Bombay High Court

Kamlesh vs State Of Maharashtra And Another on 5 August, 1996

Equivalent citations: (1996) 98 BOMLR 889, 1997 CriLJ 1399, 1997 (1) MhLj 198

Bench: M Ghodeswar

ORDER

1. The applicant who is the owner of the Tractor and Trolley bearing Nos. MH 31/G 5241 and HH 31/6934 respectively has filed this application under Section 482 of the Code of Criminal Procedure, challenging the orders passed by Judicial Magistrate, First Class, Saoner, on the application of releasing the tractor and trolley on Supratnama dated 21-3-1996 in Criminal Case No. 99/96 and the order dated 6-6-1996 passed by Second Additional Sessions Judge, Nagpur in Criminal Revision Application No. 438/96 on the ground that both the impugned orders are illegal.

2. The Round Officer, Khapa Forest Range, Tahsil Saoner, district Nagpur seized the tractor and trolley of the applicant on 8-2-1996 as it was carrying sand from Khapa Range forest for the offences punishable under Section 26(1)(c)(d) and (g) of the Indian Forest Act, 1927. The Forest Officer has reported the seizure of the said tractor and trolley along with sand to the Judicial Magistrate First Class, Saoner. The applicant has filed an application for supratnama on 16-3-1996. The learned Judicial Magistrate First Class has held that in view of definition of Section 2 of the Indian Forest Act sand is a forest produce and under Section 52 of the Act, the property is liable to be confiscated and forfeited and held that the Court has no jurisdiction to release the property.

3. Being aggrieved by this order, the applicant has preferred revision. The applicant has raised a specific ground in the memo of revision that the amended provisions of the Act, Section 61(A) to (G) are not applicable in the present case, as the sand is not notified forest produce. The revisional Court has observed that in view of definition of Section 2(4)(iv) 'sand' is a forest produce. He has further observed that considering Section 52(a) of Indian Forest Act any person aggrieved by an order of confiscation may, within thirty days of the order prefer an appeal in writing before the Appellate Authority. Therefore revisionist ought to have preferred appeal against seizure of the said tractor. The applicant has no authority to take the said vehicle on supratnama because in the document of Panchanama and seizure the numbers are not mentioned and he is entitled to say that he is the owner of the said tractor and trolley.

4. The learned counsel has submitted that the trial Magistrate has erred in holding that he has no jurisdiction, as the amended provisions of Section 61(A) to (G) of the Act are not applicable in the present case, because sand is not notified forest produce and the revisional Court has not considered the ground specifically raised in the revision and the arguments of the counsel for the applicant, and applied the law incorrectly.

5. There is no dispute that the sand is a forest produce. Section 52(2) second proviso lays down that whether the offence on account which the seizure has been made is in respect of timber, sandalwood, firewood, charcoal or such other foreset produce as may be notified by the State Government from time to time (hereinafter referred to as the 'notified forest produce') and which is the property of the State Government, such officer shall make a report of such seizure also to the

concerned authorised officer under Section 61(A) of the Act. If a report is made under Section 61(A) of the Act to the authorised Forest Officer, then the trial Magistrate does not get jurisdiction to release the property on Supratnama. Otherwise the trial Magistrate has jurisdiction. Both the Courts below have lost sight of this provision of Section 52(2) Second Proviso and on the suppoosition that the property seized is liable to be confiscated or forfeited, they have made the observations in the impugned orders which are not at all related to the question of release of the tractor and trolley on the supratnama of the applicant. The Courts below have referred to Section 55 of the Act. Section 55 reads as under :

(1) All timber of Forest produce which is not the property of Government and in respect of which a forest offence has been committed, and all tools, boats, vehicles and cattle used in committing any forest offence shall, subject to Section 61(G), be liable by order of the convicting Court to forfeiture.

(2) Such forfeiture may be in addition to any other punishment prescribed for such offence."

The section is very clear. After the trial of the offences and after conviction of the accused after completion of trial, a procedure is laid down for forfeiture under Section 55. This procedure for forfeiture is after the conclusion of trial where the accused is convicted which is certainly not applicable to the present case at this stage. The observation of the revisional Court that applicant had to file appeal before the appellate authority on the seizure of tractor and trolley is clearly wrong and improper. Both the Courts below have committed serious error of law. Hence the orders are bad in law and perverse and hence they are liable to be quashed and set aside.

6. In the result, Criminal Application No. 796/96 is allowed. The impugned orders are quashed and set aside. The application of applicant for releasing the tractor and trolley on supratnama dated 16-3-1996 (Ex. 3) is allowed. The tractor and trolley be handed over on supratnama to the applicant on furnishing a Bond of Rs. 3,00,000/- (Rupees Three Lacs) only. The applicant is directed to produce the property before the trial Court/Magistrate as and when directed.

7. Application allowed.