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MOHD. ASHIQUE

v.

STATE OF MAHARASHTRA

(Criminal Appeal No.1834 of 2008)

B

NOVEMBER 18, 2008

**[DR. ARIJIT PASAYAT AND DR. MUKUNDKAM
SHARMA, JJ.]**

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Indian Forest Act, 1927 – ss.61, 61A to 61G – Forest offence – Transportation of illicitly felled wood – Confiscation of offending vehicle – Challenge to – Held: Not tenable – Provisions for confiscation have been made as a deterrent object so that felling of trees and deforestation is not made.

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The truck of Appellant was confiscated by the Maharashtra forest officials under s.61A of the Indian Forest Act, 1927 after it was allegedly found involved in the forest offence of transporting illicitly felled wood. Appellant challenged the order of confiscation but his plea was dismissed by the Sessions Court as well as by the High Court.

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In appeal to this Court, the Appellant contended that the Courts below did not appreciate the factual position in the proper perspective and there was no evidence to prove that he was personally involved in the changes or alterations in the transit passes as alleged.

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Dismissing the appeal, the Court

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HELD: 1.1. While considering the present controversy, the purpose behind enacting the Indian Forest Act, 1927 cannot be ignored or allowed to be defeated. Forest is a national wealth which is required to be preserved. The State is enjoined with a duty to

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preserve the forest so as to maintain ecological balance and, thus, with a view to achieve the said object, forest must be given due protection. The provisions for confiscation have been made as a deterrent object so that felling of trees and deforestation is not made. [Para 6] [141-C, G, H; 142-A-C]

1.2. There is no merit in this appeal which is accordingly dismissed. However, this Court has not expressed any opinion on the merits of the case which is stated to be pending. The truck which has been taken by the Respondent shall be sold in public auction and the money shall be deposited by the concerned Forest Officer in fixed deposit account. Whether the money is to be confiscated or to be returned to the appellant shall be decided in the proceedings. [Para 7] [142-D]

State of West Bengal v. Sujit Kumar Rana AIR (2004) SC 1851, relied on.

Case Law Reference :

AIR (2004) SC 1851 relied on Para 6

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1834 of 2008.

From the final Judgment and Order dated 20.4.2006 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Writ Petition No. 432 of 2002.

Manish Pitale and Gaurav Agrawal for the Appellant.

Madhavi Diwan and Ravindra Keshavrao for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

A 2. Challenge in this appeal is to the judgment of a Division
Bench of the Bombay High Court, Nagpur Bench, dismissing
the writ petition filed under Articles 226 and 227 of the
Constitution of India, 1950 (in short the 'Constitution'). The
appellant, the owner of motor vehicle i.e. a truck bearing
B registration No.MH-30-B-2897 challenged the order of
confiscation passed by the Assistant Conservator of Forest
(Authorised Officer) under section 61-A of the Indian Forest Act,
1927 (in short the 'Act'). The truck was found involved in forest
C offence on 7.1.1999. It was found that illicitly felled Nimb Wood
and Katsawar wood were being transported. The order of
confiscation under Section 61-A of the Act was challenged in
appeal under Section 61-D of the Act which was dismissed by
learned Sessions Judge, Akola. While admitting the writ
petition, the High Court stayed both the orders and directed
D release of the truck in favour of the appellant subject to certain
conditions.

2. Factual background as stated by the appellant is as
follows:

E According to him truck belongs to him and he had
engaged one Mohd. Shabbir, resident of Medshi for
transportation of timber on 07.01.1999. That timber was
transported accordingly to Geeta Saw Mill belonging to
Gangaram Manaji Patel of Kolhapur as per transit pass and
F as per law. Appellant thereafter learnt that on or about
08.01.1999 the officers of the Forest Department seized said
timber including Katsawar from Geeta Saw Mill. Thereafter
without any reason said officers took away the truck of
G appellant which was standing on Mankarna plot near his
residence. When appellant could not find his truck, he reported
the matter to local police and thereafter he learnt that his truck
has been carried away by Forest Department. The contention
of appellant is that seizure of truck on the basis of statement
given by owner of Saw Mill is illegal. He, therefore, moved
H application before Chief Judicial Magistrate, Akola, for release

of the truck. He also received show-cause notice dated 4.10.2002 from Assistant Conservator of Forest about the seizure of truck. Even as per said show- cause notice, there was transit pass for the wood in question and information given by one R.A. Chavan was also suppressed in said notice. There were three passes having number 667308 dated 08.05.1998, 736977 dated 29.10.1998 and 001805 dated 07.01.1999. All these three passes need to be looked together and the entire timber transported is covered by it. Perusal of first two passes reveals that timber therein belongs to Sahebrao Ghuge of Malegaon and Ramchandra A. Chavan of Bodkha. Therefore the allegations made in show cause notice were incorrect and false. He appeared before the authority issuing show cause notice and requested to supply all documents but respondent avoided to supply these documents and did not even permit him to take inspection of records. Ultimately on the basis of information and documents which he could gather, he filed his reply pointing out his innocence. He also pointed out report dated 17.03.1999 submitted by Range Forest Officer Shri Bansod communicating that the report of illegal transportation was doubtful. He also relied upon statement of guard Shri Chavan and others to point out that their statements also did not support the statements in show-cause notice. He contended that show-cause notice issued was without any verification from the concerned owners & forest rangers. In spite of this, on 17.06.2002, authority passed the order and confiscated the truck. Hence he preferred Appeal No.42/2002 under Section 61-D but the same came to be dismissed on 14.10.2002.

