

IN THE HIGH COURT AT CALCUTTA

Civil Revisional Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

CRR 79 of 2024

State of West Bengal

VERSUS

Santosh Kumar Sah

For the petitioner/State:

Mr. Aditi Shankar Chakraborty, Adv.
Mr. Aniruddha Biswas, Adv.

For Opposite party:

Mr. Arjun Choudhury, Adv.
Mr. Sourav Sharkar , Adv.,

Last heard on: April 12, 2024

Judgment on: April 25, 2024

Biswaroop Chowdhury,J

This is an application under Section 482 of the Code of Criminal Procedure filed by the Petitioner against the Order dated 20thDecember 2023 passed by Ld. Sessions Judge Kalimpong West Bengal in Criminal Appeal No. 06 of 2023, arising out of Forest Case For/Vehicle/ N.R. 15 of 2023-2024. Learned Sessions Judge by the said order was pleased to set aside Order dated 17-10-2023 passed in Forest Case no. FOR/VEHICLE/N.R-15/2023 and direct DFO Kalimpong to release the vehicle in favour of registered owner by 28-12-2023. The Petitioner State of West Bengal being aggrieved by the said order has come up with the instant application.

The case of the petitioner in brief is that on 12/05/2023 at about 8.30 am Sri Promod Tamang DRM, the Beat Officer of Gorubathan West, Neora Range, with his staff namely 1. Sri Shyamol Mardi FG. 2. Jit Bahadur

Biswakarma, FW and Bivek Prodhan, RDC of Gorubathan Beat went to patrolling duty at the compartment No: Mal-9. Gorubathan Beat, Neora Range. At about 9. a.m in Chel river bed, Compartment No. Mal-9, Gorubathan Beat, they saw one truck bearing Registration No. WB-71A8518 collecting stone boulder from the reserve forest area, at compartment No. Mal-9 (GPS-N 26°55' 54.25" E 88 40' 00.68") under Gorubathan Beat. Promod Tamang, DRM, Beat Officer asked them to stop and produce any permit license/documents for collection and removal of Forest Produce (Stone Boulder) from the reserve forest areas. At that time the driver of the vehicle and other persons present there managed to flee away from the spot. Thereafter Promod Tamang DRM beat officer Gorubathan Beat seized, the vehicle (truck bearing Registration No. WB-71A8518 on proper seizure list and the forest produce (Stone Boulder of 200 CFT) loaded thereon under Section 52 of Indian Forest Act, 1927 at about 9:15 am and brought the same to the Range Office. After the seizure was complete the Beat Officer, Gorubathan Beat, under Neora Range intimated the officer-in-charge, Gorubathan Police Station, Kalimpong in writing about the incident on 12/05/2023. On the same day a letter was issued to the Regional Transport Officer Jalpaiguri District seeking information as to the ownership of the seized vehicle bearing registration No: WB-71A-8518 which was apprehended on 12/05/2023 illegally carrying forest produce. Upon obtaining a written report dated 16/05/2023 regarding seizure of truck bearing registration No: WB-71-A 8518, a notice of 30 days was issued to the opposite party being owner of vehicle bearing registration No: WB-71-A 8518. Upon

receipt of the notice the opposite Party submitted a written explanation on 06/06/2023 by annexing Photostat copy of a Road E-Challan for sand/riverbed materials Transport bearing Challan No: 6207813/S/23-24/110520 230200/PS Dated 11/05/2023 issued against a vehicle bearing registration No: WB:73D7325. The Authorized officer and DFO, Kalimpong upon not being satisfied with, the explanation given issued notice upon the opposite party for personal hearing. In the personal hearing statement of the witnesses and the opposite Party was recorded. Upon hearing the opposite party and considering the statement of the witnesses the Authorized Officer and Divisional Forest Officer Kalimpong was pleased to confiscate the said vehicle bearing registration No: WB-71 A 8518 vide order dated 17/10/2023.

The opposite Party being aggrieved by the Order of Confiscation preferred an appeal before Learned Sessions Judge Kalimpong and the same was registered as Criminal Appeal No:06 of 2923. Learned Sessions Judge upon contested hearing was pleased to allow the appeal and set aside the order of the Authorized Officer and Divisional Forest Officer Kalimpong inter alia with a direction upon the Divisional Forest Officer, Kalimpong to release the vehicle in favour of the registered owner by 28/12/2023/.

The Petitioner being aggrieved by the order dated 20th December 2023 passed by Learned Sessions Judge, Kalimpong West Bengal in connection with Criminal Appeal No: 06 of 2023 arising out of Forest Case For/Vehicle/NR.15 of 2023-24 has come up with this revisional application under Section 482 CrPC.

It is the contention of the petitioner that the order passed by the Learned Appellate Court is perverse and not based on sound Judicial reasonings. It is further contended that the Learned Court below failed to appreciate that an appeal under section 59-D of the Indian Forest Act 1927 lies before the Ld. District Judge having jurisdiction over the area where the property described in the section has been seized and the Appeal ought not to have been registered as a Criminal Appeal. It is also contended that the Learned District and Session Judge Kalimpong did not appreciate the deposition of the opposite Party (Registered Owner of the vehicle) and other witnesses which was available with the record.

