

**IN THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**W.P.(C) No. 391 of 2005**

- (1) **The State of Tripura,**  
represented by the Secretary,  
to the Government of Tripura,  
in the Forest Department,  
Agartala.
- (2) **Divisional Forest Officer,**  
Teliamura Division, Teliamura,  
(Being the Authorized Officer)  
District- West Tripura.

**..... Petitioners**

**– V e r s u s –**

- (1) **Sri Ranjan Choudhury,**  
son of late Chandrauday Choudhury,  
Motor Stand, Chitta Ranjan Road,  
P.S. East Agartala, West Tripura,
- (2) **Sri Priyavart Choudhury,**  
son of late Laxmiram Choudhury,  
residing at Colonel House,  
Agartala

**..... Respondents**

**BEFORE**  
**THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioners : Mr. T.D. Majumder, G.A.

For the respondents : Mr. A.K. Bhowmik, Sr. Advocate.  
Mr. R. Dutta, Advocate.

Date of hearing & : **28. 02.2014**  
judgment and order

Whether fit for reporting : 

<b>YES</b>	<b>NO</b>
√	

### **JUDGMENT & ORDER (ORAL)**

Heard Mr. T.D. Majumder, learned G.A appearing for the petitioners as well as Mr. A.K. Bhowmik, learned senior counsel assisted by Mr. R. Datta, learned counsel appearing for the respondents.

**2.** The State of Tripura and the Divisional Forest Officer, Teliamura division have filed this petition under Article 227 of the Constitution of India to challenge the legality of the order dated 25.04.2005 delivered in Misc. Appeal No.17 of 2001 by the Additional District Judge, West Tripura, No.2. By the said order, the order of confiscation dated 01.11.2001 passed by the Authorized Officer (the Divisional Forest Officer), Teliamura Sub-Division, Teliamura, West Tripura was quashed.

**3.** In the wake of the offence report No.52/DFPP-TD dated 27.09.1995 the claimant's notice was issued for determining the ownership of the vehicle bearing No.TRL-3899 which was admittedly carrying some teak and karai timbers in breach of the provisions of Sections 41 & 42 of the Indian Forest Act, 1927. In the aforesaid confiscation proceeding, the petitioner had appeared and made a categorical statement before the Authorized Officer (the Divisional Forest Officer, in short the D.F.O), Teliamura Division on 27.05.1988 to the effect that:

**"I categorically instructed my driver not to carry illegal forest produces. Just after seizure of the vehicle TRL-3839, I was informed about the seizure of my vehicle for carrying of timbers. Then and then I went to Forest Drop Gate and on personal enquiry it could be understood that the owner of the timbers (illegal) requested to carry his timbers from Moharcharra to Agartala. Thereafter, for**

**carrying of the illegal timbers inside vegetable goods, the vehicle was seized. I admit that the vehicle was seized on 27.09.1995 for commission of forest offence under Indian Forest Act, 1927 and Tripura Amendment under Section 52A, 1986. Regarding the seizure of vehicle, the seizure of vehicle, the seizure list for vehicle TRL-3899 and forest produces were not received by me till date. The letter of Registration Authority of Motor Vehicles addressed to Sri Ranjan Chowdhury vide No.F.1-1/DTC/97/1498 dated 22.04.1998 had been produced to you for the reference regarding the transfer of ownership and confirmation of ownership of the vehicle w.e.f. 14.05.1996."**

4. On culmination of the confiscation proceeding, the Authorized Officer (the D.F.O, Teliamura Sub-Division) by virtue of his power conferred under Section 52A of the Indian Forest Act, 1927 read with Tripura 2<sup>nd</sup> Amendment Act had ordered to confiscate the vehicle with all its bills and equipments to the State of Tripura. The order dated 01.11.2001 was challenged by the respondents herein by filing an appeal under Section 52A (v) of the Indian Forest Act read with Tripura Second Amendment Act, 1986 being Case No. Misc. Appeal (Forest) 17 of 2001. The grounds of objection taken in the said appeal are that the respondent Ranjan Choudhury had no knowledge that his vehicle would be used for transporting the illegal forest timbers. Apart that, it has been stated in the appeal that the Authorized Officer had deprived the appellant by not affording him reasonable opportunity to defend. The appeal was communicated the order dated 01.11.2001 under reference No.10-6/TRL-3899/TD-98/16967-82 dated 29.09.1995 through the ordinary post and thus his vehicle was confiscated illegally. It has been further asserted in the memorandum of appeal that the other witnesses as relied in the confiscation proceeding were not allowed to be cross-examined by the present respondent. After hearing the parties, the

Additional District Judge, West Tripura, Agartala, No.2 by the impugned order dated 25.04.2005 has observed that:

**"While arguing for the appellant the Ld. Senior counsel Sri A.K. Bhowmik strongly submitted that there are serious violation of natural justice inasmuch as the witnesses examined by the Authorized Officer, Forest Department were not allowed to be cross-examined by the owner to extract real truth. It is further added that the confiscation was passed mainly on the basis of an exculpatory statement given by the driver. It is argued that such exculpatory statement could not have been relied upon by the Forest Authority."**

**5.** It has been further observed by the Additional District Judge, West Tripura, Agartala that:

**"On careful perusal of the proceeding file it is seen that the statement of the driver Bijoy Banik was recorded on 06.07.1999 and that too in the absence of the owner-appellant. The statement of said driver shows that the said timbers were being carried out by him as per instruction of the owner. The implication of the owner was brought on record only on the statement of the driver Bijoy Banik whose statement was recorded after 4(four) years of the seizure. It is not unlikely that the statement has suffered from subsequent development, concoction and exaggeration inasmuch as there was inordinate delay in recording his statement. The statement of Montosh Talukdar, Forest Ranger was recorded on 28.05.2002. This is the version of who detected the illegal wood in the vehicle on 27.09.1995 at Champaknagar Drop Gate. This witness even did not utter a single line that the driver implicated the owner at that point of time. Therefore, the evidence so far available on record does not suggest the fact that the owner of the Lorry had any knowledge of carrying of illegal timber on 27.09.1995. Bijoy Banik could not show any written instruction of the owner for carrying such illegal timbers even if there was an instruction of the owner he was not legally bound to carry out any such illegal instruction. As such it is clear that the implication of the owner was a subsequent development and further that the owner had no knowledge of carrying of such illegal timbers."**

But there is no dispute to the fact that the vehicle carried illegal timbers on 27.09.1995 which were seized at Champaknagar Forest Drop Gate and the due action was taken resulting in confiscation

of the said vehicle by the Authorized Officer (the D.F.O), Teliamura Sub-Division.

**6.** On relying an apex court decision in **Assistant Forest Conservator vs. Sharad Ramchandra Kale**, reported in **AIR 1998 SC 2927**, it has been contended that since the prosecution had failed to establish that the owner of the truck had any knowledge that his truck was likely to be used for carrying forest produce in contravention of the provision of the Forest Act, his vehicle cannot be confiscated. The appellate authority has held that the impugned order of the confiscation dated 01.11.2001 was liable to be interfered with and accordingly, that was set aside and quashed.

**7.** Mr. T.D. Majumder, learned G.A. appearing for the petitioners has submitted that the said decision cannot have any manner of application in view of the amendment carried out in the Act. Some provisions have been incorporated in the Forest Act that if the owner can establish that he had no knowledge about carrying of the illegal timbers, the confiscation may not be authorized by the confiscation officer under the Forest Act. Mr. Majumder, learned G.A. has strongly argued that in the said amendment as carried out by the State of Tripura there is no such provision and the confiscation has been made in full compliance of the statutory requirement and also on giving the reasonable opportunities to the respondent Ranjan Choudhury. He has further submitted that no ground of objection would be available in the memorandum of appeal that he was not given the due notice. He has stated that in the grounds of objection it has been contended that he

was deprived of the reasonable opportunity as he was not given the opportunity to cross-examine the witnesses.

**8.** From the other side, Mr. A.K. Bhowmik, learned senior counsel appearing for the respondents has submitted that the respondents has discharged his onus to the satisfaction that he had no knowledge about carrying of the illegal timbers by his vehicle. Apart that, there was no opportunity for the said respondent to cross-examine the witnesses based on whose statement the finding was returned that the owner had the knowledge of carrying of such illegal timbers. Mr. Bhowmik, learned senior counsel has further raised a question that while exercising the jurisdiction under Article 226 of the Constitution of India, the area of consideration is confined to the patent illegality on the face of record. From a bare reading of the impugned order, it would be apparent that there is no patent illegality and as such, this Court should be reluctant to exercise its power under Article 227 of the Constitution of India.

**9.** As regards the constructive consent, Mr. A.K. Bhowmik, learned senior counsel has relied a decision of the then Agartala Bench of the Gauhati High Court in **Gopeswar Saha vs. State of Tripura & Ors.**, reported in **(2003) 2 GLR 601**, in the context of the Indian Forest Act and Tripura Second Amendment Act, 1986. In the said decision, the provisions of Section 52A and Sub-Section thereunder have been appreciated. It has been provided that the constructive consent can be inferred in all and sundry cases for fixing the liability of the owner. It has been observed in **Gopeswar Saha (supra)** that:

**"Admittedly, in the present case the owner petitioner did not accompany the vehicle and no express consent could be inferred from the materials available though the owner cannot absolve his liability of "constructive consent" in indulging the carrying of contraband forest produce and, as such, in my considered opinion, confiscation in entirety is not called for, because his explicit consent or conscious knowledge cannot be inferred. In the circumstances, for fair ends of justice 25% of the confiscated amount would be appropriate in addition of cost of confiscating proceeding roughly quantified at ₹1,000 would be just and reasonable in the present case."**

**10.** This decision strikes at the submission root of what submitted by Mr. T.D. Majumder, learned G.A. appearing for the petitioners that since there is no provision to exonerate the owner of the vehicle which carries the contraband forest goods even on proving that said owner had no knowledge of such carriage. This decision has again laid stress on that the knowledge of carriage of the illegal forest goods is *sine qua non* to slam the liability on the owner.

**11.** On hearing the learned counsel for the parties at length and also scrutinizing the records what has appeared before this Court that the Authorized Officer has not completed the statutory requirement as prescribed under Section 52A(3) of the Indian Forest Act (Tripura Second Amendment) Act, 1986. For purpose of appreciation, the said section of Indian Forest Act (Tripura Second Amendment) Act, 1986 is extracted hereunder:

**(3) No order confiscating any property shall be made under Sub-Section (1) or Sub-Section (2) unless the person from whom the property is seized and in case the owner of such property is known, such person is given-**  
**(a) a notice in writing informing him the grounds on which it is proposed to confiscate such property;**

**(b) an opportunity of making representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation; and**

**(c) a reasonable opportunity of being heard in the matter.**

**12.** Mr. T.D. Majumder, learned G.A. has produced the notice dated 22.04.1998 which was issued to the respondent Ranjan Choudhury and in the said notice, it has been provided as under:

**"THEREFORE, I order the appearance of Shri Priya Vart Chowdhury, Colonel House, Krishnanagar, Agartala (2) Shri Ranjan Chowdhury, C/O- New Super Engineering Works, Chitta Ranajan Road, Agartala, Motor stand, West Tripura or their legal representative to the chamber of the undersigned on 14th May, 1998 at 11-00 Hrs. with all supporting/relevant documents. A summary trial will be conducted to conclude the process and to reach a decision. Ex-parte decision will be taken in case of non appearance."**

The said notice as produced by Mr. T.D. Majumder, learned G.A. cannot have any relevance in view Sub-Section 3 of 52A of the Indian Forest Act vide Tripura Second Amendment Act, 1986. However, Mr. T.D. Majumder, learned G.A. has rightly submitted that such objection has not been taken by the appellant either in the appeal or before the Authorized Officer (the D.F.O). As such, the petitioner cannot raise the plea in this proceeding under Article 226 of the Constitution of India.

**13.** Be that as it may, what has further appeared that the element of consent was not at all considered by the Authorized Officer while confiscating. As such, nor the analogy that has been extended in the impugned order can be sustained on the face of records neither



cannot be held as illegal. Apart that, what is evident from the records that the respondent, Ranjan Choudhury, was never afforded any opportunity to cross-examine the witnesses particularly, the driver who had implicated the respondent-owner. That infirmity being a serious one cannot be pushed aside. Hence, this Court is not inclined to exercise its supervisory jurisdiction as conferred under Article 227 of the Constitution of India to interfere with the impugned order. This petition, therefore, stands dismissed. However, there shall be no order as to costs.

The order of stay passed on 01.11.2005 and confirmed by the order dated 31.01.2012 in CM. Appl. No. 439 of 2005 stands vacated.

**JUDGE**

*Sujay*