

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO.838 OF 2019
WITH
CRIMINAL WRIT PETITION NO.853 OF 2019**

The Range Forest Officer (Territorial),
Navapur Range,
Nandurbar Forest Division Shahada,
Tal. Navapur, Dist. Nandurbar.

... PETITIONER

VERSUS

1. The State of Maharashtra
through Public Prosecutor
High Court of Bombay
Bench at Aurangabad.

2. Sandip Satyaprakash Bansal
Age : 44 years, Occu : Business
R/o : 148, Green Park, Niranjanpur
Deharadun, Tal. & Dist. Deharadun
(State of Uttarakhand)

... Respondents

...

Advocate for Petitioner : Mr. Brahme Shailesh P.
APP for respondent no. 1 / State : Mr. B.V. Virdhe
Advocate for Respondent no. 2: Mr. D.D. Chaudhari

...

CORAM : MANGESH S. PATIL, J.

DATE : 09.09.2019

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The
learned APP and the learned advocate for the respondent No.2 waive

service. With the consent of both the sides the matter is heard finally at the stage of admission.

2. In nutshell the facts leading to the filing of the Writ Petition may be summarized as under:

Respondent no.2 is the owner of a vehicle which was seized by the Officers of the Forest Department for allegedly transporting timber illegally. Forest Offence No.4/2017 was registered on 07.09.2017 for the offences punishable under Section 26(1), 41(2) and 52 of the Indian Forest Act, 1927. The vehicle was seized. A notice was issued to the respondent no.2 as contemplated under Section 61(B) of that Act on 23.04.2018. His statement was recorded on 26.04.2018. Further necessary inquiry was made and by the order dated 25.05.2018, the Authorized Officer, Assistant Conservator of Forest Nandurbar, directed the vehicle as well as the timber to be confiscated and to be sold after the appeal period was over. The respondent no.2 preferred Criminal Appeal No.11/2018 before the Sessions Court Nandurbar under Section 61 (D)(1) of the Indian Forest Act. The learned Sessions Judge by the impugned judgment and order dated 18.04.2019 allowed the appeal and directed the vehicle to be released in favour of the respondent no.2 subject to usual terms. Hence this Writ Petition by the Forest Department.

3. The learned advocate for the petitioner submits that the Authorized Officer for the elaborate reasons had passed the order directing confiscation of the vehicle. However, the learned Sessions Judge, has clearly overlooked the reasoning and the legal aspects and has readily exceeded to the request of the respondent no.2. The learned advocate by referring to several decisions of the Supreme Court as well as of this Court submitted that the primary burden is cast on the owner of a vehicle to substantiate and establish that the offence was committed by using the vehicle owned by him without his knowledge. In spite of such burden having been cast on the respondent no.2 and even without he having even cursorily made any attempt to discharge it, the learned Sessions Judge has proceeded on the assumption that it was for the Forest Department to *prima facie* establish that the vehicle was being used for transporting the timber with the knowledge of the respondent no.2. The position in law being exactly converse, the learned Sessions Judge has committed a grave error which has resulted in upsetting the order passed by the Authorized Officer. The observation and conclusions of the learned Sessions judge in appeal are quite perverse and arbitrary and need to be rectified in this petition.

4. In support of his submission the learned advocate referred to the decision in the case of **State of West Bengal and Ors Vs. Sujit**

Kumar Rana; (2004) 4 Supreme Court Cases 129, State of West Bengal Vs. Mahua Sarkar; AIR 2008 Supreme Court 1591, Mohd. Ashique Vs. State of Maharashtra; AIR 2009 (SC) 624, and an unreported judgment of the Supreme Court in Criminal Appeal No.524/2019 (Special Leave Petition) (Crl) No.2001/2012 in the State of Madhya Pradesh Vs. Udaysing decided on 26.03.2019. The learned advocate also referred to the judgments of the Coordinate Bench of this Court in Forest Development Corporation of Maharashtra Ltd. Vs. Prakash Mallesh Cheraku in Criminal Writ Petition No.738 of 2017 decided on 09.01.2018, Kavita Sandip Tandel Vs. The State of Maharashtra and Ors, in Criminal Writ Petition No.3678 of 2013 decided on 23.03.2015.

5. The learned advocate for the respondent no.2 submits that he being the registered owner had made a candid statement that his driver and cleaner employed by him on the vehicle had taken it for delivering some chemical at Mysore. While returning they had told him that they had got an engagement to transport onion but since thereafter they were not traceable. He searched the call data record and through relatives of the driver and cleaner found out that they were arrested in this crime. Thus this much of material and the stand of the respondent no.2 was sufficient to dispel the burden cast on him to show that the timber was being illegally transported without his

knowledge by his driver and cleaner. Once having discharged such burden, by recording his own statement, there was no reason for directing confiscation of the vehicle. The learned Sessions Judge had rightly interfered in appeal and had directed the vehicle to be returned to him. The order does not suffer from any illegality or perversity.

6. I have carefully gone through the papers and the judgments cited herein above. In fact, a reference to all these decisions of the Supreme Court and the ones decided by the Coordinate Bench of this Court there is no manner of doubt that it is primarily the burden which has been cast on the owner of a vehicle seized for alleged illegal transportation of a Forest produce to prove that the vehicle owned by him was used without his knowledge. Equally, one need not delve much as to the importance of enforcing the forest laws.

7. It is apparent that the Authorized Officer of the Forest Department pursuant to the seizure of the vehicle in which timber was being illegally transported had issued the notice to the respondent no.2 and after extending an opportunity to be heard, he completed the inquiry. Conspicuously, it is pursuant to such a notice that even the respondent no.2's statement was recorded by the Authorized Officer. Therefore, as far as the procedural aspects are concerned, there can be no dispute that the procedure as is contemplated under Section 61-A to

61-G (Maharashtra Amendment) of the Indian Forest Act have been duly followed. Provision of Section 61-B which is important in the matter in hand reads thus:

61-B. Issue of show cause notice before confiscation under section 61-A. - (1) No order confiscating any timber, sandalwood, firewood, charcoal or any other notified forest-produce, tools, boats, vehicles or cattle shall be made under section 61-A except after notice in writing to the person from whom it is seized and considering his objections, if any:

Provided that, no order confiscating a motor vehicle shall be made except, after giving notice in writing to the registered owner thereof, if in the opinion of the authorised officer it is practicable to do so, and considering his objections, if any.

2) Without prejudice to the provisions of sub-section (1), no order confiscating any tool, boat, vehicle or cattle shall be made under section 61-A if the owner of the tool, boat, vehicle or cattle proves to the satisfaction of the authorised officer that it was used in carrying the timber, sandalwood, firewood, charcoal or any other notified forest -produce without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the tool, boat, vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use.

8. The wording of Sub-section 2 of Section 61-B is conspicuous and leaves no manner of doubt that the burden to prove that the forest produce was being carried in the vehicle was without his knowledge is on the owner of that vehicle. The decision in the case

of Forest Development Corporation of Maharashtra Ltd. and in Kavita Sandip Tandel (supra) clearly lay down and interpret the provision and I find no sufficient and cogent reason but to agree with the observations that it is the burden on the owner of the vehicle to prove that the vehicle was so used without his knowledge.

9. Once it is found that the burden is on the owner to prove his ignorance as to the purpose for which the vehicle was used, one now needs to turn to the statement of the petitioner recorded during the inquiry conducted by the Authorized Officer. Perusal of the statement shows that he admitted the ownership of his vehicle taken in custody by the Forest Department. He then admitted that the driver and the cleaner were employed by him to ply the Truck two months prior to the incident. He then stated that on 22.08.2017, the driver and the cleaner had taken the truck to Mysore for delivering chemical drums. After such delivery the Truck awaited at Mysore for further engagement. He then stated to have contacted the driver on 06.09.2017 and the latter having told him that he had got an engagement to transport onion from Nasik to Deharadun. He then stated that on 08.09.2017 he again contacted the driver who told him that he was at Navapur Police Station and thereafter he cut the phone. He then stated to have traced out the location of the driver and the cleaner on the basis of the call data record collected by him and after

contacting the relatives of the driver. He then stated about having come to know that the vehicle was seized by the Forest Department Officials of Navapur. He then stated that he was not knowing either the businessman or the person engaged in illegal transportation of forest produce. He stated that he was not aware that his vehicle was being used for such illegal transportation of timber.

10. A bare perusal of this statement leaves no manner of doubt that except expressing ignorance he has not made any attempt to give any elaborate description to make out some attending circumstances relying upon which one could have drawn an inference as to his lack of knowledge. In the normal course any owner of a vehicle would first ask the question to his driver and the cleaner as to for whom they were transporting the timber. The respondent no.2 conveniently omits to state as to if he had made any such inquiry with his driver and the cleaner.

11. Similarly, the driver and the cleaner in their statement have also not stated that they were transporting the timber clandestinely keeping the respondent no.2 in dark. If at all they were his employees one cannot comprehend any reason as to why they have not come out with any such statement in his favour.

12. These circumstances are sufficient to doubt veracity of the

statement of the respondent no.2 about his claim of being kept uninformed by the driver and the cleaner. There being no other material produced before the Authorized Officer, *prima facie* there was nothing to show that the observations and the conclusion drawn, about the respondent no.2 having failed to prove that the timber was being transported without his knowledge, are perverse or arbitrary.

13. If one peruses the impugned judgment of the learned Sessions Judge, without even cursorily referring to the provisions of the Forest Act (Maharashtra amendment) and particularly Section 61-B and without adverting to the aspect of burden of proof, he seems to have readily accepted that the vehicle owned by the respondent was being used for transportation without his knowledge, even without there being any other corroborating circumstance or material to vindicate such conclusion. He has apparently accepted the statement of the respondent no.2 as a Gospel truth, when as is demonstrated herein above his conduct and the statement was far from satisfactory and clearly lacked sufficient material much less to discharge the burden cast upon him under Section 61-B. The observations and the conclusions are clearly perverse, arbitrary and capricious and have resulted in serious injustice.

14. Faced with the situation, the learned advocate for the

respondent no.2 sought to salvage some ground and made a request that the matter may be remanded for fresh inquiry under Section 61-A to the concerned Authorized Officer which would enable him to lead further evidence to substantiate his ignorance.

15. However, a careful perusal of the memo of appeal which he had preferred before the Sessions Court would reveal that at no place any request was made by him, even in the alternative to seek such opportunity of leading further evidence. It is thus apparent that it is at the stage of this Writ Petition for the first time, the respondent no.2 is coming with such a request for the obvious reasons. In my considered view, as it was not his request before the Appellate Court, no such request can be entertained at this stage.

16. Resultantly, the impugned judgment and order passed by the Sessions Judge in appeal clearly suffers from gross illegality and is liable to be quashed and set aside.

17. The Writ Petition is allowed. The impugned order passed by the Sessions Judge is quashed and set aside and the one passed by the Authorized Officer is restored.

18. Since the Criminal Writ Petition No.838/2019 is being allowed, the Criminal Writ Petition No.853/2019 preferred by the respondent no.2 seeking implementation of the order passed in the

Criminal Appeal is liable to be dismissed and is accordingly dismissed.

19. The Rule is accordingly made absolute.

(MANGESH S. PATIL, J.)

habeeb