

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.12534 of 2020

Bibekananda Das

....

Petitioner

Mr. R.N Nayak, Advocate

-versus-

State of Odisha & another

....

Opposite Parties

*Mr.S. S. Mohapatra,
AGA.*

**CORAM:
THE JUSTICE S.PUJAHARI**

**ORDER
30.08.2022**

**Order
No.**

11. **1.** This writ petition is directed against the order of confiscation dated 11.02.2020 whereby and whereunder the Authorized Officer-cum-Asst. Conservator of Forest, Angul Forest Division, Angul, in exercise of the power under Section 56(2-c) of the Orissa Forest Act, 1972, initiated Confiscation Proceeding No.14 of 2019-20 and directed confiscation of the tractor belonging to the Petitioner bearing registration number OR-19-M-7994 as the same was stated to have been used for commission of the forest offence, under Section 56(2-a) of the Orissa Forest Act

vide order dated 11.02.2020. The aforesaid order was challenged in the appeal before the learned District Judge, Angul vide FAO No.01 of 2020. Learned District Judge vide impugned order dated 12.03.2020 confirmed the same. The Petitioner in this writ petition has made a prayer to quash the aforesaid orders on the ground that the same are illegal and arbitrary.

2. Heard the learned counsel for the parties.

3. It appears that the aforesaid tractor along with the trolley of the Petitioner was seized on 31.10.2019 by the Forester when the same was found transporting 80 Cft. of boulders from Marudhipa proposed reserved forest. Since the driver of the Petitioner allegedly committed digging, loading and transporting the boulders from the reserved forest violating the provision of Section 27(1)(a)(3)(b) of the Orissa Forest (Conservation) Act, 1972, he was arrested and forwarded to the court, so also a proceeding under Section 56 of the Orissa Forest Act was initiated vide

the aforesaid confiscation case. In the aforesaid confiscation proceeding, upon being noticed, the petitioner filed show-cause. The Authorized Officer recorded a finding that the tractor was found loaded with boulder and transporting the same from Marudhipa PRF area without any document, for which an offence under Section 27(1)(a)(3)(b) of the Orissa Forest (Conservation) Act, 1972 was committed in respect of the boulders and directed for confiscation of the Tractor. The appellate court upheld the same appreciating the materials on record and held that the offence under Section 27(1)(a)(3)(b) of the Orissa Forest (Conservation) Act, 1972 has been committed as the driver of the Petitioner transported the boulder from the reserved forest.

4. Learned counsel for the Petitioner submitted that the impugned orders passed by the Authorized Officer-cum-Asst. Conservator of Forest, Angul Division, Angul as well as the learned District Judge, Angul clearly reflect non-application of mind inasmuch

as no offence under Section 27(1)(a)(3)(b) of the Orissa Forest (Conservation) Act, 1972 was committed, as such, an Act is not in force, but on a wrong premises, they have stated that the driver of the Petitioner was found to have committed the offence in respect of the forest produce violating the provision of Section 27(1)(a)(3)(b) of the Orissa Forest (Conservation) Act, 1972. He also relies on **Baikuntha Swain vs. State of Odisha**, reported in 2017 (I) OLR 46 vide which this Court have held that for transportation of minor forest produce from the reserved forest, no transmit permit is required as there was no intra district movement and, as such, for transportation of forest produce, confiscation of the tractor engaged was not proper. Accordingly, it is submitted on behalf of the petitioner that the impugned orders are liable to be quashed.

5. However, learned counsel for the State submitted that the materials on record would reveal that the Forester along with other staff while performing patrolling duty inside the reserved forest,

found the tractor of the Petitioner to have been loaded with boulders lifted from the reserved forest, as such forest offence having been committed in respect of the forest produce, there was violation of Section 27(1)(a)(3)(b) of the Orissa Forest Act (not the Orissa Forest (Conservation) Act, 1972). Hence, the writ petition is liable to be dismissed, even if it has been mentioned wrongly that the offence committed was under the Orissa Forest (Conservation) Act, 1972.

6. To appreciate the contentions of the parties, it would be apposite to quote the provision of Section 56 of the Orissa Forest Act, which reads as thus:

“56. Seizure of property liable to confiscation – (1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, ropes, chains, boats, vehicles or cattle used in committing any such offence may be seized by any Forest Officer or Police Officer.

(2) Every officer seizing any property under this section shall place, on such property a mark indicating that the same has been so seized and shall as soon as may be, except where the offender agrees in writing to get the offence compounded, [1] [either produce the property seized before an officer not below the rank of an Assistant Conservator of Forests authorised by the State Government in this behalf by notification (hereinafter referred to as the authorised

officer) or] make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made :

Provided that, when the forest produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior and the Divisional Forest Officer.

[(2-a) Where an authorised officer seizes any forest produce under sub-section (1) or where any such forest-produce is produced before him under sub-section (2) and he is satisfied that a forest offence has been committed in respect thereof, he may order confiscation of the forest produce so seized or produced together with all tools, ropes, chains, boats, vehicles or cattle used in committing such offence.

(2-b) No order confiscating any property shall be made under sub-section (2-a) unless the person from whom the property is seized is given –

(a) a notice in writing informing him of the grounds, on which it is proposed to confiscate such property;

(b) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation;and

(c) a reasonable opportunity of being heard in the manner.

(2-c) Without prejudice to the provisions of sub-section (2-b), no order of confiscation under sub-section (2-a) of any tool, rope, chain, boat, vehicle or cattle shall be made if the owner thereof proves to the satisfaction of the authorised officer that it was used without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person incharge of the tool, rope, chain, boat, vehicle or cattle, in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.

(2-d) Any Forest Officer not below the rank of a Conservator of Forests empowered by the Government in this behalf by notification, may, within thirty days from the date of the order of confiscation by the authorised officer under sub-section (2-a), either suo motu or on application, call for and examine the records of the case and may make such inquiry to be made and pass such orders as he may think fit:

Provided, that no order prejudicial to any person shall be passed without giving him an opportunity of being heard.

(2-e) Any person aggrieved by an order passed under sub-section (2-d) or subsection (2-d) may, within thirty days from the date of communication to him of such order, appeal to the District Judge having jurisdiction over the area in which the property has been seized, and the District Judge shall after giving an opportunity to the parties to be heard, pass such order as he may think fit and the order of the District Judge so passed shall be final.]

(3) The property seized under this section shall be kept in the custody of a Forest Officer or with any third party, until the compensation for compounding the offence is paid or until an order of the Magistrate directing its disposal is received.

(Provided that the seized property shall not be released during pendency of the confiscation proceeding or trial even on the application of the owner of the property for such release.”

7. From the aforesaid, it is clear that when a forest offence is committed in respect of any forest produce using the tools, ropes, chains, boats, vehicles or cattle, the same become liable for confiscation under Section 56(2-a) of the Orissa Forest Act by the Authorized

Officer in a proceeding under Section 56 of the Orissa Forest Act unless the owner thereof comes forward and shows that the same was used in circumstances as provided in Section 56(2-c) of the Orissa Forest Act.

8. “Forest produce” has been defined in Section 2(g) of the Orissa Forest Act, 1972, relevant portion of which reads as thus:

“2. Definitions – In this Act, unless the context otherwise requires –
 xxx xxx xxx
 (g) “forest” produce includes –
 xxx xxx xxx
 (ii) the following when found in or brought from a forest that is to say –
 (a) Xxxxxx xxxxxx;
 (b) Xxxxxxxx xxxxxxxx;
 (c) Xxxxxxxx xxxxxxxx;
 (d) peat, surface soil, rock, sand and minerals (including limestone, laterite, mineral oils and all products of mines or quarries.”

So also “Forest Offence” has been defined in Section 2(e) of the Orissa Forest Act which reads as thus;

“2. **Definitions** – In this Act, unless the context otherwise requires –

Xxxxxxxxxx xxxxxx

(e) “**Forest Offence**” means an offence punishable under the Act or under the rules and includes the abetment of a forest offence;”

9. There is no Act known as Orissa Forest (Conservation) Act, 1972. Therefore, both the orders of the Authorized Officer as well as the learned District Judge speak total non-application of mind and oblivious to the statute. Even for violation of Forest (Conservation) Act, 1980, a confiscation proceeding is incompetent as Section 56 of the Orissa Forest Act is not invocable to an offence under any other Act in view of the definition of forest offences under the Orissa Forest Act quoted supra.

10. Now, coming to the question of violation of the provision of Orissa Forest Act as submitted by the learned State counsel, it would be appropriate to mention that Section 27(a) of the Orissa Forest Act, a penal provision, speaks of commission of an offence by a person. Section 27(a) of the Orissa Forest Act, 1972 reads as thus :

“27. Offences – (1) The person who –

(a) makes any fresh clearing or causes breaking of
land which is prohibited under Section 5.

XXXXXXXX XXXXXX XXXXXXXX”

11. The aforesaid statutory provision speaks of a proceeding against a person who committed such an offence. However, in this case this Court is not concerned with the proceeding or punishment against a person as indicated in Section 27 (a) of the Orissa Forest Act, 1972. Now, it is to be seen whether breaking of land can be said to have been committed for removal of forest produce. For violation of Section 27 of the Orissa Forest Act, 1972 seizure can be made of the articles used by a person in committing a forest offence, but a confiscation proceeding is not maintainable there unless there is a seizure of the forest produce along with such articles used. No doubt, the boulders were found in the tractor of the Petitioner, but the same *ipso facto* does not lead to the conclusion that the tractor of the Petitioner was used for commission of the forest offence against the forest

produce. Boulders are forest produce as envisaged under Section 2(g)(ii)(d) of the Orissa Forest Act only when found in the forest or brought from the forest. “Found in the forest” means must have been embedded in the Forest or part of the Forest. “Brought from the forest” means bringing out of such articles or produce from such State. No material is produced to show that the aforesaid boulders were collected from the forest or quarried therefrom. In the absence of the same, it cannot be said that a forest offence was committed in respect of forest produce, merely because the tractor was found being loaded of the boulders in a forest. It may so happen that a person on collecting boulders from somewhere else may be moving in a road passing through a reserved forest / any other forest to his destination. Unless it is specifically shown that he had collected the boulders from the reserved forest / proposed reserved forest / any other forest, it cannot be said that forest offence is committed in respect of the said produce / articles, as mentioned in Section 2(g)(ii)(d) of the Orissa Forest Act. Therefore, in the

absence of the same, this Court is of the view that the initiation of the confiscation proceeding without further materials on record showing violation of Section 27(1)(a)(3)(b) of the Orissa Forest Act, 1972 and confiscation of the tractor with trolley is misconceived. Learned District Judge without appreciating the same having confirmed the order of the Authorized Officer that too wherein for violation of provisions of an Act which is non-existent Act having been made, both the impugned orders are liable to be quashed. The petitioner-owner is entitled to release of the same.

12. Accordingly, the writ petition is allowed and the impugned orders stand quashed. The tractor with trolley, if not released, be released in favour of the petitioner-owner.

13. Urgent certified copy of this order be granted on proper application.