The High Court found that on examination of the transit passes involved it was clear that the transit passes do not pertain to any quantity of Katsawar. Thus the timber of Katsawar which was not there in the earlier transit passes, could not have been included in the third transit pass No.001805 dated 7.1.1998 issued in lieu thereof. It was therefore apparent that alterations were made in the transit passes. Accordingly, the High Court dismissed the writ petition. The High Court permitted

A the respondent to either take the custody of the truck or to confiscate it and in the alternative to proceed to recover the amount of rupees two lakhs by invoking personal bond and the bank guarantee. It appears that the custody of the vehicle has been taken.

B 3. Learned counsel for the appellant submitted that the factual position has not been appreciated properly. It has not been shown that the appellant had taken any personal interest in the alleged changes or any alterations as alleged.

C 4. Learned counsel for the respondent on the other hand supported the judgment.

D 5. Relevant provisions in this respect are contained in Section 61-B as amended by Maharashtra Amendment to the Act. Section 61-A to Section 61-G are added by this amendment. Section 61-prescribes for confiscation by Forest Officer of forest produce where Forest offence is believed to have been committed. Section 61-B prescribes for procedure thereof while section 61-C prescribes for Revision by higher department officers against the orders of confiscation. Section E 61-D prescribes remedy of Appeal against the original order passed under Section 61-A and also revisional order passed under Section 61-C. Section 61-E provides that confiscation under earlier provisions does not save the offender from any other punishment which can be imposed upon him under Indian F Forest Act or any other law. Section 61-F stipulates that after the order of confiscation becomes final, the property confiscated vests in government. Section 61-G bars jurisdiction of any other officer, Court or Tribunal authority with regard to custody, possession, delivery, disposal or distribution of property seized G under above-mentioned provision. Section 69 makes a provision for presumption that forest produce is the property of Government until the contrary is proved. Section 61-B (2) is important for purposes. It reads:-

H "S.61-B (2) Without prejudice to the provisions of sub-

section (1), no order confiscating any tool, boat, vehicle or cattle shall be made under Section 61-A if the owner of the tool, boat, vehicle or cattle proves to the satisfaction of the authorized officer that it was used in carrying the timber, sandalwood, firewood, charcoal or any other notified forest produce without the knowledge or connivance of the owner himself, his agent, if any and the person in charge of the tool, boat, vehicle or cattle and that each of them had taken all reasonable and necessary precaution against such use".

6. While considering present controversy, the purpose behind erecting the Forest Act cannot be ignored or allowed to be defeated. In *State of West Bengal v. Sujit Kumar Rana* (AIR 2004 SC 1851) this Court has made the following observations in paras 19 and 20:

"19. The provisions of law referred to hereinbefore leave no manner of doubt that upon seizure of forest produce, timber or vehicles etc. the concerned authority has an option to report the factum of such seizure both to the concerned Magistrate as also the authorized officer, save and except in the cases which would fall within the purview of the proviso appended to sub-section (2) of Section 52 of the Act, as amended by the State of West Bengal. The report in relation to such seizure is required to be made either for (1) confiscation of the seized property; (2) prosecution of the offender; or (3) for both.

20. The legislature has inserted the aforementioned provisions with a laudable object. Forest is a national wealth which is required to be preserved. In most of the cases, the State is the owner of the forests and forest produce. Depletion of forests would lead to ecological imbalance. It is now well-settled that the State is enjoined with a duty to preserve the forest so as to maintain ecological balance and, thus, with a view to achieve the said object forest must be given due protection. Statutes

- A which provide for protection of forest to maintain ecological balance should receive liberal construction at the hands of the superior Courts. Interpretive exercise of such power should be in consonance with the provisions of such statutes not only having regard to the principle of purposive construction so as to give effect to the aim and object of the legislature; keeping the principles contained in Articles 48-A and 51-A (g) of the Constitution of India in mind. The provisions for confiscation have been made as a deterrent object so that felling of trees and deforestation is not made."
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7. Above being the position, there is no merit in this appeal which is accordingly dismissed. However, we make it clear that we have not expressed any opinion on the merits of the case which is stated to be pending. However, the truck which has been taken by the respondent pursuant to the High Court's order shall be sold in public auction and the money shall be deposited by the concerned Forest Officer in fixed deposit account. Whether the money is to be confiscated or to be returned to the appellant shall be decided in the proceedings.

E B.B.B. Appeal dismissed.