats, ropes, chains or any other article (other than the timber or forest produce seized shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorised officer that any such tools, vehicles, boats, ropes, chains or other articles were used without his knowledge or connivance or as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission”.
7. As there is no evidence to show that the petitioner had knowledge or the act was done in his connivance and there is nothing to show that the petitioner had permitted the driver to make use of the vehicle for any other purposes than the agricultural use, therefore, on this basis it

can be said that it was not a fit case in which the confiscation order could have been passed by the confiscation authority and subsequent order of the appellate authority as well as revisional Court are also against the provisions of law under Section 52(5) of the Indian Forest Act. Therefore, I feel inclined to allow this petition. The petition is allowed at motion stage. The impugned orders of confiscation passed by the confiscation authority, appellate authority and the revisional Court are hereby set aside and the respondents are directed to release the vehicle in favour of the petitioner preferably within a period of 15 days from the date copy of this order is received by them.

Sd/-
(Rajendra Chandra Singh Samant)
Judge