Heard Learned Advocate for the petitioner and Learned Advocate for the opposite Party perused the petition filed and materials on record.

Learned Advocate for the petitioner submits that criminal appeal is not maintainable against the order passed under section 59A of the West Bengal Amendment of Indian Forest Act 1988, and the Learned District Judge having jurisdiction over the area in which the property and the tools, ropes, chains boats vehicles or cattle have been seized, can hear the appeal against order passed under Section 59A of the West Bengal Amendment of Indian Forest Act 1988. Learned Advocate for the petitioner further submits that the order passed by Learned Appellate Court is without jurisdiction.

Learned Advocate for the petitioner also produces a certified copy of challan and submits that the challan shows, that permit was not issued to carry forest products on the date of incident.

Learned Advocate for the opposite party submits that all relevant documents were before Learned Appellate Court, and the petitioner had opportunity to produce necessary documents before appellate Court, thus no further documents be permitted to be produced. Learned Advocate draws attention to para – 10 of the judgment of appellate Court which contains the following observation.

‘10 The e-challan/permit proves that the alleged seizure either did not happen or documents were falsely created to depict the same.’

Learned Advocate also submits that it is the case of the opposite party that e-challan permits are issued after vehicles are loaded which was considered by the Learned Appellate Court in arriving at the decision thus no new documents can be produced at this stage. Learned Advocate relies upon the following judicial decisions.

- Deepak Tandon Vs Rajesh Kumar Gupta (Reported in AIR-2019. S.C. 924.)
- Kvian Devi Vs The Bihar State Sunni Waqf Board and ors. (Reported in (2021) 15 SCC. P-15)
- General Insurance Council Vs State of A.P. (Reported in (2010) 6 SCC. P-768.)
- Suraj Chettri and Anr. Vs Deputy Ranger (Beat Officer) and Anr. (2022 SCC Online Cal-640.)

In the case of Kiran Devi (Supra) the Hon’ble Supreme Court observed as follows:

“26. Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court finds that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or section 482 of the Code. It may not however be lost sight of the provisions exist in the Code of revision and appeal but some time for immediate relief section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High court as under Article 226 and 227 could well be treated under Article 227 of the Constitution of India.”

The instant case relates to passing of Order of confiscation in exercise of power conferred under Section 59A of the West Bengal Amendment of Indian Forest Act 1988. Thus before going into the validity of the Order passed by Authorized Officer under the provisions of the said Act it is necessary to discuss the provisions contained in the said Provisions.

Section 59A of the West Bengal Amendment of Indian Forest Act 1988 provides as follows:

59A. Confiscation by Forest-officer of forest-produce in the case of forest-offence believed to have been committed.- (1) Notwithstanding anything contained in the foregoing provisions of this Chapter or in any other law for the time being in force, where a forest-offence is believed to have been committed

in respect of the timber or other forest-produce which is the property of the State Government the forest officer or police officer seizing the timber or forest produce under sub-section (1) of section 52 shall, without any unreasonable delay, produce the same, together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence before an officer of a rank not inferior to that of an Assistant Conservator of Forest authorized by the State Government in this behalf by notification in the Official Gazette (hereinafter referred to as the authorized officer).

(2) The State Government may, for any local area, authorize one or more officers under sub-section (1).

(3) Where any timber or other forest-produce which is the property of the State Government is produced before an authorized officer under sub-section (1) and the Authorized Officer is satisfied that a forest-offence has been committed in respect of such property, he may, whether or not a prosecution is instituted for the commission of such offence, order confiscation of the property together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence.

(4)(a) Where the Authorized Officer, after passing the order of confiscation of the property together with all tools, ropes, chains, boats, vehicles and cattle as aforesaid under sub-section (3), is of opinion that it is expedient in the public interest so to do, he may order such property or any part thereof and such tools, ropes, chains, boats, vehicles and cattle to be sold by public auction.

(b) Where the order of confiscation of any property or tools, ropes, chains, boats, vehicles or cattle under sub-section (3) is set aside or annulled under section 59 C or section 59-D, the proceeds of sale by auction shall, after deduction of the expenses of auction and all other incidental expenses relating thereto, if any, be paid to the owner of such property or tools, chains, boats, vehicles or cattle to the person from whom the same was seized as may be specified in the order under section 59-C or section 59-D.

Section 59D provides the provision of Appeal which is as follows:

59-D. Appeal.-(1) Any person aggrieved by an order under section 59-A or section 59-C may, within thirty days from the date of communication to him of such order, prefer an appeal to the District Judge having jurisdiction over the area in which the property and the tools, ropes, chains, boats vehicles or cattle have been seized and the District Judge shall, after giving the appellant and the Officer who passed the order an opportunity of being heard, pass an order confirming, modifying or annulling the order appealed against.

(2) The order of the District Judge under sub-section (1) shall be final and shall not be called in question by any Court.

As in the instant application the challenge is from the order passed in an appeal under Section 59D of the West Bengal Forest Amendment Act 1988 and sub-section 2 of section 59D of the said Act provides that the Order of the District Judge under sub-section (1) of Section 59D shall be final and shall not be called in question by any Court, it is incumbent upon the petitioner to satisfy this Court as to how this application is maintainable under law. The

petitioner in this application has assailed the Order passed under Section 59D(1) of the West Bengal Forest Amendment Act on the ground that the said order is without jurisdiction as the same is not passed by the District Judge but by the Sessions Judge in Criminal Appeal. It is the contention of the petitioner that the Appeal ought not to have been registered as a Criminal Appeal. The second ground of challenge is that the impugned order is perverse and not based on sound judicial reasoning and passed without considering the facts of the case. The third ground of challenge is that the order is passed in ignorance of the settled principles of law applicable to the issues relating to confiscation. These issues raised must be answered.

Now with regard to the jurisdiction of the Court passing the impugned order under Section 59D(1) of the said Act it will appear that the order is passed by Learned Sessions Judge Kalimpong in Criminal Appeal. Thus the contention of the petitioner has some substance. Section 59D of the said Act provides that an order passed under section 59A or 59C can be challenged in Appeal to the District Judge having jurisdiction over the area in which the property and the tools, ropes, chains, boats vehicles or cattle have been seized. It is to be kept in mind that appeal under Section 59D is not against an order passed by Criminal Court but against an order passed by a Forest Officer in a Quasi Judicial Proceedings. As order under Section 59A is not an order by Criminal Court but by a Quasi Judicial Authority and there is a provision of Appeal before the District Judge and not Sessions Judge the appeal is to be treated as Civil Appeal and not a Criminal Appeal. Thus there is a procedural

irregularity. However as the Learned Session Judge Kalimpong is also a District Judge of the said District and have powers of a District Judge the impugned order cannot be said to be wholly without jurisdiction. This procedural irregularity may be cured and the Criminal Appeal may be treated as Civil Appeal. Now with regard to the maintainability of this application filed by the Petitioner although Section 59D(2) of the said Act provides that order passed under Section 59D(1) is final and shall not be called in question by any Court, but as the High Court is vested with the power of superintendence over all Courts and tribunals under Article 227 of the Constitution of India instead of dismissing this application under Section 482 CrPC it would be reasonable to consider the application as under Article 227 of the Constitution and ascertain from the order passed by Appellate Court if the said order is totally perverse and devoid of reasons.

Section 59A(3) gives discretion to the Forest Officer to order Confiscation of forest Produce together with tools ropes chains boats vehicle or cattle after being satisfied that a forest offence is committed whether or not a prosecution is instituted for the commission of such offence. As a discretionary power is given to the forest officer such power should be exercised reasonably upon application of mind and not arbitrarily. Special caution should be taken in case of vehicle which is used for committing such offence as in many cases vehicles are used for offence without knowledge of the vehicle owner. Even if the vehicle owner does not appear and the forest officer upon perusing the materials

before him is in doubt about involvement of the vehicle owner he shall not order confiscation of vehicle.

Sub-section 2 of Section 59B of the said Act provides as follows:

‘2) Without prejudice to the provisions of sub-section 1 no order connecting any tool rope chain boat vehicle or cattle shall be made under Section 59A if the owner thereof proves to the satisfaction of the authorized officer that such tool rope chain boat vehicle or cattle was used in carrying the timber or other forest-produce without the knowledge or connivance of the owner himself or his agent, if any or the person in charge thereof and that each of them had taken all reasonable and necessary precautions against such use.’

Upon reading the relevant provisions as mentioned above it can be construed that if the involvement of the vehicle owner cannot be ascertained from the materials on record and hearings in the confiscation proceedings, and the same require trial on evidence before Regular Criminal Court the Forest Officer should not pass an order of confiscation.’

Upon perusal of the order of Confiscation and the order of the Appellate Court specially with regard to the observations made by the Appellate Court it is necessary to quote the following observation,

‘6. As found the permit/e-challan is issued only after a vehicle is loaded with forest goods and there is no mechanism like issuance of any document showing permission to load the vehicle preceding/prior to issuance of the e-challan/permit. Such procedure creates a potential risk of false implication of a bonafide trader/transporter who intends to obtain e-challan/permit after

loading the vehicle. There in no protection for him during the process of loading.’

‘7. As discussed above the e-challan vide no. 6222709/S/23-24/120520231607/PS was issued in the name of this vehicle for the period from 8:16 pm on 12.05.2023 till 3:16 am on 13.05.2023 and on 12.05.2023 at 8:16 pm as noted in the challan this vehicle ie WB 71A 8518 was loaded and ready for departure.’

The above two observations along with others made by the Learned Appellate Court go to show that the Learned Judge considered the materials on record applied her mind and assigned her reasons in coming to the findings. Such order cannot be said to be perverse. Hence the Order passed by Learned Appellate Court does not require any interference. Hence this application stands dismissed.

(Biswaroop Chowdhury,J)