

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 2174 of 2009

Order Reserved on 23.6.2021

Order Passed on 30.6.2021

State of Chhattisgarh, through Sub-Divisional Forest Officer, Lailunga, District Raigarh, Chhattisgarh.

---- Petitioner

Versus

Vinod Kumar Agrawal, S/o Shri Dhajaram Agrawal, R/o. Pattalgaon, District Jashpur, Chhattisgarh.

---- Respondent

For the Petitioner/ State	:	Ms. Hamida Siddique, Dy. A.G.
For the Respondent	:	Mr. Faiz Kazi, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

1. This petition under Article 227 of the Constitution of India has been brought being aggrieved by the order dated 22.11.2008 passed by the learned First Additional Sessions Judge, Bilaspur in Criminal Revision Case No. 147 of 2008.
2. The respondent is the registered owner of truck bearing registration No.C.G. 10/A-0788, which was seized on 11.4.2006 by the Forest Officers in Forest Range, Lailunga, District Raigarh as the alleged truck was being used for transportation of coal which is a forest offence and the raiding party had caught the activity of loading in the truck on the spot. The proceeding to confiscate the truck seized in the connection of commission of Forest offence was initiated by the Divisional Forest Officer, Lailunga, under Section 52 of the Indian Forest Act, 1927. After giving the opportunity for hearing to the parties, the final order was passed on 16.1.2008, by which the seized truck and the load of coal on

that truck was confiscated in favour of the State Government. The respondent then preferred an appeal before the Appellate Authority and Conservator of Forest, Bilaspur. This appeal was dismissed by the Appellate Authority. Criminal Revision No. 147 of 2008 was then preferred by the respondent, before the Sessions Court, which has been decided by the impugned order dated 22.11.2008. It is also submitted by counsel for the petitioner, that the order of confiscation passed by the Divisional Forest Officer, Lailunga was upheld by the Conservator of Forest and both were sustainable orders. Learned Sessions Court has exceeded the jurisdiction of revision to make reassessment of the facts and hold that the order of Divisional Forest Officer was un-lawful on this ground, that the procedure provided for confiscation was not followed by the Divisional Forest Officer while passing the order of confiscation.

3. Reliance has been placed on the judgment of Kerala High Court in the case of **Abdul Salam vs. Divisional Forest Officer and Others**, reported in **2019 SCC Online Ker 17249**, in which citing the judgment of Supreme Court in the case of **State of West Bengal vs. Mahua Sarkar**, reported in **(2008) 12 SCC 763**, it was held that it is the burden of the owner that the vehicle was being used without his knowledge and connivance without which he has no relief. Similarly, it has been held in the case of **Sukham Bai vs. State of Chhattisgarh and Others** in W.P. No.3369 of 2005 decided on 24.3.2014 by the Co-ordinate Bench of this Court, that the High Court has limited jurisdiction under Article 227 of the Constitution of India and it cannot reassess the evidence and draw a different conclusion, therefore, the impugned order is not sustainable and it is prayed that this petition be allowed and relief be granted to the petitioner.

4. Learned counsel for the respondent opposes the submissions and submits, that firstly in this case there is no jurisdiction under Article 227 of the Constitution of India. It is submitted that the learned Sessions Judge has very correctly passed the order and set aside the order of the prescribed Authority-cum-Sub-Divisional Officer, Forest Lailunga. No error has been committed by the Court below. It is also submitted that in the case of **Union of India, Representing the Union Territory of Tripura vs. Abdul Jalil and Others**, reported in **AIR 1965 SC 147**, it was held that there is a pre-requisite for conviction under Forest Act, 1927, that the place of commission of such offence is notified under Section 4 of the Act, 1927. In this particular case, the petitioner has failed to prove, that the spot from where the seizure of the truck was made was a notified area under Section 4 of the Indian Forest Act, 1927. The judgment in the case of **State of Tripura vs. Raimohan Ghosh**, reported in **1972 Cri. Law. Journal 706** has also been relied upon. The claim of the petitioner that the place was a part of the reserved forest, is nowhere mentioned. It is further submitted that the petition has become infructuous because of passage of time. The seized truck was registered in the year 2001 and after receiving the possession of the truck, the same has been disposed of by the respondent, therefore, the respondent is not aware of the whereabouts of the truck. It was held by the Co-ordinate Bench of this Court in the case of **State of Chhattisgarh vs. Mahaveer Prasad Agrawal** in **W.P.C. No. 4608 of 2007**, by order dated 16.1.2020 that even though the case was fit to be remanded, but the seizure of the vehicle was made about 22 years before the date of that order and there was all likelihood, it may have rotten and became useless, therefore, this Court refused to remand the case to the authority. The same is the situation

here and more than 20 years have passed since the seizure of truck was made, therefore, by now the truck must have lost its value. Hence, in case this Court finds this case fit to be remanded, then such remand will serve no purpose and will not be of any benefit to the petitioner, therefore, this petition be disposed off.

5. Heard counsel for both the parties and perused the documents present on record.
6. Considered the submissions. The order of confiscation dated 16.1.2008 mentions that the seizure of the truck was made from the Forest Compartment No. 526. This was never challenged by the respondent, therefore, the respondent cannot raise a new ground at this stage and it appears from the perusal of the confiscation order, that all the procedures under the Act, 1927 were followed before passing the order of confiscation. Hence, the submissions of the State Government have force on which basis, the matter can be given consideration for grant of relief. The factual situation present today cannot be ignored. It is a fact that the seizure of vehicle was made about 20 years before. The respondent side submits that the respondent is not in possession of that vehicle any more subsequent to its release in his favour.
7. In these circumstances, if the execution of confiscation order is initiated that will be a fruitless exercise or even if it is fruitful that may not be any benefit to the State or the Forest Department, therefore, on this basis, and taking into consideration the factual aspects of the case the present petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge