

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3906 of 2021

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SHANKAR PRASAD, Son of Ram Briksh Sah, Resident of Village- Uchaila,
P.S.- Rohtas, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Environment and Forest, Government of Bihar, Patna.
2. The Principal Secretary, Department of Environment and Forest, Government of Bihar, Patna.
3. The District Magistrate, Rohtas at Sasaram.
4. The Authorized Officer-cum-Divisional Forest Officer, Rohtas Forest Division, Sasaram, District- Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajani Kant 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 : 14-12-2021

Heard learned counsel for the parties.

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

“That, the petitioner craves indulgence of this Hon’ble Court for issuance of an appropriate writ in the nature of certiorari for quashing the order dated 30.10.2019 passed by learned Principal Secretary, Department of Environment and Forest, Government of Bihar, Patna in Forest Revision Case No. 15 of 2018 as contained in Annexure- 7 whereby and where under learned Principal Secretary, Department of Environment and Forest, Govt. of Bihar, Patna has been pleased to dismiss the revision of the petitioner affirming the order dated 18.07.2017 passed by learned District

Magistrate, Rohtas at Sasaram in Forest Confiscation Appeal Case No. 38/2015 as contained in Annexure-6 and order dated 30.06.2015 passed by learned Authorized Officer-cum-Divisional Forest Officer, Rohtas Forest Division, Sasaram in Confiscation Case No. 37 of 2015 as contained in Annexure- 5, arising out of Forest Case No. 16/2015 in which the Pick up Van of the petitioner bearing Registration No. UP-65-AT/2814 has been confiscated and further for directing the Authorised Officer-cum-Divisional Forest Officer, Rohtas Forest Division Sasaram to release the Pick-up-Van bearing Registration No. UP- UP-65-At/2814 in favour of the petitioner within a specified period.”

Briefly stated the facts of the case is that on 16.3.2015 Forester of Tilothu Forest Division along with other armed personnel were patrolling Chandpura protected forest area and while he was patrolling at Tilothu – Dehri road, along with officer-in-charge of Indrapuri Police Station, Rohtas, he saw a pickup van which was stopped for checking, however, the driver fled away after leaving the pickup van and from pickup van, 18 kg. of forest produce (Jaungi Hare) packed in 36 bags was found loaded for which, there was no valid transit permit and thereafter, the pickup van and forest produce (Jaungi Hare) were seized for violation of Sections 5, 10 and 11 of Bihar Forest Produce (Regulation of Trade) Act, 1984 and a copy of seizure list was sent to Sub-Divisional Judicial Magistrate,

Dehri, Rohtas and another to the authorized officer -cum - DFO, Rohtas.

Proceeding for confiscation of the vehicle and the forest produce (Jaungi Hare) were initiated under Section 52 (3) of the Forest Act by the authorized officer-cum- DFO, Rohtas giving rise to confiscation case No.37 / 15.

Two witnesses were examined on behalf of petitioner who admitted that the forest produce (Jaungi Hare) were loaded in the pickup van within protected forest area and was purchased from landowners having raiyati right over the land and transit permit was provided by the Mukhiya, however, those documents produced before the authorized officer was disbelieved and was found to have been fabricated and anti-dated after seizure of the pickup van and forest produce (Jaungi Hare). The driver instead of producing the transit permit and valid purchase receipt of forest produce (Jaungi Hare) fled away leaving the pickup van

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 or 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 pickup van failed to satisfy the authorities that the seized forest produce (Jaungi Hare) was not a forest produce and he had valid transit permit for transportation of the produce (Jaungi Hare). 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)

veena/rajiv-

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