

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31/07/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.1014 OF 1996

S. Gowri .. Petitioner

-Vs-

1. The Assistant Conservator
of Forest Prosecution Squad,
Madras □ 22.

2. The District & Sessions Judge
at Chingleput,
Chengai MGR District. .. Respondents

Petition filed under Article 226 of the Constitution of India for the
issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.L. Karthikeyan

For Respondents : Ms. Selvi George
Govt. Advocate for
Mr. Sethuraman, Spl.G.P.,

:J U D G M E N T

The petitioner is the registered owner of the vehicle bearing
Registration No.TN-09-E-2817, which she has purchased with the help of loan
granted by Tamil Nadu Industrial Investment Corporation. The vehicle was
being given on hire to various persons. On 21.3.1995, the vehicle was given
on hire to one Haja Moinudeen on the basis of the recommendation made by the
driver Sridhar and accordingly, the vehicle went to Ranipet and returned next
day. On 22.3.1995, the driver told the petitioner that one relative of the
aforesaid Haja Moinudeen wants to go to Sholingur on 23.3.1995 and accordingly
requested the owner to give the vehicle on hire. Accordingly, the vehicle was
booked by the driver in the name of Sri R.C., No.15, Second Street, Bajanai
Koil, Choolaimedu and the vehicle was taken on 23.3.1995. Since the vehicle
did not return till the night of 24.3.1995, the petitioner contacted in the
address was a bogus one. Thereafter, she lodged a complaint before the police

on 28.3.1995. She came to learn that the vehicle had been seized by the Forest Department on the allegation that Sandalwood has been smuggled in the vehicle. Subsequently, the petitioner received a notice to show cause as to why the vehicle should not be confiscated under Section 49A of the Tamil Nadu Forest Act, 1882 as amended by Act 44 of 1992. The petitioner submitted reply dated 3.4.1995 indicating that the vehicle had been given on hire on the basis of the request of the driver and the petitioner was not directly aware about the person who had taken the vehicle on hire and she had no knowledge nor she had connived in the alleged forest offence. It was stated that the driver Sridhar was solely responsible for whatever happened in the trip. It was further stated :-

□ . . . As is the general practice with all Travel Agencies in the City, the Van is sent to the address of the hirer according to the schedule given by him. The driver is mostly full time paid employee of the Travels, whom the owner trusts. The Travel agency mostly believes the hirer and the purpose of the journey reported by him, as they have no means to verify either the antecedents of the hirer or his actual intentions. Most of the parties do not even want to specify the purpose for which the van is wanted. Virtually, the employee driver is the custodian of the van during the period of the hire and he and only he, is solely and legally responsible for whatever happens during the trip, such as accident, theft, illegal use of the vehicle etc. The owner is in no way or by any stretch of imagination can be held responsible for anything that happens during the period of the hire. The hirer, his party and the driver of the van only are solely responsible for any illegal activity done with the hired vehicle . . . □

2. The driver of the vehicle had made a statement before the Forest Officers soon after the seizure of the vehicle. Subsequently, on receipt of notice relating to enquiry, the driver had made a further statement in writing dated 22.4.1995 wherein he has stated that the owner of the vehicle did not have any connection with the illegal transportation of Sandalwood and the person who had hired the vehicle had not met the owner and the advance amount had been received by the driver and paid to the owner. In other words, it has been stated by the driver that the owner did not have any knowledge nor had connived in the commission of the offence.

3. On 14.6.1995, the first respondent passed an order of confiscation relying mainly upon the statement made by the driver to the effect that he had got permission from the owner to transport Sandalwood and he was not aware of the incident. The 1st respondent disbelieved the subsequent statement wherein the driver had stated that she was not aware of the offence and had not connived in the commission of the offence. The 1st respondent also concluded that the owner had not taken all reasonable and necessary precautions relating to the illegal use of the vehicle. The appeal filed by the owner was rejected by the Principal Sessions Judge by judgment dated 22.12.1995. The present petition has been filed challenging the order of confiscation as confirmed by the Appellate Court.

4. The main contention raised in the writ petition is to the effect that the Original Authority as well as the Appellate Authority

committed illegality in relying upon the statement made by the driver before the Authorised Officer and should have relied upon the subsequent statement made by the driver wherein the driver had completely exonerated the owner.

5. Section 49-A of the Tamil Nadu Forest Act, 1882, which was introduced by Amended Act 44 of 1992, empowers the Authorised Forest Officer to confiscate vehicle used in the commission of forest offence. Section 49-B of the Act relates to the procedure to be followed and it is extracted hereunder :

□ S.49-B. (1) No order confiscating any scheduled timber, or tools, ropes, chains, boats, vehicles or cattle shall be made under Section 49-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.

(2) Without prejudice to the provisions of sub-section (1) no order confiscating any tool, rope, chain, boat, vehicle or cattle shall be made under Section 49-A if the owner of the tool, rope, chain, boat, vehicle or cattle proves to the satisfaction the authorised officer that it was used in carrying scheduled timber 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 or cattle and that each of them had taken all reasonable and necessary precautions against such use.□

6. Section 49-B(1) envisages notice to the person from whom the vehicle has been seized and the procedure lays down issuance of notice to the registered owner of the vehicle. Section 49-B(2) envisages that no order of confiscation should be passed if it is proved to the satisfaction of the Authorised Officer that the vehicle was used in carrying scheduled timber without the knowledge and connivance of the owner himself, his agent, if any and the person in charge of the vehicle and further each of them had taken all reasonable and necessary precautions against such use.

