

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 175 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

MOHMED YUSUF YAKUB ISMILEWALA  
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Appearance:

SHRI K.L.PUJARI, ADDL.PUBLIC PROSECUTOR for Petitioner  
MR YM THAKKAR for Respondent No. 1, 2  
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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 31/08/2000

ORAL JUDGEMENT

This revision is directed against the order dated  
30.3.2000 of Sessions Judge, Bharuch, whereby he has  
allowed the appeal of the respondent of this revision and  
quashed the order of the forest authoirty in Case No.133

of 1999 confiscating truck NO.GJ-16-T-8387. Shri K.L. Pujari, learned APP, and Mr Y.M. Thakkar, learned counsel for the respondent, have been heard.

2 An appeal was preferred before the learned Sessions Judge under Section 61(1)(d) of the Indian Forest Act against the order of confiscation passed by the forest authorities. The brief facts are that Truck No.GJ-16-T-8387 owned by the respondent no.1 and driven by his brother, respondent no.2, was intercepted for carrying prohibited forest wood, namely, wood of Kher trees. The persons who were to transport the wood fled away from the scene of occurrence and one person was interrogated who told that he was appointed there to supervise the work. His name was Mustaq. His confessional statement was recorded wherein the names of four persons including two respondents and Mustaq and Husseinbhai came to light. The truck remained in the custody of forest authorities. The respondent moved this High Court for a direction to the forest authorities for interim custody of the truck being given to them. This Court by order dated 19.8.1999 directed the State of Gujarat and the respondent no.2 to dispose of the application of the respondents for releasing the said truck and for giving the same in their interim custody. In compliance of this direction of this Court application for interim custody was moved before the authority. That application was rejected. Simultaneously order of confiscation of the aforesaid truck was passed by the forest authorities. It is against this order of confiscation that the present Revision has been filed inasmuch as the order of confiscation was set aside by the appellate authority, namely, the lower court.

3 The judgement of the lower Court has been examined. The lower appellate Court found that the order of confiscation cannot be sustained on two grounds. The first was technical ground, namely, no notice of proposed action for confiscation was given to the respondents by the forest authorities. In the absence of such notice and affording opportunity to the respondents to explain and substantiate their objections to the proposed action order for confiscation could not legally be passed. Secondly, on merits also the learned Sessions Judge found that the order of confiscation was bad in law because respondent no.1 being the owner of the vehicle had no knowledge that his vehicle which was being driven by respondent no.2 was to be utilised for illegal purposes, namely, for carrying prohibited forest wood. On these grounds the order of confiscation was quashed.

4 Shri Pujari has contended that show-cause notice was given to the respondents but this contention could not be substantiated from the material on record. The learned Sessions Judge has made a reference to four papers on record, namely, pages nos.65, 66, 67 and 68 and after examining these pages, he found that these pages were only summons issued to the four accused for replying the charges proposed to be framed against them and not that these were show-cause notices to the respondents for proposed action of confiscation of motor vehicle. Shri Pujari has made an attempt to argue that two subsequent notices were given but those notices were not brought on record nor those notices could be shown by him to show that they are notices in compliance of Section 61(a) of the Indian Forest Act. The order of confiscation could be quashed only on this ground, namely, for want of notice u/s 61(a) of the Indian Forest Act.

5 Section 61-A of the Forest Act is an empowering provision. Under sub-clause (2) of this Section it is provided where the authorised officer seized under Sub-Sec. (1) of Sec. 52 any forest produce which is the property of the State Government, or where any such property is produced before the authorised officer under Sub-Sec. (1) and he is satisfied that a forest offence has been committed in respect of such property, such authorised officer may whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of the property so seized together with all tools, ropes, chains, boats, vehicles and cattle used in commission of such offence. Thus, under this empowering provision under Section 61-A (2) of the Forest Act, the authority irrespective of institution of prosecution could seize inter alia a vehicle which was used for carrying forest produce or property illegally. The power u/s 61-A has to be exercised in the light of the provisions contained in Section 61-B of the Forest Act.

6 Sub-Sec. (1) of Sec. 61-B of the Forest Act provides that no order confiscating any forest produce or tools, ropes, chains, boats, vehicles or cattle shall be made under 61-A except after notice in writing to the person from whom it is seized informing him of the grounds on which it is proposed to confiscate it and considering his objections, if any, provided that no order confiscating a motor vehicle shall be made except after giving notice in writing to the registered owner thereof if in the opinion of the authorised officer it is practicable to do so and considering his objections, if any.

