

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 3963 of 2011****Order Reserved on 6.10.2021****Order Delivered on 16.11.2021**

R.L. Shrivastava, aged about 67 years, S/o. Shri Nathlal Shrivastava, By Caste Kayrath, R/o. Infront of PWD Rest house, Bhanupratappur, District Bastar, Kanker.

---- Petitioner**Versus**

State of Chhattisgarh through Regional Forest Officer, Korar (General), District Uttar Bastar Kanker.

---- Respondent

For the Petitioner	:	Shri Shalvik Tiwari, Advocate on behalf of Shri Parag Kotecha, Advocate.
For the Respondent/ State	:	Shri Alok Nigam, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV ORDER**

Heard.

1. This petition has been brought under Article 227 of the Constitution of India being aggrieved by the order dated 4.5.2011 passed by the Learned Additional Sessions Judge, District Uttar Bastar, Kanker in Criminal Revision No. 26 of 2009 by dismissing the revision and confirming the order of confiscation passed by the Appellate Authority and Conservator of Forest, Kanker, whereby the order of confiscation passed by the Confiscation Authority, Divisional Forest Officer, Korar dated 11.6.2009 was upheld.

2. It is submitted by counsel for the petitioner that on 8.10.2007, the driver of the petitioner, namely, Radhelal Kavde had taken the vehicle but he did not return. The petitioner came to know that his vehicle has been

withheld by a villager who was demanding damages for his crops. When the petitioner refused, the revisioner made a false complaint. The vehicle was then seized on 11.10.2007 in connection with the commission of Forest Offence No. 4182 of 2016 for the commission of offences under Section 42 of the Chhattisgarh Vanopaj (Vyapar Viniyaman) Adhiniyam, 1969, Sections 5, 15 & 16 of the Chhattisgarh Abhi Vanopaj Niyam, 2001 and under the provisions of Indian Forest Act, 1927. The prescribed authority initiated the confiscation proceeding and the petitioner pleaded false implication. Pursuant to the enquiry, the order dated 11.6.2009 was passed, directing confiscation of the vehicle of the petitioner bearing registration No. C.G. 19D-0194. The appeal preferred before the Appellate Authority and Conservator of Forest was dismissed vide order dated 24.9.2009. Subsequent to which, the revision preferred before the Additional Sessions Judge, North Bastar, Kanker has also been dismissed by the impugned order dated 4.5.2011.

3. It is submitted by counsel for the petitioner that the impugned order is bad in law and in clear violation of the fundamental right of the petitioner. The arguments submitted on the ground raised by the petitioner regarding which, defence was not given any consideration. The petitioner neither used his vehicle for transport of any forest produce nor he had connived for commission such offence regarding which, there is no evidence present at all, therefore, the impugned order is arbitrary and unsustainable.

Reliance has been placed on the judgment of Supreme Court in the case of **Assistant Forest Conservator and Ors. vs. Sharad Ramchandra Kale**, reported in (1998) 1 SCC 48, in which the order of confiscation of

vehicle was set aside by the High Court on the ground that the authorities had failed to establish that the owner of the truck had any knowledge that his truck was likely to be used for carrying forest produce in contravention of the provision of the Forest Act, which was upheld by the Supreme Court. It is further submitted that the present case is similar. Hence, the petitioner is entitled for relief.

4. Learned counsel for the respondent/ State opposes the submissions made and submits that the impugned order passed is just, proper and lawful. There is a concurrent finding of all the three Courts below, therefore, it is not a fit case in which the petitioner has any entitlement for grant of relief.

5. Considered on the submissions. Section 52 of the Indian Forest Act, 1927 provides for the seizure of property liable to confiscation and there is a Madhya Pradesh Amendment Act, 1983, in which Section 52 of the Principal Act has been substituted. Sub-section 4 of this Act provides that in the matter of confiscation of any seized property, the authorized officers shall be required to give some intimation about initiation of proceedings for confiscation of property to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made. Secondly, it would be required to issue notice in writing to the person from whom the property is seized, and to any other person who may appear to the authorized officer to have some interest in such property. Thirdly, the Forest Officers shall afford an opportunity of hearing to such parties interest. Sub-section 5 of amended Section 52 of the Indian Forest Act, 1927 provides that no order of confiscation under Sub-section 3 of Section 52 of any tools, boats, vehicles,

ropes, chains or any other article (other than the forest produce seized shall be made, if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorized officer that any such tools, boats, ropes, chains or other articles were used without his knowledge or connivance or as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission of forest offence. There is similar provision under Section 15 of the Chhattisgarh Vanopaj (Vyapar Viniyaman) Adhiniyam, 1969. Sub-section (5) of Section 15 of the Indian Forest Act, 1927 regarding procedure to be followed is similar as provided under Section 52(4) of the Amended Provision under the Act, 1927.

6. The key words in these provisions with respect to the defence which may be raised by a person interest are these that the article was used without the knowledge or connivance or as the case may be without the knowledge of the owner or of the servant or agent of such person having interest.

7. The facts of the case are that information was received by authorized officer regarding that a vehicle is stuck in the agricultural field which has load of teak-wood. The Forest Officers arrived on the spot and found the vehicle bearing registration No. C.G. 19D-0194. The petitioner arrived on the spot on 10.10.2007 and a search was made. The vehicle and the forest produce both were seized after registering the forest offence.

8. On perusal of the orders dated 10.10.2007 and 11.6.2009, it is mentioned that the petitioner had taken only one defence that the vehicle was stuck in the agricultural field and the land owner was making a demand of Rs.12,000/- for his loss. There is no such statement that the vehicle was used for transportation of teak-wood without his knowledge or connivance, therefore, the order was passed for confiscation of the vehicle mentioned herein-above. Similar is the view taken by the Appellate Authority in its order dated 24.9.2009 and in the revisional order of the Additional Sessions Judge dated 4.5.2011.

9. After perusal of the orders mentioned herein-above, it is found that the only ground on which the petitioner would have been held entitled for relief as mentioned in the amended Section 52(4) and Section 15(5) of the Chhattisgarh Vanopaj (Vyapar Viniyaman) Adhiniyam, 1969, was this that the petitioner should have pleaded and proved that he or his agent both had no knowledge regarding the illegal transportation of the forest produce and that both of them had not connived in the commission of such offence. Therefore, there being no such pleading or proof present, the submission regarding the entitlement of the petitioner in this petition is of no value, therefore, I am of this view that this petition is without any substance. Hence, it is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge