

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10621 of 2020

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Vikash Kumar Singh, S/o- Kamlesh Singh, Resident of Village- Kanchanpur,
P.S.- Sasaram, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary Forest and Environment Department,
Govt. of Bihar at Patna.
2. The Secretary, Forest and Environment, Govt. of Bihar at Patna.
3. District Magistrate, Rohtas at Sasaram.
4. The Divisional Forest Officer Cum Authorised Officer Rohtas at Sasaram.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Uma Shankar Singh, Advocate
For the Respondent/s : Mr.Lalit Kishore (A.G.)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 06-12-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

“(i) For the issuance of an appropriate writ to quash the order dated 31.01.2020 in Forest Revision Case No. 36 of 2018 passed by the Secretary Forest and Environment Department, Govt. of Bihar (Respondent No. 2) (contained in Annexure-4) and direct Respondent No. 2 to decide the Revision in accordance with law.

(ii) For the issuance of an order directing the Respondent No. 2 to dispose the confiscation proceeding against the petitioner’s vehicle in accordance with law, following the directions issued by this Hon’ble Court time to time.

(iii) For the issuance of an appropriate

writ/order/direction, directing the Respondent authorities or Respondent No. 4 to release the provisionally the seized vehicle bearing Registration No. JH02H/7545 in connection with Sasaram Forest Case No. 94 of 2015 during the pendency of the present writ petition or till the final disposal of Sasaram Forest Case No. 94/2015 pending in the court of C.J.M., Rohtas, Sasaram.

(iv) For the issuance of any other appropriate writ/direction/order/orders as your lordships may deem fit and proper for the ends of Justice or to allow the relief to petitioner for which he is found entitle.”

Informant is forester who in his written complaint has alleged that on 10.11.2015, while he was patrolling within the protected forest area with other forest personnels, he received an information that in Mauza-Gopi Bigha, on one Truck illegal crushed stone chips excavated from Fazilpur forest protected area was being transported to Bhabhua via G.T. Road and same was intercepted, however, the Driver and the Cleaner of the said truck fled away.

It was found that stone chips laden in the Truck were excavated from the Fazilpur forest protected area and was illegally crushed in Gopi Bigha illegal crusher and thereafter said truck bearing registration no. JH-02H-7545 along with illegal crushed stone chips measuring 600 cubic feet were seized under Section 52 of the Forest Act and seizure list was prepared and seized goods were handed over to the Officer-in-charge,

Shiv Sagar Police Station for safe custody and thereafter confiscation proceeding under section 52(3) of the Forest Act was initiated against the seized Truck as well as stone chips giving rise to Forest Confiscation Case No. 94F/15 and Forest Confiscation Case No. 189 of 2015.

Petitioner who is the owner of the Truck appeared before the Confiscating Authority and submitted that on said date on his truck stone chips were loaded from Palamu (Jharkhand) and was being carried to Ghazipur (Uttar Pradesh) on a valid mining transit permit and was illegally intercepted and seized by the Forest Department with the help of local police. Truck was seized outside the Forest Area as such no offence was made out under the Forest Act. Department failed to prove that seized stone chips were excavated from Fazilpur forest protected area as alleged in written complaint however, the case of the department was that from the truck stones chips which were excavated from Fazilpur Forest Protected Area were crushed in an illegal crusher at Gopibigha and were illegally transported in violation of Section 33, 41 and 42 of the Forest Act and were accordingly seized.

The Confiscating Authority held that since Driver and Cleaner of the Truck fled away and did not produce the relevant

documents to show that stone chips loaded on truck were legally carried with mining transit permit, purchase receipt, toll tax receipt, as such the case of the department is true and ordered for confiscation of truck as well as stone chips. The confiscating Authority has further held that the owner of the truck could not establish that his truck was not involved in the forest offence in terms of section 52(5) of the Forest Act.

Against the order passed by the Confiscating Authority, petitioner preferred appeal before the District Collector, Rohtas being Forest Confiscation Appeal No. 84 of 2016 in which petitioner produced a mining transit challan in which stone chips were shown to have been loaded from M/s Shiv Enterprises, Palamu, Jharkhand and were being transported to Ghazipur, however, the Appellate Authority found said mining transit challan not to be authentic and genuine and same was never produced before the confiscating authority and there was no reason for the Driver and Cleaner to fled away from the truck if they had valid mining transit permit. Moreover, neither Driver nor the Cleaner were examined by the petitioner before the confiscating authority. The Appellate Authority has further held that seized stone chips comes within the definition of forest produce and as such were liable for confiscation. The revision

preferred against the appellate order also stood dismissed by the Revisional Authority.

The Hon'ble Apex Court in the case of **State of West Bengal Vs. Gopal Sarkar** since reported in **(2002) 2 SCC 495**, in paragraph no. 9 and 19 has held as follows:-

“9. Section 59A(3) of the Forest Act reads as follows:

"Where any timber or other forest produce which is the property of the State Government is produced before an Authorised Officer under Sub-section 1 and Authorised Officer is satisfied that a forest offence has been committed in respect of such property, he may, whether or not a prosecution is instituted for the commission of such offence, order confiscation of the property together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence."

10. On a fair reading of the provision it is clear that in a case where any timber or other forest produce which is the property of the State Government is produced under Sub-section (1) and an Authorised Officer is satisfied that a forest offence has been committed in respect of such property he may pass order of confiscation of the said property (forest produce) together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence. The power of confiscation is independent of any proceeding of prosecution for the forest offence committed. This position is manifest from the Statute and has also been held by this Court in Divisional Forest Officer and Anr. v. G.V. Sudhakar Rao and Ors. 1986 CriLJ 357. Therein this Court elucidating the provision held as follows:

"The conferral of power of confiscation of seized timber or forest produce and the implements, etc., on the Authorised Officer under Sub-section (2A) of Section 44 of the Act on his being satisfied that a forest offence had been committed in respect thereof, is not dependent upon whether a criminal prosecution for commission of a forest offence has been launched against the offender or not. It is a separate and distinct proceeding from that of a trial before the Court for commission of an offence. Under Sub-section (2A) of Section 44 of the Act, where a Forest Officer makes report of seizure of any timber or forest produce and

produces the seized timber before the Authorised Officer along with a report under Section 44(2), the Authorised Officer can direct confiscation to Government of such timber or forest produce and the implements, etc., if he is satisfied that a forest offence has been committed, irrespective of the fact whether the accused is facing a trial before a Magistrate for the commission of a forest offence under Section 20 or 29 of the Act."

A bench of this Court in the case of **Manoj Kumar Sharma Vs. the State of Bihar and Ors** since reported in **2004(1) PLJR 491**, in paragraph no. 9 has held as follows:-

"9. Neither on principle nor on precedent I am persuaded to accept this submission of Mr. Shukla and for that, examination of Section 52(5) of the Act is imperative, same reads as follows:--

"52 (5) Seizure and its procedure for the property liable for confiscation-- (5) No order of confiscation under Sub-section (3) of any tools, arms, boats, vehicles, ropes, chains or any other article other than the forest produce seized shall be made if any persons referred to in Clause (b) of Sub-section (4) proves to the satisfaction of authorised officer that any such tools, arms, boats, vehicles, ropes, chains or other article were used without his knowledge or connivance or as the case may be, without the knowledge or connivance of his servant of agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission of forest offence".

Generally speaking whoever seeks relief from an adjudicating authority on existence of a particular fact such person has to prove that fact but the legislature in its wisdom can alter this rule and put on the other person the onus to prove such facts. In my opinion when the legislature has cast duty on the owner to satisfy certain requirement to avoid confiscation the Court cannot substitute its opinion according to its own notion of justice. Here the legislature has chosen to provide that no order of confiscation shall be made if the owner of the property or the person interested in such property proves to the

satisfaction of the forest Officer that vehicle was used without his knowledge or connivance and not only this all reasonable and necessary precautions were taken against use of the vehicle. In the face of the aforesaid language there is no escape from the conclusion that once it is established that vehicle has been used in commission of forest offence, the onus shifts on the owner of the vehicle to establish that the vehicle was used without his knowledge or connivance or that of his servant and agent and also to establish that he had taken all reasonable and necessary precaution against the use of the vehicle. Nothing has been brought on record by the petitioner to satisfy those requirements and as such the authority did not err in confiscation of the truck in question.”

Having heard learned counsel for the parties and considering the materials available on record, this Court does not find any perversity in the order passed by the Confiscating Authority, Appellate Authority as well as Revisional Authority, requiring any interference by this Court in its discretionary writ jurisdiction. The writ Court cannot appreciate or re-appreciate the evidence led by the parties before the authorities and conclusion arrived by said authorities unless such finding appears to be perverse or based on no evidence.

In the present case, the onus upon the petitioner who claims to be the owner of the truck failed to satisfy the authorities that the seized stone chips were not a forest produce and he had valid transit permit for transportation of the stone chips. The authorities have relied upon several judgments of Apex Court as well as Patna High Court rendered on this issue

on the basis of which orders have been passed by authorities under the Forest Act.

In such view of the matter, there is no merit in this writ petition and is, accordingly, dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/veena-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA