

PRADIP MOHANTY, J & B.K.NAYAK, J.

W.P.(C) NO.12286 OF 2004 (Decided on 24.06.2011)

ASHOK KUMAR SAHOO

.....Petitioner.

.Vrs.

**FOREST RANGE OFFICER,
NAYAGARH & ANR.**

.....Opp.Parties.

ORISSA FOREST ACT, 1972 (ACT NO.14 OF 1972) – S.2 (g) (ii) & 56.

For Petitioner - M/s. Samir Kr. Mishra & Mr. M.R.Dash.

For Opp.Parties - Mr. A.Rath, Addl. Standing Counsel.

B.K.NAYAK, J. In this writ petition, the petitioner has prayed to quash the order dated 27.12.1999 of confiscation of his Mini Truck bearing registration No.OR-05-8337 passed by the Authorised Officer-cum-Asst. Conservator of Forest, Nayagarh Division, Nayagarh under Section 56 of the Orissa Forest Act vide Annexure-1 and also the appellate order dated 16.10.2004 passed by the learned District Judge, Puri in Misc. Appeal No.21 of 2000 vide Annexure-2 confirming such order of confiscation.

2. The facts of the case are that on 24.10.1998 at about 5.00 A.M., while the Forester, Nayagarh Section and his staff were performing the duty of checking of vehicles at Nayagarh Forest Check Gate, the petitioner's Mini Truck bearing registration No.OR-05-8337 was stopped and on verification it was found that the truck was carrying 12000 sal leaf plates and 2000 sal leaf processed cups. The driver of the truck having failed to produce any permit for transportation of sal leaf plates and processed cups, the vehicle was seized. The Forest Range Officer, who conducted inquiry, being of the opinion that forest offence was committed because of want of permit for transportation of sal leaf plates and cups reported the matter to the Divisional Forest Officer, Nayagarh Division, whereupon confiscation proceeding was initiated. In the proceeding on being noticed the owner-petitioner appeared and filed his show cause inter alia on the ground that he had no knowledge and connivance with the driver of the vehicle for transportation of the sal leaf plates and cups.

3. Taking into consideration the evidence led by the forest officials and the statement of the driver of the vehicle in question, the Authorised Officer came to the conclusion that the vehicle in question was involved in the commission of forest offence inasmuch as the driver could not produce any permit for transportation of sal leaf plates and processed cups.

4. Although several contentions have been raised by the learned counsel for the petitioner we confine ourselves to the only legal contention to the effect that there being no allegation whatsoever that the sal leaf plates and processed cups, which were being transported in the truck in question, were found in or brought from any forest, such sal leaf plates and cups cannot be said to be 'forest produce' within the meaning of the definition and, therefore, no offence having at all been committed for transportation

thereof, the order of confiscation of the vehicle and also the affirming appellate order are bad and illegal. In this connection, the learned counsel for the petitioner has relied upon two decisions of this Court, viz: 2006 (II) OLR 109; **Smt. Padamabati Lenka v. State of Orissa and another** and 2010 (II) OLR 011; **Smt. M. Vijayalaxmi v. Divisional Forest Officer-cum-Authorised Officer, Bhadrak (WL) Division, Bhadrak and another**.

5. The learned Additional Standing Counsel, on the other hand, contends that processed sal leaf plates and cups are nonetheless sal leaf and when they are found in or brought from any forest they are 'forest produce' for which transit permit under the Orissa Timber and other Forest Produce Transit Rules, 1980 (in short "the OTT Rules") is necessary.

6. There is no dispute that for transportation of forest produce transit permit under the OTT Rules is required. But the question is whether sal leaf plates and cups which do not lose their character as sal leaf even if processed are per se forest produce? Section 2(g) of the Orissa Forest Act which defines forest produce, consists of two parts, i.e., 2 (g) (i) and 2 (g) (ii). Certain categories of forest materials which are listed under Section 2 (g) (i) are forest produce whether found in or brought from a forest or not. Section 2 (g) (ii) lists certain items as forest produce only when they are found in or brought from a forest. Sal leaf comes within the purview of Section 2(g) (ii) and, therefore it is forest produce only when it is shown that the same is found in or brought from a forest. In the cases of **Smt. Padamabati Lenka** and **Smt. M. Vijayalaxmi** (supra) where the vehicles carrying sal leaves were intercepted on the road and there was no allegation by the prosecution that the vehicles were carrying sal leaves which were collected from the forest, it was held that the leaves seized from such vehicles cannot be treated as forest produce.

7. In the instant case, we have carefully gone through the seizure list and the prosecution report available on the lower court records along with the statements of witnesses. In the seizure list as well as the inquiry report of the Range Officer, it is alleged that the vehicle in question was intercepted at the Forest Check Gate on the main road and it was found that the sal leaf plates and cups were being transported therein. There is absolutely no allegation that the said sal leaf plates and cups were manufactured by collection of leaves from any particular forest or that they were brought from any forest. The statements of the prosecution witnesses also do not show that the sal leaf plates and cups were brought from any particular forest. In the circumstances, the ratio decided in the aforesaid two decisions of this Court applies with full force to the facts of the present case. We have, therefore, no hesitation to hold that the order of confiscation of the Mini Truck of the petitioner and the affirming appellate order passed by the learned District Judge, Puri vide Annexures-1 and 2 respectively are illegal and liable to be quashed and accordingly we quash the same.

8. The writ petition is thus allowed.

Writ petition allowed.