7. In the present case, even if the subsequent statement of the driver is accepted, it would only mean that the owner of the vehicle had no knowledge and had not connived in the commission of the offence. However, it is apparent that the driver of the vehicle, who was obviously the person in charge of the vehicle, was aware of the commission of the offence. Even if the subsequent statement of the driver is accepted, it does not indicate that the driver had no knowledge regarding the commission of the offence.

8. The procedures contained under Sections 49-A and 49-B have been construed by a Division Bench of this Court in Writ Appeal No.1296/19 95 dated 4.12.1995. In the said case, the Forest Officer had passed an order of

confiscation which was set aside by the Appellate Authority on the ground that at the time of commission of the offence, the owner of the vehicle was in the hospital attending to his son and was not aware of the illegal transportation of timber. After referring the provisions contained, it was observed thus :-

□ The latter portion of the proviso places burden upon the owner of the vehicle. It is not enough for the owner of the vehicle to prove that the vehicle was used without his knowledge or connivance. He is also further required to prove that the agent or the driver under whose possession, the vehicle was being kept, had taken all reasonable and necessary precautions against such use. In the instant case, it is not in dispute that the vehicle was seized when it was transporting illegally sandalwood. In such cases the aforesaid proviso comes into operation. The burden shifts on the owner of the vehicle to prove by convincing evidence that not only he had no knowledge of or had not connived with the use of the vehicle for illegal purpose, but his agent or the person in charge of the vehicle had taken all the reasonable and necessary precautions against such use. The owner has not adduced any evidence to show that the driver of the vehicle took necessary and reasonable precautions to prevent the use of the vehicle for illegal transporting the sandalwood. The fact that the driver was in the custody of the Police, did not in any way prevent the owner to examine him and to adduce any other evidence to prove that reasonable and necessary precautions were taken by the person in charge of the vehicle. The object of the proviso is to ensure that the owner of the vehicle does not escape by merely pointing out that he had no knowledge. He being the owner of the vehicle, it is his responsibility to ensure that not only he himself had taken care to see that the vehicle was not used for any unauthorised purpose, but also the person placed in charge of the vehicle did not use the vehicle or allowed it to be used or connived at use for such purpose. This provision of law requires to be scrupulously observed in order to prevent the smuggling of sandalwood. Therefore, we are of the view that the Prescribed Authority and the learned single Judge have not taken into consideration the true and correct scope and ambit of the proviso to Section 49-B of the Act. That being so, the order of the Prescribed Authority cannot be sustained. Consequently, the order of the single Judge has to be set aside.□

9. In view of the aforesaid analysis of the procedures by the Division Bench, which is binding on me, even accepting in toto the subsequent statement of the driver, the order of confiscation passed by the Authorised Officer and confirmed by the Appellate Authority cannot be said to be illegal. From the subsequent statement of the driver, it is apparent that the driver had knowledge in the commission of the offence and it is further apparent that he had not taken all reasonable steps to prevent the commission of the offence. Therefore, even assuming that the owner was unaware of the

commission of the offence and had not connived in the commission of the offence, since the driver was aware of such illegal user of the vehicle, the vehicle was liable to be confiscated.

10. The learned counsel appearing for the petitioner in

course of hearing of the writ petition raised the contention that the statement made by the driver before the Authorised Officer behind the back of the petitioner has been utilised and no enquiry has been made giving opportunity to the petitioner to prove her innocence. Such submission even though prima facie attractive, cannot be accepted in the facts and circumstances of the present case. It appears that such a contention was never raised before the Appellate Authority or even in the writ petition and for the first time such submission has been made in course of hearing of the writ petition. Moreover, as already indicated, even if the first statement made by the driver is ignored altogether, the subsequent statement made by the driver, upon which much reliance has been placed by the petitioner is accepted in toto, cannot help the petitioner to escape from the rigour of the provision. It is apparent that the driver had knowledge regarding the commission of offence and the driver had not taken all reasonable steps to prevent the commission of the offence. A careful reading of the provisions of Section 49-A and 49-B in the light of the Division Bench decision makes it amply clear that even if she is totally innocent, if the agent of the owner or the person in charge of the vehicle were responsible, the vehicle is to be confiscated.

11. My attention has been drawn to a Full Bench decision of Andhra Pradesh High Court reported in 1998 AIHC 5029 (SUB-DIVISIONAL FOREST OFFICER v. VIJAY B. GULATI AND OTHERS). Apart from the fact that the Division Bench decision of Madras High Court is binding, it appears that the provisions contained in Andhra Pradesh Forest Act were different. In the said Act, Section 44(2-C) was to the following effect :-

□ 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 or vehicle shall be made if the owner thereof proves to the satisfaction of the authorised officer that it was used in carrying the property without his knowledge or connivance or the knowledge or connivance of his agent, if any or the person in-charge of the tool, rope, chain, boat or vehicle in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.□

12. A careful perusal of the aforesaid provision indicates the difference in phraseology used by the Legislature. In the Andhra Pradesh Act, the use of the expression of the word "or" at the relevant places makes all the difference, whereas under the Tamil Nadu Act, the use of the word "and" at the relevant places makes the intention clear that all the clauses are conjunctive and not disjunctive. The decision of the Andhra Pradesh High Court is clearly distinguishable and at any rate the Division Bench decision is binding on me.

13. For the aforesaid reasons, I do not find any merit in this writ petition, which is accordingly dismissed. No costs.

Index : Yes

Internet : Yes

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To

1. The Assistant Conservator
of Forest Prosecution Squad,
Madras □ 22.

2. The District & Sessions Judge
at Chingleput,
Chengai MGR District.
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