

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 300 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
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 concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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STATE OF GUJARAT

Versus

DHANSUKHLAL AMRUTLAL PUROHIT

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Appearance:

1. Special Criminal Application No. 300 of 2005  
MS NV JOSHI, LD.APP for Petitioner No. 1-2  
..... for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 30/03/2005

ORAL JUDGMENT

Heard Ms.N.V. Joshi, learned counsel appearing  
for the petitioners.

2. Invoking jurisdiction of this Court under Sections 226 and 227 of the Constitution of India, the petitioners have prayed for appropriate writ, order or direction to the effect that the order passed by the ld.Sessions Judge, Valsad, in Criminal Appeal No.55 of 2002, be quashed and set aside, whereby the ld.Sessions Judge has allowed the appeal preferred by the owner of the Maruti Fronti Car bearing Registration No.GJ-15-C-1179 ( for short 'Maruti Car') allegedly used in piloting the motor truck bearing Registration No.GTK-5938 (for short 'the truck'), loaded with 'Kherwood', a forest produce.

3. Assailing the said order, it is argued by Ms.N.V. Joshi, ld.APP, that the ld.Sessions Judge has erred in applying the ratio of the decision in the case of Manubhai Babubhai Patel v. Deputy Conservator of Forest and another, reported in 1985 (2) GLR 836. According to Ms.Joshi, the facts of the referred decision are materially different than the facts of the present case. In the referred decision, even as per the case of the Forest Department, an attempt was being made of use of tempo to carry forest produce and actually when the same was intercepted and ceased, it was not found loaded with any forest produce; whereas in the present case, there is ample evidence on record with the Forest Department and there is also admission on the part of the person travelling in the truck carrying 'Kherwood' in the truck in question in violation of the law and committing offence punishable under the Forest Act. Ms.Joshi has also pointed out the facts stated by the driver of the truck namely Kalyanbhai Chamarbhai Patel (Annexure-E) as well as statement of the driver of Maruti Car namely Rajeshbhai Amrutlal Shah. As per the say of the Forest Department, the real brother of Rajesh A. Shah is the owner of the Maruti Car and the petitioner-State mainly relies on the admission made by the said two persons i.e. driver of the truck and driver of the Maruti Car.

4. The ld.Sessions Judge has considered the scheme of Section 61 of the Indian Forest Act, 1927, as amended in the year 1983. It is not the finding that no offence punishable under the Forest Act was committed. In this background, it is argued by Ms.Joshi that the said Maruti Car can be said to have been used in commission of the offence punishable under the Forest Act as the driver of the Maruti Car was piloting the truck carrying 'Kherwood' illegally.

5. Having considered the facts stated by both these personnel in the case of Police Department, it is rightly

held by the ld.Sessions Judge that the confiscation of Maruti Car ought not have been ordered by the authority. It emerges from record even produced before this Court that firstly the truck was intercepted and not the Maruti Car, which was allegedly piloting the truck. On plain reading of the order under challenge, it is also not clear as to what was the distance between the allegedly piloting Maruti Car and the truck following the Maruti Car.

6. The ld.Sessions Judge while appreciating the facts placed before him has rightly applied the ratio of the decision in the case of Manubhai Babubhai (supra). In response to the query raised by the Court on instructions it is submitted that the truck was also ordered to be confiscated. However, the appeal before the Court of Sessions was filed only against the order of confiscation of Maruti Car and it was argued that the Maruti Car was not at all involved in committing the offence and it was not found carrying any forest produce illegally and the said Maruti Car was not found piloting the truck in question; otherwise that car could have been stopped first or simultaneously with the truck in question.

7. Ms.Joshi, ld.APP, has also drawn attention of this Court on the observations made by the Apex Court in the case of State of Karnataka v. K. Krishnan, reported in AIR 2000 SC 2729, whereby the Apex Court accepting the stand of the State of Karnataka has observed that :

"7. ... The Courts cannot shut their eyes and ignore their obligations indicated in the Act enacted for the purposes of protecting and safeguarding both the forests and their produce. The forests are not only the natural wealth of the country but also protector of human life by providing a clean and unpolluted atmosphere. We are of the considered view that when any vehicle is seized on the allegation that it was used for committing a forest offence, the same shall not normally be returned to a party till the culmination of all the proceedings in respect of such offence, including confiscatory proceedings, if any. Nonetheless, if for any exceptional reasons a Court is inclined to release the vehicle during such pendency, furnishing a bank guarantee should be the minimum condition. No party shall be under the impression that release of vehicle would be possible on easier terms,

when such vehicle is alleged to have been involved in commission of a forest offence. Any such easy release would tempt the forest offenders to repeat commission of such offences. Its casualty will be the forests as the same cannot be replenished for years to come.

8. However, it is important to note at this stage that the Apex Court was dealing with a decision of the High Court in exercise of powers vested with it under Section 482 of the Code of Criminal Procedure and that too against the release of vehicle as an interim arrangement, pending inquiry before formal confiscation. Unless the roads are reasonably good, it will be difficult to drive away a small car in a thick forest. When the State and/or National Highway is passing through a forest or a reserved forest area and such a small vehicle is intercepted on similar allegations, then before confiscation of such a small vehicle, the Department should produce more than convincing evidence that the vehicle was actually used in commission of the offence punishable under the Forest Act. Of course, the admissions made before the Forest Department can be read as substantive piece of evidence in inquiry by the authorities dealing with the proceedings under Sections 61/62 and 71 of the Forest Act.

9. For short, the finding recorded by the ld.Sessions Judge in the present case is absolutely legal and based on material placed before him. There is no element of either material error or perversity. Therefore, there is no scope to reevaluate the finding in exercise of powers vested with it under Articles 226 and 227 of the Constitution of India. As per the settled legal proposition, the powers of judicial superintendence are to be exercised in given rare circumstances and exceptional fact situation. There is no even element of refusal of exercise of jurisdiction or improper exercise of jurisdiction or perversity and, therefore, the Court is not inclined to disturb the finding as the same is arrived at following the decision of this Court in the case of Manubhai Babubhai (supra), which is a binding force and it was binding also to the ld.Sessions Judge.

10. In view of above observations, the present petition is hereby dismissed in limine.

( C.K. Buch, J )