

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 7554 of 2019

Abhiram Chatria

..... Petitioner

Mr. Debashish Kumar Panda, Advocate
on behalf of Mr. Sudipto Panda, Advocate

-versus-

State of Odisha and others

.... Opp. Parties

Mr. Ajodhya Ranjan Dash,
Additional Government Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

12.08.2022

Order No.

3. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition seeks to assail the order dated 23rd February, 2019 (Annexure-3) passed by learned District Judge, Kalahandi at Bhawanipatna in FAO No.7 of 2018, whereby he confirmed the order of confiscation dated 5th October, 2018 (Annexure-2) passed by Authorized Officer-cum-Assistant Conservator of Forest, Kalahandi North Division, Bhawanipatna (for short, 'Authorized Officer') in CP No.21 of 2016-17 in respect of vehicle bearing registration No.OR-08-E-9747 (Tata Winger) (for short, 'offending vehicle').
3. Mr. Panda, learned counsel for the Petitioner submits that in the intervening night of 28/29th March, 2017, while Forester, namely, Nurtyaraj Majhi of Bhatangpadar Section along with other forest staff were patrolling, they stopped the offending vehicle at about 2.30 AM and detected that it is loaded with 54 numbers of 0.52 cum of fresh cut teak planks for which they detained driver of the offending vehicle, namely, Tulsiram Kand. On being asked he could not produce the TT

Permit for its transportation. Accordingly, the offending vehicle was seized and confiscation proceeding was initiated for violation of Rules 4 and 12 of Odisha Timber and other Forest Transit Rules, 1980 (for short, 'TT Rules').

3.1 The plea of the Petitioner before the Authorized Officer as well as Appellate Court was that he had never instructed the driver to transport the forest produce in his vehicle. The vehicle was being used for conveyance of children to Central School, Bhawanipatna. Neither the Authorized Officer nor the Appellate Authority has taken into consideration the deposition of the driver as well as the Petitioner to the effect that the driver was never instructed to transport teak planks in the offending vehicle. He further submitted that the driver in his deposition clearly stated that the teak planks were loaded in the offending vehicle under threat of some persons. All these materials were not taken into consideration by the Authorized Officer as well as the Appellate Authority while directing for confiscation of the vehicle. He further relied on a decision of this Court in the case of *Gurudev Singh Rai Vs. Authorized Officer-cum-Assistant Conservator of Forests and another*, reported in AIR 1992 Orissa 287, wherein this Court, while upholding the decision of the Authorized Officer, directed to release the vehicle by compounding of offence on payment of fine. Mr. Panda submits that the fact of the said case is almost akin to the present one and hence, the offending vehicle may be released on payment of fine. He, therefore, prays for setting aside the impugned order and to release of the offending vehicle on payment of reasonable fine to be determined by the Court.

4. Mr. Dash, learned AGA submits that the grounds raised by the Petitioner in this writ petition were raised before the Appellate Court and the same were taken care of discussing the materials available on record and relevant case law. It is his submission that looking at the facts and circumstances of the case as well as the gravity of offence, it should not be compounded. He further submits that the plea taken by the Petitioner that he had not instructed the driver and had no knowledge about involvement of his vehicle in forest offence cannot be accepted as a specific plea was taken by the Petitioner to the effect that the vehicle was being used for conveyance of children to Central School, Bhawanipatna. But the vehicle was seized in the intervening night of 28/29th March, 2017. Thus, learned Appellate Court disbelieved the plea taken by the Petitioner. Further, the contention raised by learned counsel for the Petitioner that teak planks were loaded in the offending vehicle by threatening the driver cannot be believed, as the matter was never informed to the police. Further, learned District Judge relying upon the decision in the case of *Ashok Kumar Das Vs. State of Orissa and others*, reported in 2005 (Supp.) OLR 507 disbelieved such plea. This Court, while exercising power under Article 227 of the Constitution, should not re-appreciate the evidence and substitute its own finding. It is his submission that the Petitioner had cooked up a story to prove himself innocent. He has raised plea of compounding the offence by payment of fine, which indicates that the vehicle of the Petitioner is involved in the forest offence. He, therefore, submits that the writ petition is devoid of merit and is liable to be dismissed.

5. Taking into consideration the submissions of learned counsel for the parties, this Court feels it proper to indicate certain undisputed facts for adjudication of the case. It is not in dispute that the offending vehicle was seized in the intervening night of 28/29th March, 2017 by the forest officials being loaded with 54 numbers of fresh cut teak planks. The driver of the offending vehicle could not produce any TT permit for transportation of the same. Learned counsel for the Petitioner submits that in view of provisions under Section 52 (2)(c) of the Odisha Forest Act, 1972 (for short, 'the Act'), vehicle of the Petitioner is not liable for confiscation when the owner thereof proves to the satisfaction of the Authorized Officer that it was used without his knowledge or convenience of his agent. The driver being employed by the Petitioner was acting as his agent to drive the vehicle. There is no material on record except oral statement of the owner as well as the driver himself to the effect that the Petitioner had no knowledge of involvement of the offending vehicle in forest offence. There is no cogent evidence available on record to arrive at a conclusion that either the Petitioner or his driver had any knowledge of such transportation. On the other hand, the driver deposed that the teak planks were loaded in the offending vehicle under threat of some antisocial. However, the matter was never informed to local Police having jurisdiction. The case of the Petitioner is that the vehicle was being used for conveyance of children to Central School, Bhawanipatna, but when he contacted the driver at 10.30 PM of intervening night of 28/29th March, 2017, the driver informed that he is going to his village to bring his family members and the Petitioner had never objected to the

same. It clearly shows that the Petitioner had permitted his driver to ply his vehicle other than the purpose for which it was engaged. Thus, the plea of loading of the teak planks in the offending vehicle by threatening the driver, was an afterthought and made out only to escape the legal consequences of committing a forest offence.

6. On perusal of the impugned order, it appears that learned District Judge, Kalahandi at Bhawanipatna has considered the submission made by learned counsel for the Petitioner its entirety and discussing the same with reference to the materials on record and case law, did not accept the same.

7. This Court is in seisin of the matter under Article 227 of the Constitution. Hence, it will not be proper to re-appreciate the evidence and substitute its own finding only because a second view may be possible.

8. So far as compounding of offence is concerned, on perusal of case laws cited supra, it appears that basing upon facts and circumstances of that case, this Court has proceeded to impose fine on the Petitioner therein by compounding the offence. But in the facts and circumstances of this case no such case is made out.

9. In view of the above, I am not inclined to entertain the writ petition. Accordingly, the same is dismissed being devoid of any merit.

(K.R. Mohapatra)
Judge