

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 24479 of 2022

Balbir Singh

..... Petitioner

Mr. R. Behera, Advocate

-versus-

State of Odisha and others

.... Opp. Parties

Mr. Ajodhya Ranjan Dash,
Additional Government Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

18.10.2022

Order No.

2. 1. This matter is taken up through hybrid mode.
2. 2. This writ petition has been filed assailing the order dated 24th August, 2022 (Annexure-3) passed by learned District Judge, Malkangiri in FAO No.01 of 2021, whereby the appeal filed under Section 56 (2-e) of the Odisha Forest Act, 1972 has been dismissed confirming the judgment and order dated 16th June, 2021 (Annexure-2) passed by the Authorized Officer-cum-Assistant Conservator of Forests, Malkangiri Division in OR Case No.66 of 2019-20.
3. 3. Mr. Behera, learned counsel for the Petitioner submits that during pendency of the appeal, the occupants of the vehicle bearing registration No.OD-30-8829 were acquitted in the Criminal Proceeding No.2(b) CC No.03 of 2019 of the Court of learned SDJM, Malkangiri initiated for commission of forest offence under Rule 23 of the Odisha Timber and other Forest Produce Transit Rules, 1980 holding the case to be '*mistake of fact*'. Although the judgment was passed on 10th August, 2022 (Annexure-1), but the same could not be brought to the notice

of learned appellate Court at the time of argument, as the certified copy of the order was not obtained at the relevant time. However, the said order was produced before learned District Judge, Malkangiri on 23rd August, 2022. Hence, the same could not be taken into consideration in the order impugned herein under Annexure-3.

4. In view of the above, this Court is of the considered opinion that the matter requires fresh consideration by learned District Judge, Malkangiri. Accordingly, this Court sets aside the impugned order dated 24th August, 2022 and remits the matter back to learned District Judge, Malkangiri to adjudicate FAO No.01 of 2021 afresh taking into consideration the judgment in 2(b) C.C. No.03 of 2019 passed by learned SDJM, Malkangiri giving opportunity of hearing to the parties concerned.

4.1 It is made clear that this Court has not delved into merit of the impugned order. As the subsequent developments could not be taken into consideration by learned District Judge, Malkangiri while adjudicating the appeal, this Court has set aside the impugned order to consider the appeal afresh.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge