

**Calcutta High Court  
In The Circuit Bench at Jalpaiguri  
(Via Video Conference)**

**CO 38 of 2021**

**Sri Shaileswar Prasad Singh  
Vs.  
The State of West Bengal and others**

Mr. Debasish Mukhopadhyay,  
Mr. Amritam Mondal,  
Mrs. Madhushri Dutta

...for the petitioner

As per previous direction, a copy of the order of the first forum is filed by learned advocate-on-record for the petitioner in court today. The same may be kept on record and be treated to be a part of the application under Article 227 of the Constitution of India.

The present challenge has been preferred against an order of the appellate authority affirming an order directing confiscation of the petitioner's vehicle.

Learned counsel for the petitioner argues that the petitioner had nothing to do with the illegality of the transported products and that the petitioner has also identified the miscreant, who was transporting the forest produce, as such, indicating sufficient precaution having been taken by the

petitioner. Learned counsel, by placing reliance on Section 53 of the Indian Forest Act, 1927, argues that the Authorised Officer confiscating the vehicle has a discretion to release the same on the execution by the owner of a security in the form of a bank guarantee of an amount not less than the value of the property as estimated by such Officer for the production of the said vehicle if and when so required before the Magistrate having jurisdiction to try the offence. It is submitted that such discretion was not exercised at all by the Confiscating Officer in the present case.

That apart, learned counsel places reliance on Section 59B (West Bengal Amendment) of the said Act which provides that no property including vehicle shall be so confiscated except after giving a notice in writing to the owner.

In the present case, no such notice, it is submitted, was given to the petitioner.

Learned counsel for the petitioner places reliance on the judgment of *State of West Bengal and another vs. Mahua Sarkar*, reported at (2008) 12 SCC 763, wherein it was held, inter alia, that Section 59B(2) makes the position clear that no order confiscating any such vehicle shall be made under Section 59A if the owner thereof proves to the satisfaction of the authorised officer that the vehicle

was used in carrying the timber or other forest produce without the knowledge or connivance of the owner himself or his agent, if any, or the person in charge thereof and that each of them had taken all reasonable and necessary precautions against such use.

Learned counsel further submits that the driver of the vehicle at the relevant point of time is illiterate and, as such, it cannot be expected of him to ascertain the date of expiry of the challans-in-question. It is submitted that although there were challans for the transport of the forest produce, those had expired prior to such confiscation.

Thus, it is submitted that there was no question of the petitioner's involvement in the alleged offence.

However, the very next paragraphs of the cited judgment, being paragraph nos.10 and 11, indicate that it is the owner who has to prove that the vehicle was used in carrying timber or other forest produce without his knowledge or connivance or that of his agent. The requirement was held by the Supreme Court to be mandatory that the owner has to prove that he had no knowledge or had not connived. It is a matter which is within his knowledge. Mere assertion without anything else will not suffice.

That apart, the Supreme Court held, there is another requirement that the owner or his agent or the person in charge thereof had taken all reasonable and necessary precaution against such use. This aspect has to be established by the person concerned by sufficient material. Mere assertion in that regard, it was held, could not be sufficient.

In the present case, the *post facto* identification of the person responsible for illegally carrying the forest produce cannot amount to a precaution taken by the owner. The challans pertaining to the forest produce had already being invalidated due to expiry of their terms. Mere illiteracy of the driver cannot be a pretext for flouting the norms laid down by the Supreme Court in the cited judgment as well as in Section 59B of the Indian Forest Act (West Bengal Amendment). In the present case, there is nothing on record to show that the petitioner discharged his burden to absolve him of the charge and/or that the forest produce was being carried without his knowledge or connivance or that of his agent. Mere assertion, as held by the Supreme Court, cannot suffice for getting benefit of the provisions of Section 59B(2) of the Act.

That apart, in view of the concurrent findings of both the forums below regarding the vehicle having

been confiscated in a justified manner while transporting illegal forest produce, it would be imprudent to interfere therewith.

As regards the non-service of notice on the petitioner, it does not appear from the impugned orders that the said point was raised before the Authorised Officer, which was the first forum, or specifically argued in the hearing before the appellate forum, although such ground might have been taken in the pleadings connected with the appeal. As such, since the petitioner failed to discharge his burden of proving precautionary steps taken by him or his innocence regarding knowledge or connivance or that of his agent with regard to the offence, this court cannot find any illegality or jurisdictional error sufficient to interfere with the orders impugned herein.

In view of the aforesaid discussions, CO 38 of 2021 is dismissed without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

**(Sabyasachi Bhattacharyya, J.)**