

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

561-A Cr.P.C No. 57/2003
Cr.M.P Nos. 107/2003, 103/2003 & 124/2003
561-A Cr.P.C No. 58/2003
Cr. M. P Nos. 124/2003 & 107/2003

Date of Decision: 08.12.2011

State of J&K	Vs	M/s Thakur Motors
State of J&K	Vs	Trilochan Singh

Coram:

Mr. Justice J.P.Singh.

Appearing Counsel:

For the Petitioner(s) : Mr. R.S.Jamwal, Dy.A.G.

For the Respondent(s) : M/s Y.E.Tak & P.S.Pawar, Advocates.

i)	Whether approved for reporting in Press/Media	:	Yes
ii)	Whether to be reported in Digest/Journal	:	Yes

1) A Patrolling Party led by Inspector Jagjit Bakshi intercepted Truck bearing Registration No.PB08N-2860 loaded with 263 cft timber in 295 Fir Planks and 330 cft. timber in 380 Kail Planks at Dyalachak-Kathua. Gulshan Kumar- the driver of the vehicle failed to produce documents supporting permission to transport timber. Finding *prima facie*, a case for commission of offences punishable under Sections 6, 15, 16 & 39 of the Jammu and Kashmir Forest Act, the Truck was seized along with timber loaded therein.

2) Deputy Director Forest Protection Force Gamma Unit J3-Kathua, informed the Divisional Forest Officer, Kathua Forest Division Kathua, the Authorized Officer in terms of Section 26 of the Jammu and Kashmir Forest Act, 1987

(1930 A.D.) of the seizure requesting confiscation of the seized Truck and timber.

- 3) Initiating Confiscation proceedings, the Authorized Officer issued Notices to the concerned for their Response thereto.
- 4) During the currency of proceedings before the Authorized Officer, the seized Truck was ordered to be released on superdnama. This order was stayed by the learned Sessions Judge, Kathua on Deputy Director Forest Protection Force, Kathua's Criminal Revision.
- 5) Aggrieved by learned Sessions Judge's Order, the Deputy Director approached this Court seeking setting aside of the Revisional Court's Order of November 29, 2011, invoking its inherent jurisdiction.
- 6) Disposing of the Deputy Director's Petition, a direction was issued to the Authorized Officer to pass final orders on or before January 07, 2002 on Confiscation proceedings.
- 7) The Authorized Officer issued separate Notices to the owner of the Truck and timber for their appearance before him. The owner of the Truck did not appear and instead addressed Communication to the Authorized Officer to pass appropriate orders saying that he had nothing more to say in the matter. *However in its Response to the*

*Authorized Officer's Communication, the owner of the Timber indicated that he had purchased packing cases from Saverा Enterprises on 05.11.2001 but had no knowledge about the seized illicit timber. According to him, he had not authorized anyone including the driver to load any other timber except the packing cases which were purchased by him from Saverा Enterprises. Along with his Reply, he annexed photocopies of the Bill of Saverा Enterprises, in terms whereof, 92 packing cases of 224.85 cft volume and 103 packing cases of 241.31 cft volume of timber, **duly nailed** were purchased for a total amount of Rs.1,41,200/-.*

- 8) Considering the owner's Reply, the evidence produced before him and the records of the case, the Authorized Officer came to the conclusion that the seized timber was not *out turn of C-Class timber* and would not match the measurements and volume of timber which the owner had purchased from Saverा Enterprises, Kunjwani Talab, Jammu, *which had sold Nailed package cases and not Raw timber which was seized by Forest Protection Force.* He, accordingly, directed confiscation of 675 pieces of seized timber of Kail and Fir of 593 cft volume and Truck bearing Registration No.PB08N-2860 belonging to M/s Thakur Motors.

It was noticed by the Authorized Officer in his Confiscation order of 07.01.2002 that the consigner, transporter and/or consignee had not staked any claim to ownership of the seized timber which was presumed illicit under Section 39 of the Jammu and Kashmir Forest Act.

- 9) Aggrieved by Authorized Officer's Confiscation Order, Tarlochan Singh and M/s Thakur Motors, questioned it before the learned Sessions Judge, Kathua by their separate Criminal Revision Petitions.
- 10) Both the Revision Petitions were allowed by the learned Sessions Judge vide his order of April 25, 2003 setting aside Authorized Officer's order of 07.01.2002.
- 11) The State of Jammu and Kashmir has invoked inherent jurisdiction of the Court seeking setting aside of learned Sessions Judge's order, *inter alia*, on the ground that learned Sessions Judge had erred in holding that confiscation proceedings before conviction under the Forest Act were unwarranted.
- 12) Heard learned counsel for the parties and perused the records.
- 13) Perusal of the Revisional Court's order reveals that the Authorized Officer's order was found unsustainable by the learned Sessions Judge on three grounds; viz
 - (1) The Authorized Officer did not indicate in his order about commission of offences under the Forest Act

and as to whether the seized timber was Government property or its source was not private and the confiscation was not, therefore, warranted in the circumstances.

