

W.P.(C) NO.15573 OF 2006

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Sk.Ibrahim Petitioner

Versus.

State of Orissa & others Opp.parties

For petitioner : M/s. S. K. Mohapatra,
C.K. Pradhan & B.B. Baisakh

For opp. parties : Government Advocate

PRESENT

**THE HON'BLE SHRI ACTING CHIEF JUSTICE I.M.QUDDUSI
A N D
THE HON'BLE SHRI JUSTICE B.K.NAYAK**

Date of hearing : 23.10.2009 : Date of judgment: 22.01.2010

B.K.NAYAK, J. In this writ application the petitioner prays to quash the order of confiscation of his vehicle under Annexure-1 passed by the Authorised Officer-cum-A.C.F., Angul Forest Division, Angul in C.P. Case No.5 of 2005-06 and also the appellate order under Annexure-2 passed by the learned District Judge, Dhenkanal in FAO No.7 of 2006 confirming such confiscation order.

2. The facts of the case are that on 08.05.2005, the Forester, Panchamahala Forest Check Gate and his staff detected a Tata Sumo vehicle bearing registration number plate OR-02-J/9891 at 12.30 A.M.

that was carrying 93 bundles of kendu leaves unauthorisedly. The three occupants of the said vehicle including the driver having failed to produce any document of authority regarding such transportation, the vehicle along with kendu leaves were seized and brought to the forest rest house, Angul. Further enquiry revealed that the kendu leaves were being transported from Kishorenagar area of Angul to Balijhari in the district of Cuttack. The Forest Range Officer, Purunagarh Range, Angul reported the matter on the basis of which confiscation proceeding no.5 of 2005-06 was initiated before the Authorised Officer-cum-ACF, Angul Forest Division, Angul.

3. Nearly three months after the seizure of the vehicle, the present petitioner claiming to be the owner of the said vehicle filed petitioner and a show cause in the confiscation proceeding stating that the vehicle in question belonged to him and its actual registration number was OR-02H-3501 and that he had engaged one Sk.Salim Mohammad of Tusura, district-Kendrapara as driver and the driver had been specifically instructed not to carry contraband goods or forest produce. It was further stated that on 28.03.2005 the driver took the said vehicle with the permission of the petitioner for use in the marriage ceremony of a relation with a promise to return the vehicle after two days. The driver having not returned the vehicle till 31.03.2005, as promised, the petitioner went to his house on 10.4.2005, but failed to get any information about the vehicle and whereabouts of the driver from his family members. The petitioner thereafter lodged a report at

Balichandrapur Police Station about the missing of the vehicle. The O.I.C., Balichandrapur P.S. having not taken any action, the petitioner approached the Superintendent of Police of Jajpur on 17.5.2005 whereafter the O.I.C., Balichandrapur P.S. registered P.S.Case No.56 dated 22.05.2005 under Section 407 of the I.P.C. against the driver and took up investigation. The driver remained absconding till 28.7.2005 when he was found by the petitioner's son driving a bus at Cuttack. The driver was then produced in Malgodown Police Station and during interrogation he disclosed that the vehicle (Tata Sumo) was seized by the Forest Staff, Angul Division on 08.05.2005. The I.O. along with the driver and the petitioner came to Angul on 29.7.2005 and on enquiry at the Forest Division office it was found that one Tata Sumo bearing Registration No.OR-02J-9891 was seized. At that time, the driver disclosed that he had displayed the fake number plate, as aforesaid, on the Tata Sumo belonging to the petitioner for illegal transportation of kendu leaves. On verification of the Engine and Chasis numbers of the seized Tata Sumo, it was found that it belonged to the petitioner and its real registration number was OR-02H-3501. The petitioner, therefore, contended before the Authorised Officer that despite his specific instruction not to use the vehicle for any illegal purposes, his driver transported kendu leaves unauthorisedly without the knowledge, consent or connivance of the petitioner and, therefore, the vehicle was not liable to be confiscated.

