

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :22/06/2021

Order passed on : 13/07/2021

WP227 No. 274 of 2013

- Pokhan Dewangan S/o Shankerlal Dewangarn, Aged About 53 Years, R/o Salihapara, Bhanupratappur, Thana and Tahsil Bhanupratappur, Distt. Uttar Bastar Kanker, Chhattisgarh

---- Petitioner

Applicant

Versus

1. State Of Chhattisgarh, through District Magistrate, Distt. Uttar Bastar Kanker, Chhattisgarh
2. Conservator of Forest and Appellate Authority, Kanker Circle, Kanker, District : Kanker, Chhattisgarh
3. Prescribe Officer and Deputy Divisional Forest Officer, Korar, Tahsil Bhanupratappur, Distt. Kanker, District : Kanker, Chhattisgarh
4. Forest Range Officer Korar, Tahsil Bhanupratappur, Distt. Kanker, District : Kanker, Chhattisgarh

----Respondents

For Petitioner – Shri Parag Kotecha, Advocate.

For State/Respondents – Smt. Hamida Siddiqi, Deputy Advocate General.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Order

13-07-2021

1. This petition under Article 227 of the Constitution of India has been brought praying to quash the order dated 12-02-2013 passed by the Court of Additional Sessions Judge, Uttar Bastar Kanker (C.G.) in Criminal Revision No.23/2010, by which the revision petition filed by the petitioner was dismissed and the order of confiscation of the property under seizure were upheld.

2. At the stage of hearing on admission this Court passed the order dated 03-07-2014. The operative part of that order is paragraph 6 and 7, which are as follows :-

“6. There is thus a conflict in the view taken by this Court in the case of

Sukham Bai (supra) {WP No.3369 of 2005 (Sukham Bai Vs. State

of Chhattisgarh and Ors.) decided on 24th March, 2014} and that taken by a coordinate Bench in the case of **Lala alias Uma Kant** (supra) {Lala alias Uma Kant Shrivastava Vs. State of Chhattisgarh, 2010 (1) CGBCLJ (HC) 307}. It is, therefore, considered appropriate to refer these proceedings for being placed before Hon'ble the Chief Justice with a recommendation for being placed before a Bench of two judges on following question of law:

“Whether the power of confiscation conferred upon the Authorized Officer under Section 52 (3) of the Indian Forest Act, 1927 is subject to conviction of the offenders for commission of forest offences in view of the provision contained in Section 55 of the Act and for confiscation of vehicle and other articles, conviction of offender for commission of forest offence is *sine qua non*?”

7. Accordingly, the Registry is directed to place the matter before Hon'ble the Chief Justice for appropriate orders.”

3. The matter was listed before the Division Bench. The Division Bench has by order dated 31-07-2017 answered the reference as follows:-

“2) The aforesaid question is no more *res integra* in view of the decision of the Hon'ble Supreme Court in **State of Madhya Pradesh and others Vs Smt Kallo Bai (AIR 2017 SCC 2516)** which arose from the State of Madhya Pradesh. It clearly lays down that the power of confiscation is independent of any proceeding of prosecution for forest offences.

3) Under such circumstances, we answer this reference by holding that the law laid by the Apex Court in **Smt. Kallo Bai (Supra)** governs

the field and it also stands answering the question raised through this reference made to the Division Bench in the case in hand. The reference is ordered accordingly.”

4. It is submitted by learned counsel for the petitioner that the petitioner is registered owner of the tempo Trax No. CG 19 T/0243. This vehicle was hired by Head Constable from the petitioner. This vehicle was seized by the forest department in connection with illegal transportation of teak and other timber from forest in POR No.3804/2011 for offence under Section 5(1)(π), 15(1)(2) and 16 of Chhattisgarh Vanopaj Vyapar Viniyaman Adhiniyam on 06-11-2009. The prescribed authority/ DFO proceeded for the confiscation of the seized vehicle under the provision of Indian Forest Act and the order dated 08-03-2010 was passed directing confiscation of the vehicle in favour of the State Government. This order was challenged before the Conservator of Forest/ Appellate Authority Kanker Circle in appeal. The appellate authority dismissed the appeal vide order dated 03-04-2010. The order of the appellate authority was challenged in revision before the Court of Additional Sessions Judge Bastar and the same has been dismissed and disposed off by the order dated 12-02-2013 (Annexure - P/3).

It is submitted by learned counsel for the petitioner that the petitioner had no knowledge that transportation of teak and other timber were to be made by making use of his vehicle. This fact has been clearly demonstrated in the enquiry before the prescribed authority, but the same was not at all considered. Therefore, there is no such fact present that the forest offence which was committed by the accused persons was with knowledge and connivance of this petitioner. It is further submitted that the prosecution has also resulted in acquittal of the accused.

Reliance has been placed on the judgment of this Court in the case of

Sukhdeo Singh Bachchu Vs. State of Chhattisgarh and Ors., 2011 (1) C.G.L.R.W. 466 and on the judgments of Madhya Pradesh High Court in the matter of **Ramlal Vs. State of Madhya Pradesh**, 2003 (4)MPHT 354, in the case of **Madhukar Rao Vs. State of M.P. and others**, 2000 (2)MPHT 445 and in the case of **State of M.P. Vs. Mohd. Jabbar Khan**, 2002 (3)MPHT 465.

It is submitted that it is clearly held that when there is proof that the vehicle has been used without knowledge and connivance of the vehicle owner, in that case, the petitioner has entitlement for the custody of the seized vehicle. Therefore, it is prayed that the impugned orders suffer from grave infirmity which are liable to be set aside. Hence, it is prayed that the petition be allowed and the relief be granted to the petitioner.

5. Learned State counsel representing all the respondents opposes the petition and the submission of the petitioner's counsel. It is submitted that there is clear and concurrent finding of three authorities below. In Writ Petition No.3369 of 2005 (Sukham Bai Vs. State of Chhattisgarh and Ors.) decided on 24-03-2014 and in W.P. No.4298 of 1997 {State of Madhya Pradesh (now Chhattisgarh) Vs. Krishna Kaniva Paddy and another} decided on 28-06-2012, it has been held that finding of fact recorded by the revisional authority and the authorities below cannot be ordinarily set aside in exercise of Article 227 of the Constitution of India unless the finding is absolutely perverse and has been made by complete misreading of the statement of witnesses or ignoring settled provisions of law. Therefore, this Court has a very limited jurisdiction under Article 227 of the Constitution of India. Therefore, the prayer made in the petition cannot be allowed. Hence, the petition may be dismissed.

6. Heard learned counsel for the parties and perused the record.

7. Considered on the submissions. On perusal of the confiscation order dated 08-03-2010 passed by the prescribed authority/DFO, it is found

mentioned in the cross-examination of the Plantation In-charge Shiv Kumar Pandey that Constable Bhupendra Pradhan presented himself to show papers. There is no such mention in the statement of witnesses Kheduram Sahu, Naradram Pisda, Vishram Singh Uike and Tikamram about Constable Bhupendra Pradhan. Witness Mahendra Singh Chouhan has stated about the presence of driver, helper and owner of the vehicle, i.e., the petitioner. He has also mentioned about the presence of Constable Bhupendra Pradhan. Witness R.K. Singh, Forest Ranger and forest employee Akhand Pratap have not made any specific mention about the circumstances in which the transportation to teak wood and other timber was being made.

The petitioner examined himself in defence and stated that he was told by the driver that the vehicle was hired by Constable Bhupendra Pradhan for transport of his house hold articles. Same is the statement of defence witness Goluram Kola who is the employee of the petitioner, who has stated similarly. Constable Bhupendra Pradhan was also examined in the proceeding and he has stated that he had hired the vehicle on rent of Rs.800/- for the purpose of transporting his things from Durgukondal, he has stated that apart from his articles which were house hold articles, furniture, the other teak and timber did not belong to him.

8. Section 52(5) of the Indian Forest Act, 1927 is as follows:-

52. Seizure of property liable to confiscation –

.....

(5) No order of confiscation under sub-section (3) of any tools, vehicles, boats, ropes, chains or any other article (other than the timber or forest produce seized shall be made if any person referred to in clause (b) sub-section (4) proves to the satisfaction of authorised officer that any such tool, vehicles, 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.”

9. There is a clear direction in this provision that owner of the tools, vehicles etc. has to prove that the same were being used without his knowledge and connivance or, as the case may be, without knowledge connivance of his servant or agent. The evidence in enquiry shows that this fact was though established that Constable Bhupendra Pradhan had hired the vehicle for transport of his house hold goods, but he has denied the ownership of teak wood and other timber which were present in the vehicle cut in sizes. Therefore, it is a case in which the transport of these additional teak and other timber which was being made in the vehicle, cannot be said to be made without knowledge and connivance of the petitioner or in this particular case without knowledge and connivance of his servants, that is, driver and helper of the petitioner. Therefore, there is no error in finding and appreciation that has been made by the confiscation authority, appellate authority and by the revisional authority in passing the impugned order. Therefore, this petition is without any substance which is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge