

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 687 of 2016

- Kushal Prasad Manhar, S/o S.R. Manhar, Aged About 39 Years, R/o Purani Basti-Korba, House No.16, Ward No.2, Korba, District-Korba, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh Through The District Magistrate, Bilaspur, Chhattisgarh.
2. The Conservator Of Forest, Circle Bilaspur, Distirct-Bilaspur, Chhattisgarh.
3. The Forest Sub Divisional Officer, Lailunga, Distirct-Raigarh, Chhattisgarh.

---- Respondents

For petitioner	:	Mr. Lavkush Kumar Sahu, Advocate.
For respondents/State	:	Mr. Devendra Pratap Singh, Dy. Adv. General.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

23/01/2020

1. This petition has been brought being aggrieved by the order dated 9.7.2014 (Annexure P-1) passed by the learned 6th Additional Sessions Judge, Bilaspur in Criminal Revision No.35/2014 dismissing the revision filed by the petitioner.
2. The case, in brief, is this that on 19.2.2011 the forest officials made a seizure of one pick-up vehicle bearing registration No.CG-12E-1389 from the spot, which was loaded with coal. When the forest officials were trying to shift the same to the official premises, one person claiming himself to be the owner of the said vehicle raised obstruction and with the help of others he unloaded the coal from the said vehicle. A criminal case was registered by the Forest Department and

prosecution was launched. The proceeding for confiscation of the seized vehicle was initiated before the Authorized Officer of Lailunga. The order dated 20.9.2012 was passed by the Authorized Officer ordering confiscation of the seized vehicle. The petitioner preferred an appeal before the Appellate Authority i.e. Conservator of Forest, Bilaspur, which came to be dismissed vide order dated 23.10.2013. Thereafter, the petitioner preferred revision petition before the Court of 6th Additional Sessions Judge, Bilaspur, which has been decided by the impugned order dated 9.7.2014 and the revision petition has been dismissed.

3. It is submitted by the learned counsel for petitioner, that there is no such evidence in the inquiry made by the Forest Officer that the said vehicle was used for transportation of forest produce within the knowledge and in connivance of the petitioner. The petitioner is the registered owner of the seized vehicle and he has entitlement to receive the same in his custody. The petitioner himself has not committed any forest offence. It is further submitted by the counsel for petitioner that the petitioner has handed over the said vehicle to one Abhishek Khalkho on the basis of one agreement that was executed on 13.2.2011, therefore, at the relevant point of time, this applicant had no possession and no control over the vehicle and its use. This fact had been brought to the notice of the Authorized Officer even then that has not been considered by the Authorized Officer. Similarly, this fact has not been appreciated properly by the Appellate Authority and the Sessions Court as well. It is submitted, that petitioner is entitled for custody of the seized vehicle. The impugned order and the orders of the authorities below are without any merit and against the provisions of law, hence, it is prayed that petition be allowed. Reliance has been placed on the judgment of M.P. High Court in Vishwanath Singh v. State of M.P. & others reported in 2018 CRI. L.J. 1799.
4. Learned State counsel opposes the petition and the submissions made in this respect. It is submitted that it is established in the inquiry made before the Authorized Officer that immediately after the seizure of vehicle, the petitioner had come on the spot and tried to obstruct the proceeding that were carried out by the Forest Officials. There is nothing to suggest that the vehicle of the petitioner was used without

his knowledge and connivance for transportation of forest produce.

5. I have heard both the parties and perused the documents on record.
6. On perusal of the order dated 20.9.2012 passed by the Authorized Officer, which contains all the details of the evidence taken in the inquiry for confiscation proceeding, it is found that Gajraj Singh Sidar, Forest Official, Venu Dhar Gupta, Forest Peon, Pusat Ram, Member of Forest Management Committee, Village-Sohanpur, K.S. Painkara- Forest Official, Mahesh Ram Patnayak- Forest Guard, Dharni Dhar Sidar- Forest Guard, Chand Vijay Sidar- Forest Guard, Chandrama Singh- Forester, were examined in that proceeding. All these witnesses have stated about the seizure of the vehicle from the spot, which was not seized from any particular person. Although there is a statement that some person appeared on the spot claiming himself to be owner of the said vehicle and tried to obstruct the Forest Officers in completing the procedure, but they have not named this petitioner as the person who had appeared on the spot to create such obstructions.
7. Petitioner himself was also examined in the same inquiry and he has stated before the Forest Officer, that he had given his vehicle on hire to one Abhishek Khalkho, R/o Korba on the monthly rent of Rs.20,000/- and in this regard an agreement was also executed, in which, it has been mentioned very clearly that if any illegal activity is carried-out in the vehicle then the responsibility of the same would be of the person who has hired the vehicle. Copy of that agreement has also been produced. No other witness was examined by the defence side.
8. On appreciating the evidence details that are present in the order of the Forest Officer, it is found that there is nothing to say that the petitioner was present on the spot when the seizure of the vehicle was made. Statement of the petitioner in defence before the Forest Officer that he had given his vehicle on hire to one Abhishek Khalkho is specific and that has not been rebutted or denied in any manner by the officials of the Forest Department. Therefore, in this particular case, the view taken by the Authorized Officer, confirmed by the Appellate Authority and then further affirmed by the Sessions Court, holds no ground. There is no material present in the inquiry made that the

petitioner had any connection with the commission of the forest offence. His only connection is this that he is the owner of the vehicle which was being used for the commission of forest offence. There being no specific rebuttal present in the inquiry regarding the vehicle being hired out to one Abhishek Khalkho by the petitioner, this possibility has been made out by the petitioner that he was not in effective possession or control of the vehicle. The burden was on the Forest officials to find out said person Abhishek Khalkho and examine him or if necessary to prosecute him in case evidence were found against him, but that has not been done.

9. The M.P. Amendment Act of 1983 and Section 52 (5) of Indian Forest Act, 1927 provides that no order of confiscation of vehicle or other article shall be made if the person concerned proves to the satisfaction of Authorized Officer that any such vehicle or article was used without his knowledge or connivance. As there is no specific and direct evidence against the petitioner that he had the knowledge or he had connivance in the use of his vehicle for transportation of forest produce, the view taken by the Authorised Officer, Appellate Authority and the Sessions Court appears to be erroneous, which is liable to be set aside.
10. For the foregoing reasons, this petition is allowed and the impugned order and also the orders passed by the authorities below are hereby set aside. It is ordered that the seized vehicle be released in the custody of applicant, on his satisfying the authority concerned that he is the registered owner of the said vehicle. This order be complied by the respective authorities expeditiously, preferably within a period of two months from the date of production of certified copy of this order.

Sd/-

(Rajendra Chandra Singh Samant)
Judge