4. On consideration of the show cause of the petitioner and the materials/evidence on record the Authorised Officer arrived at the conclusion that the Tata Sumo was used for commission of forest offence and that the petitioner (owner) must be imputed with the knowledge of the commission of the offence by his agent, the driver, and, therefore passed the order of confiscation of the said vehicle.

5. The petitioner challenged the order of confiscation before the District Judge, Dhenkanal by filing an appeal under Section 56 (2-e) of the Orissa Forest Act which was registered as FAO No.7 of 2006. After hearing both sides, the learned District Judge, Dhenkanal dismissed the appeal with the finding that since the petitioner's driver- Sk.Salim Mohammad had knowledge about the illegal transportation of forest produce, the petitioner cannot escape liability even though he had no personal knowledge of use of his vehicle for such illegal transportation.

6. In assailing the impugned orders, the learned counsel for the petitioner contended that the petitioner had instructed his driver Sk.Salim Mohammad not to use the vehicle for illegal purposes and that the petitioner having no knowledge or connivance about the use of his vehicle for transportation of kendu leaves by the driver, his vehicle was not liable to be confiscated and, therefore, the orders under Annexure-1 and 2 are bad and illegal.

7. The learned Government Advocate on the other hand contended that in view of the specific provision contained in Section 56(2-c) of the Orissa Forest Act, which provides that the owner of the

vehicle can escape liability only by proving that the vehicle was used not only without his knowledge or connivance but also without the knowledge or connivance of his agent in charge of the vehicle, and that the petitioner's driver having admittedly the knowledge of illegal transportation of forest produce, the vehicle was liable to be confiscated and as such there is no infirmity in the orders under Annexure-1 and 2.

8. The contention raised on behalf of the petitioner has the reference to sub-section (2-c) of Section 56 of the Orissa Forest Act, 1972 (hereinafter referred to as 'the Act'). Sub-section (2-c) runs as follows :

“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, vehicle or cattle shall be made if the owner thereof proves to the satisfaction of the authorised officer that it was used 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 vehicle or cattle, in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.”

9. The scope of Section 56 (2-c) directly came up for consideration before this Court in the case of **State of Orissa represented through the Range Officer, Khurda, Forest Range v. Kiran Sankar Panda & others**; 71 (1991) C.L.T. 157. In paragraph-3 of the aforesaid judgment this Court held as follows :

“so far as confiscation of any tool, rope, chain, boat, vehicle or cattle is concerned, section 56 (2-c) has excluded the conception of mens rea

by necessary implication, as already noted. We have said so because this section states that in case of confiscation of such articles, it is the owner who has to prove that the same had been used without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of the article in question. This would show that knowledge or connivance is assumed unless contrary is proved. The knowledge or connivance about which section 56 (2-c) has spoken is not confined to the owner but takes within its fold the knowledge or connivance of the agent, if any, or of the person in charge of the article in question. Not only this, this section further states that to escape the order of confiscation, it must be further proved that each of the concerned persons had taken all reasonable and necessary precaution against the use of the article in question in respect of the commission of the forest offence.”

10. The aforesaid decision has also been subsequently followed in the case of **Malatilata Samal and others v. State of Orissa and others: 94 (2002) CLT 290**. This Court also took note of the views of the Hon’ble Apex Court in the case of **State of Karnataka v. K.Krishnan: AIR 2000 SC 2729**, where it was held that liberal approach in the matter with respect to the property seized which is liable to confiscation is uncalled for as the same is likely to frustrate the provisions of the Act.

11. In the instant case, the petitioner had given the vehicle to his driver, who admittedly himself knowingly used the vehicle for commission

of forest offence. Even assuming for the sake of argument that the petitioner instructed the driver not to use the vehicle for illegal purposes and that he had no knowledge of the illegal user of the vehicle by his driver, he cannot escape the liability of confiscation as his driver, who was the agent in-charge of the vehicle, knowingly used the same for commission of forest offence.

12. In the context of the aforesaid established facts and in the light of the settled position of law as seen above, we do not find any merit in this writ petition, which is accordingly dismissed.

There shall, however, be no order as to costs.