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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No. 68 of 2012

- Sunil Kumar Agrawal @ Pappi Agrawal, S/o Late Shri Ramkumar Agrawal, aged about 45 years, R/o Morga, Tahsil Podi- Uproda, District Korba (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh (Through the Secretary, Forest, Department, D.K.S. Bhawan, Raipur, Chhattisgarh)
2. Conservator of Forest (Appellate Authority) Circle Bilaspur, District Bilaspur(C.G.)
3. Joint Divisional Forest Officer, (Prescribed Authority) Katghora Division, District Korba (C.G.)

---- Respondents

For Petitioner : Shri Ashok Kumar Shukla, Advocate

For State : Shri Vikas Shrivastava, Panel Lawyer

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

26.07.2021

1. The petitioner has filed the present W.P.(Cr.) under Article 226 of the Constitution of India, challenging the legality and propriety of the order dated 09.01.2012 (Annexure P/1) passed by the learned 5th Additional Session Judge, Bilaspur (C.G.) in Criminal Revision No. 31/2011 filed under Section 52-B of the Indian Forest Act, 1927 by which the learned Revisional Court has affirmed the order dated 20.01.2011 passed by the Conservator of Forest (Appellate Authority) Bilaspur in connection with Forest Criminal Case No. 021609 (Sunil Kumar Agrawal Vs. State of C.G.) whereby the vehicle of the petitioner was confiscated by respondent No.3/ Joint Divisional Forest Officer (Prescribed Authority) Katghora Division, District Korba, vide order dated 8-1-2010 (Annexure P/2)
2. The brief facts of the case as projected by the petitioner are that the Competent Authority and Joint Divisional Forest Officer,

Katghora has initiated proceeding for confiscation of vehicle No. CG-12/E-7013 under Section 52 of the Indian Forest Act, 1927 alleging that the vehicle was illegally transporting coal from reserved forest on 21-12-2007, the vehicle was owned by present petitioner who is a resident of village Morga. It was further alleged that the vehicle loaded with half tractor trolley coal. But there was no document with regard to purchase of the coal as such it amounts to illegal transportation of coal by the petitioner. The Competent Authority and Joint Divisional Forest Officer, Katghora has initiated the proceedings and issued notice to the petitioner before initiating the confiscation proceedings.

3. The contention of the petitioner is that no opportunity has been given to the petitioner to cross-examine the witnesses of the Forest Department. The witnesses namely Sanjay Luthur, Range Officer and Kumari Gumari Gurubari Sidar, Forest Guard were not subjected to cross examine by the petitioner as no opportunity to cross examine the witnesses was given by the competent authority. As such, the statements of these witnesses should not be relied upon by the prescribed authority as it is violation of principle of natural justice. It is also well settled legal position that the examination in chief unless and until is subjected to cross examine by the opposite party, it cannot become part of evidence and the same cannot be relied upon by the judicial/quasi judicial forum for taking any decision. The record of the case would demonstrate that no opportunity was given to cross-examine the witnesses Sanjay Luther Range Officer, Kendai, Kumari Gurubari Sidar, Forest Guard. Therefore, the learned competent authority has committed illegality in ordering for confiscation of the vehicle relying upon the statements of these two witnesses. It is pertinent to mention here that the owner of the vehicle Sunil Kumar Agrawal also examined before the Competent Authority on 06.02.2009 and was subjected to cross-examine by the present officer. Thereafter, the Competent Authority has passed the impugned order on 08.01.2010 .

4. The record of the proceedings were called by this Court and the record would show that the Competent Authority and Joint Divisional Forest Officer, Katghora before passing the impugned order on 08.01.2010 has initiated the proceedings and has given an opportunity of hearing to the petitioner to substantiate the charges leveled against the petitioner. The Forest Department has examined the witnesses namely Sanjay Luther the then Range Forest Officer post Kendai, Kumar Gurubari Sidar the then Forest village Khirti, G.C. Netam the then range Officer, Morga, Seshnath who was working as Carpenter in the rest house Morga, Vijay Kumar working in the rest house Morga, Ramkishan, Ravi Kumar, Chatur Singh, driver of vehicle Sunil Kumar Kevat, Sukhlal, Bhola Singh, the Forest Department while conducting the proceedings for confiscation has recorded statements of witnesses namely Sanjay Luther Range Officer, Kendai, Kumari Gurubari Sidar, Forest Guard but no opportunity for cross examination was given to them.
5. On the other hand, learned counsel for the State would submit that the proceedings have been done by the Competent Authority in conformity with the principle of natural justice and proper opportunity of hearing has been given. The learned counsel for the State would also refer the Annexure A-2 which is passed by Competent Authority. The petitioner has clearly submitted his reply wherein he has said that he does not want to laid any evidence in his support. Therefore, the proper opportunity has been granted to him and he would submit that the order passed by the authority and affirmed by the Revisional Authority are legal and justified, therefore, the present writ petition is liable to be dismissed.
6. I have heard learned counsel for the parties, perused the record of the confiscation proceedings initiated by competent authority as well as the record of the revisional court.
7. Perusal of the record would show that the competent authority has not given any opportunity of cross-examination to these two witnesses namely Sanjay Luther Range Officer, Kendai, Kumari

Gurubari Sidar, whereas opportunity for rest of the witnesses was given to writ petitioner to cross-examine them.

8. On the contrary, learned counsel for the petitioner has clearly said that he does not want to cross-examine them. Therefore, contention of learned counsel for the petitioner so far as that no opportunity has been given as contrary to the record, cannot be accepted except with regard to opportunity for cross-examination of two witnesses namely Sanjay Luther Range Officer and Kumari Gurubari Sidar. The Competent Authority and the appellate Authority had relied upon the uncontroverted evidence of the witnesses namely Sanjay Luther Range Officer and Gurubari Sidar, therefore, the order suffers from violation of principle of natural justice. The orders passed by the Revisional Authority and Conservator of Forest, Bilaspur, & Joint Divisional Forest Officer, Katghora are liable to be and are hereby quashed. It is directed that opportunity to cross-examine the witnesses namely Sanjay Luther Range Officer and Gurubari Sidar to be given to the petitioner, thereafter the competent authority will pass a fresh order without being influenced by earlier order passed by him.
9. The record of the Joint Divisional Forest Officer (prescribed authority) Katghora Division District Korba be sent back immediately. The petitioner is directed to appear before the competent authority on 07.09.2021 and thereafter within 3 months the competent authority shall decide the case in accordance with law, considering evidence and material placed on record.
10. With the aforesaid observations and directions, the writ petition is allowed in part.
11. No order as to costs.

Sd/-

(Narendra Kumar Vyas)
Judge