7 Sub-sec. (2) of Section 61-B provides that without prejudice to the provisions of Sub-Sec. (1) no order confiscating any tool, rope, chain, boat, vehicle and cattle shall be made under Sec. 61-A if the owner of the tool, rope, chain, boat, vehicle and cattle proves to the satisfaction of the authorised officer that it was used in carrying forest produce without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the tool, rope, chain, boat, vehicle and cattle and that each of them had taken all reasonable and necessary precautions against such use.

8 It is thus clear that the provisions of Section 61-A have to be read along with the provisions contained u/s 61B. Section 61B is a procedural provision which obliges the forest authority to issue show-cause notice before confiscation under Sec. 61-A of the Act. The words used in sub-clauses (1) as well as (2) of Section 61-B are "shall" and not "may". The word "shall" itself indicates that without issuing the notice, no order of confiscation shall be passed by the forest authority. Not only issuance of the show-cause notice is contemplated u/s 61-B of the Act but it further contemplates reasonable opportunity of being given to the owner of the vehicle to raise objections before the authority that the vehicle was not for that purpose or if it was used, it was not within the knowledge of the owner nor it was so used with the connivance of the owner. Of course, the word "agent" is there under sub-section (2) of Section 61-B of the Act but, this also requires that notice to the agent of the owner is to be given. Shri Pujari has contended that driver was the brother of the respondent no.1 and he was as such acting as the agent of the owner and he had knowledge that the wood was being transported for illegal purpose without proper permit and licence. However, this takes us to subsequent fact regarding knowledge on the part of the agent. But so far as first portion is concerned, it is evident from the record that no notice was given either to the owner of the truck or the driver of the truck who are the respondents in this revision. Consequently, the order of confiscation has been held to be bad in law. This matter was examined by this Court in KANJIBHAI G PATEL V. STATE reported in 1995 (2) GLR 1436 wherein it was laid down that before any order of confiscation can be passed requirements of Section 61-B have to be complied and those requirements are three in number:-

(1) Notice in writing containing the grounds for the proposed confiscation has to be served on the

person from whom forest produce or vehicle is seized and objections if any submitted by him have to be considered;

(2) In case of motor vehicle a notice in writing has to be issued to the registered owner thereof and his objections have to be heard;

(3) If the owner of the vehicle proves to the satisfaction of the authorised officer that it was used for carrying forest produce without the knowledge or connivance of the owner himself or his agent and the person in-charge of the vehicle and that each of them had taken all reasonable and necessary precautions against such use no order of confiscation can be passed.

(4) All these three conditions were not complied in the instant case. So far as the respondents are concerned, they are not concerned with the confiscation of Kher trees by the forest authorities. However, they are concerned with the confiscation of the motor vehicle owned by respondent no.2. Since no notice was given to the owner, he had no opportunity to satisfy the authority that it was carrying on forest produce, namely, Kher trees without the knowledge or connivance of the owner or his agent. With regard to knowledge and connivance on the part of the owner of the Kher trees or their agent, the Additional Sessions Judge discussed other circumstances also inasmuch as he found that the truck in question was used for carrying building material in general and it was not meant for carrying logs of wood from forest or from other areas. He further found that the truck transported building material but on return when it was waiting for some work the so called owners of Kher trees met the driver and settled the matter for transportation of Kher trees. The Sessions Judge further found that no exorbitant freight was charged by the driver of the truck. He further found that there was nothing on record that the driver of the truck knew that illegal forest produce, namely, Kher trees were being transported by the so called owners. Shri Pujari, learned APP, has however contended that it was the duty of the driver to enquire from the so called owners whether the wood was really licenced wood or not. It is actually going too far to expect from a driver to make enquiries about the ownership of the wood or to enquire as to where was the licence, and from which place the Kher trees were cut by the other accused who posed themselves to be the owners of the same. Normally, in common practice, drivers do not ask for proof of

ownership from the owners or consignors of the consignment. In this view of the matter, it cannot be said that the driver being the agent of the truck owner knew from any source that the Kher wood which was proposed to be carried in his truck was forest produce. Likewise, the owner of the truck had also no knowledge that his brother, driver of the truck, was carrying illegal forest produce on his truck. Thus, on merits also the learned Sessions Judge observed that it was not a fit case for confiscation. He was therefore perfectly justified in quashing the order of confiscation. So far as the order imposing penalty is concerned, it is also perfectly justified. It was contended before the lower appellate Court that the order of confiscation being too harsh any minor penalty may be imposed and considering this request the learned Sessions Judge imposed penalty of Rs.1,000/- to be paid jointly by the two respondents for the offence committed under Section 41 of the Indian Forest Act. This order also requires no interference.

For the reasons stated hereinabove, I do not find any reason to interfere with the order passed by the Court below. The revision is therefore dismissed.

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