- (2) Opportunity of hearing was not allowed to owner of the timber who had staked claim thereto.
 - (3) The forest produce could not be confiscated in the absence of conviction under the provisions of the Forest Act.
- 14) Before considering the issue as to whether or not the order passed by the Revisional Court warrants interference by the Court, reference needs to be made to the findings returned by the Authorized Officer while directing confiscation of the Truck and timber. These read thus:-

“The discernable and established facts of the matter, therefore, are:-

- (a) the load carrier PB08-N-2860 was mobile on the National Highway with the sawn but raw conifer Kail and Fir timber load; illegally and clandestinely being transported by it during night hours that too without any valid documents i.e. F-25 of the Forest Department, a statutory requirement for transportation of timber and other forest produce, thus violating Section 6, 15 and 16 of the J & K Forest Act amended 1997. The vehicles carrying forest produce are invariably not allowed by the Forest Department to be mobile after sun-set and before sunrise and the condition always forms a part of permissions issued for any such legal transports.
- (b) the quantity, quality, dimensions and the descriptions of sawn but raw conifer timber, the out turn, - as it is, of the timber scants (sleepers) and being transported hence seized from the load carrier in question is completely different from the Stuff i.e. packing cases indicated in the accompanying Bill No. 118 dated 6.11.2001 of Savera Enterprises Kunjwani Talab and the receipt No. 2021 dated 6.11.01 issued by KGC Private Limited Jammu.
- (c) Shri Tarlochan Singh, Consigner in his Written Statement in response to the queries has submitted before the Authorized Officer that he had purchased the following packing cases for M/s Karan Singh and Sons Single Bridge Jullandhar from

Savera Enterprises Kunjwani Talab, Jammu in finally finished and Nailed form.

Kail 97 Nos = 224.85 cft ! All 210 MM x 75MMx22 MM

Fir 103 pcs = 241.31 cft!

Total 200 pcs = 466.16 Cubic feet.

He further submits that the Stuff was the out turn of C-Class timber and had been verified by the Timber Transport Officer (Range Officer) Sh. A.K.Bhat and is accordingly mentioned in the Bill No. 118 dated 6.11.2001 issued by Savera Enterprises Kunjwani Talab, Jammu and further acknowledged by Karter Goods Carriers Pvt. Ltd. Jammu vide their transportation receipt No. 2021 dated 6.11.2001.

However, as per enquiry of Forest Protection Force, M/s Karan Singh and Sons Single Bridge Jullandhar in their Written Statement has denied to have placed any such order for any type of goods.

In contrast, the Sawn but raw conifer timber being transported and seized from the vehicle which has been inspected by the undersigned as well and is definitely not the out turn of C-Class Timber as a whole, and bears the undermentioned dimensions (as per seizure memo).

Fir 80 pcs 10' x 5" x2 1/2"

215 pcs 10' x 8"x 1 1/2"

Total : 295 pcs. = 263 Cubic feet.

Kail 323 Nos 10' x 8" x 1 1/2"

28 pcs. 10' x 8" x 1 1/2"

29 pcs. 10' x 3" x 1 1/2"

380 330 cubic feet

G.Total 675 pcs. = 593 cubic feet

Sh. Tarlochan Singh who claims to have requisitioned the Vehicle for transportation of the packing cases so purchased for M/s Karan Singh & Sons Jullandar, has denied any knowledge about the timber actually seized while being under transportation by the seized vehicle and further has not staked any claims for its ownership even; thus disassociating himself from the seized material and its illegal transportation."

- 15) Perusal of above findings indicates Authorised Officer's satisfaction that the seized timber would not tally with the Nailed packing cases which were stated to have been purchased by Tarlochan Singh from Savera Enterprises. It further comes out from his findings that movement of timber without there being any document in support

thereof was in violation of Penal provisions of the Forest Act.

- 16) The findings of the learned Sessions Judge that the Authorised Officer's order nowhere indicated that the timber was Government property, therefore, appears to have been recorded without going through the records and appreciating that in the absence of any claim made by Tarlochan Singh to the seized property, specifications and condition whereof would not tally with the timber purchased by the owner, the seized timber could not be said to be property other than Government property. In the absence of any Claim by the owner to the seized property coupled with his plea in writing that he was unaware as to how the seized property was recovered from the Truck when he had ensured at the time of loading that it was sawn packing cases which were purchased from Savera Enterprises, the seized property could not but be treated as Government property.
- 17) Learned Sessions Judge has recorded findings without considering the detailed findings of the Authorized Officer based on facts indicating that the property which was purchased from Savera Enterprises was **Nailed timber** with different specifications whereas the seized property was **Raw timber** with specifications which would not

match with the timber purchased from Savera Enterprises.

- 18) Finding of the learned Sessions Judge that opportunity of hearing was not allowed to the owner of timber who had staked claim to the timber too appears to have been recorded without going through the records of the Authorized Officer which do not indicate the owner to have staked any claim to the seized timber.
- 19) The view taken by the learned Sessions Judge that confiscation of timber was permissible only after conviction for offences under the Forest Act, is on the face of it, erroneous, in that, the provisions of Section 28 of the Forest Act, referred to by the learned Judge, are subject to the provisions of Section 26 of the Act, in terms whereof confiscation of Government property in respect whereof offences under the Forest Act **appear to have been committed**, is open to Confiscation, even before conviction under the Forest Act.
- 20) The learned Sessions Judge was required to deal with the factual findings recorded by the Authorised Officer, in the light of the material on records, before recording his findings and opinion on the issues projected before him in the Revision Petition. He has, however, omitted to do what he was required so to do before exercising

jurisdiction to pass appropriate orders under Section 26 (b) of the Act.

- 21) For all what has been said above, the findings recorded by the learned Sessions Judge in two Revision Petitions cannot, therefore, be sustained as he has omitted to exercise Revisional Jurisdiction in the manner he was required so to do under law.
- 22) This is a fit case where exercise of power of superintendence under Section 104 of the Constitution of Jammu and Kashmir is called for requiring the learned Sessions Judge to decide afresh the respondents' Revision Petitions in accordance with law.
- 23) The orders passed by the learned Sessions Judge, Kathua on 25.4.2003 in Criminal Revision Nos. 19-A and 14 are, therefore, quashed reviving the Revision Petitions for their consideration afresh by the learned Sessions Judge, in accordance with law.

**(J.P.Singh)
Judge**

Jammu:
08.12.2011
Pawan Chopra