

A STATE OF WEST BENGAL AND ANR.

v.

MAHUA SARKAR

CIVIL APPEAL NO. 991 OF 2002

FEBRUARY 27, 2008

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[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

C *Indian Forest Act, 1927: ss.59A, 59B – Burden to prove that confiscated vehicle was used for carrying timber illegally without knowledge or connivance of the owner himself or his agent and each had taken necessary precautions against such use – Held: Is on the owner – Mere assertion is not sufficient – On facts, owner failed to discharge the burden of proof – Vehicle already released by order of High Court – Owner directed to deposit Rs.20,000 in place of restoration of vehicle*
D *– West Bengal Forest Produce Transit Rules, 1959 – Indian Forest (West Bengal Amendment) Act, 1988 – s.59A(3).*

E The Beat officer intercepted a maruti van loaded with hand sawn Sissoo timber. He found that four persons including the driver were travelling in the vehicle. The timber in question was not carrying any hammer marks and the driver of the vehicle could not produce any document in respect of the possession and transportation of the timber. Therefore, alleged illicit timber was seized
F and the driver and other passengers were arrested and forwarded to the Court of Chief Judicial Magistrate. As required under s.59B of the Indian Forest Act, 1927, notice was issued and served on the owner of the vehicle to show cause as to why the vehicle in question should not
G be confiscated by the State of West Bengal as provided under s.59(A) of the Act. The owner in reply stated that the vehicle was taken by a family friend for a marriage ceremony and the driver had without his permission and knowledge carried the articles which later on were seized

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by the forest officials. After receipt of the reply, the stand taken was verified and ultimately it was found that the vehicle was used for illicit procurement of timber. The District Judge dismissed the appeal and confirmed the findings of the authorized officer. Writ petition was filed before the High Court. The High Court while directing release of the confiscated vehicle observed that unless the driver of the vehicle acted as an agent of the owner of the said vehicle and indulged in carrying forest produce illegally and that too with the knowledge and connivance of the owner, neither the vehicle could be confiscated nor the owner could be prosecuted for such alleged offence.

In appeal to this Court, appellant-State contended that the onus was on the owner of the vehicle to establish that he had no knowledge about the carrying of illegal timber. Additionally, the statement given by the owner was at great variance with the statement given by the driver and the other occupants of the vehicle at the time of seizure.

Partly allowing the appeal, the Court

HELD: 1.1 A bare reading of sub-section (2) of s.59-B of Indian Forest Act makes the position clear that no order confiscating any tool, rope chain, boat, vehicle or cattle shall be made under s.59-A if the owner thereof proves to the satisfaction of the authorized officer that such tool, rope, chain, boat, vehicle or cattle was used in carrying the timber or other forest produce without the knowledge or connivance of the owner himself or his agent, if any, or the person in charge thereof and that each of them had taken all reasonable and necessary precautions against such use. The requirement is mandatory that the owner has to prove that he had no knowledge or had not connived. It is a matter which is within his knowledge. Mere assertion without anything else would not suffice. There is another requirement that either he or his agent, if

A any, or the person in-charge thereof had taken all reasonable and necessary precaution against such use. This aspect has to be established by the concerned person by sufficient material. [Paras 7, 9] [565-A-E]

B 1.2. The Forest Officer and the Appellate Authority clearly noted that the owner failed to establish his alleged lack of knowledge or connivance or taking necessary precaution. The High Court came to an abrupt conclusion and held that without knowledge of the owner of the vehicle, driver was carrying forest produce illegally. Both
C the forest officer and the Appellate Authority categorically held that the lack of knowledge as asserted was not established. High Court did not record any finding that all possible care had been taken to prevent such misuse and only concluded that the vehicle was being used for
D carrying illegal timber without the knowledge and connivance of the owner. It has not even referred to the materials which weighed with the forest officer and the first appellate authority to conclude that the onus in law on the owner has not been discharged. [Paras 10,11,12]
E [565-E, F, H; 566-A, B]

State of Karnataka v. K. Krishnan (2000)7 SCC 80; *State of West Bengal v. Gopal Sarkar* (2002) 1 SCC 495 – referred to.

F 2. The High Court was not justified in setting aside the confiscation. But there is another aspect which needs to be noted. The vehicle in question was released pursuant to the High Court's order. Though the appeal is allowed, there is no point in directing restoration of the vehicle. Respondent is directed to deposit a sum of
G Rs.20,000/- within three months so that the restoration of the vehicle would not be necessary. [Para 14] [568-D, E]

CIVILAPPELLATE JURISDICITON : Civil Appeal No. 991 of 2002.

H From the Judgment and final Order dated 6/9/2000 of the

High Court of Calcutta at Calcutta in C.O. No. 694/2000.

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Dr. ARIJIT PASAYAT, J. 1. Heard learned counsel for the parties.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Calcutta High Court in a writ petition filed under Article 226 of the Constitution of India, 1950 (in short the 'Constitution'). By the impugned order, learned Single Judge directed release of vehicle which was seized and confiscated for an alleged violation of the provisions of Indian Forest Act, 1927 (in short the 'Act').

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3. Background facts in a nutshell are as follows:

On 10.2.1999, certain forest officials noticed that a Maruti Van was going at unusually high speed. On suspicion, the Beat Officer concerned chased the vehicle in a jeep and was able to intercept the Maruti Van by the side of reserve forest near Range office at Bichabhanga. It was noted that the registration number of the vehicle was WB-72-9459. The Beat Officer found that the vehicle was loaded with hand sawn Sissoo timber. He found that four persons including the driver were traveling in the vehicle. The timber in question was not carrying any hammer marks and the driver of the vehicle could not produce any document in respect of the possession and transportation of the timber. Therefore, alleged illicit timber was seized and the driver and other passengers were arrested and forwarded to the Court of Chief Judicial Magistrate, Jalpaiguri. A notice in terms of Section 8(1) of West Bengal Forest Produce Transit Rules, 1959 (in short the 'Transit Rules') was issued to the driver as well as the owner of the vehicle. The Range Officer forwarded the case to the Divisional Forest Officer, Wildlife, Division-II, Jalpaiguri who is the Authorised Officer, under Section 59A of the Act as amended by Section 17 of the Indian Forest (West Bengal Amendment) Act, 1988 (in short the 'Amendment Act'). In terms of sub-Section (3) of Section 59A of the Act, action was held. The vehicle was driven by Shri Rohini Roy who was arrested and the forest produce was seized. As required under Section

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- A 59B of the Act, notice was issued and served on the owner of the vehicle to show cause as to why the vehicle in question shall not be confiscated to the State of West Bengal as provided under Section 59(A) of the Act. The owner in reply stated that a family friend had taken the vehicle for a marriage ceremony.
- B The driver had without his permission and knowledge carried the articles which later on were seized by the forest officials. After receipt of the reply, the stand taken was verified and ultimately it was found that the vehicle was used for illicit procurement of timber. An appeal was preferred before the
- C District Judge, Jalpaiguri who dismissed the appeal and confirmed the findings of the authorized officer. Writ petition was filed before the High Court.

4. Primary stand taken was that the owner had no knowledge about the commission of offence under the Act and,
- D therefore, confiscation was illegal. The High Court inter-alia observed as follows and directed release of the confiscated vehicle:

- E "It is settled law that unless the driver of the vehicle acted as an agent of the owner of the said vehicle and indulged in carrying forest produce illegally and that too with the knowledge and connivance of the owner neither the vehicle could be confiscated nor the owner could be prosecuted for such alleged offence."

- F 5. In support of the appeal, learned counsel for the appellants submitted that the impugned order is not sustainable in law. The onus was on the owner of the vehicle to establish that he had no knowledge about the carrying of illegal timber. Additionally, the statement given by the owner was at great
- G variance with the statement given by the driver and the other occupants of the vehicle at the time of seizure. There is no appearance on behalf of the respondent in spite of service of notice.

6. At this juncture, it will be relevant to quote Sections 59(A)
- H and 59(B) of the Act as inserted by the Amendment Act. The

provisions read as follows:

"59-A. Confiscation by Forest officer of forest produce in the case of forest offence believed to have been committed-

(1) Notwithstanding anything contained in the foregoing provisions of this chapter or in any other law for the time being in force, where a forest-officer is believed to have been committed in respect of the timber or other forest-produce which is the property of the State Government, the Forest Officer or the Police-officer seizing the timber or other forest produce under sub-section (1) of Section 52 shall, without any unreasonable delay, produce the same, together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence before an officer of a rank not inferior to that of an Assistant Conservator of Forest authorised by the State Government in this behalf by notification in the official Gazette (hereinafter referred as the authorized officer).

(2) The State Government may for any local area, authorize one or more officers under sub-section (1).

(3) Where any timber or other forest produce which is the property of the State Government is produced before an authorized officer under sub-section (1) and the authorized officer is satisfied that a forest offence has been committed in respect of such property, he may, whether or not a prosecution is instituted for the commission of such offence, or other confiscation of the property together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence.

(4)(a) Where the authorized officer, after passing the order of confiscation of the property together with all tools, ropes, chains, boats, vehicles and cattle as aforesaid under sub-section (3), is of opinion that it is expedient in the public interest so to do, he may order such property or any part thereof and such tools, ropes, chains, boats, vehicles and cattle to be sold by public auction.

A (b) Where the order of confiscation of any property or
tools, ropes, chains, boats, vehicles or cattle under sub-
section (3) is set aside or annulled under Section 59C or
B Section 59-D, the proceeds of sale by auction shall, after
deduction of the expenses of auction and all other
incidental expenses relating thereto, if any, be paid to the
owner of such property or tools, ropes, chains, boats,
vehicles or cattle or to the person from where the same
was seized as may be specified in the order under Section
59-C or Section 59-D.

C **59-B. Issue of notice before confiscation-**(1) No order
confiscating any property or tools, ropes, chains, boats,
vehicles or cattle shall be made under Section 59-D except
after giving a notice in writing to the owner of, or the person
D from whom, such property or tools, ropes, chains, boats,
vehicles or cattle have been seized for showing cause as
to why the same should not be confiscated and considering
his objections, if any:

E Provided that no order confiscating any motor vehicle
shall be made except after giving a notice in writing to the
registered owner thereof if, in the opinion of the authorized
officer, it is practicable to do so and considering his
objections, if any.

F Explanation- "Motor Vehicle" shall have the same meaning
as in the Motor Vehicles Act, 1939 (4 of 1939).

(2) Without prejudice to the provisions of sub-section (1),
no order confiscating any tool, rope, chain, boat, vehicle
or cattle shall be made under Section 59-A if the owner
thereof proves to the satisfaction of the authorized officer
G that such tool, rope, chain, boat, vehicle or cattle was used
in carrying the timber or other forest produce without the
knowledge or connivance of the owner himself or his agent,
if any, or the person in charge thereof and that each of
them had taken all reasonable and necessary precautions
H against such use."

7. A bare reading of sub-Section (2) of Section 59-B makes the position clear that no order confiscating any tool, rope chain, boat, vehicle or cattle shall be made under Section 59-A if the owner thereof proves to the satisfaction of the authorized officer that such tool, rope, chain, boat, vehicle or cattle was used in carrying the timber or other forest produce without the knowledge or connivance of the owner himself or his agent, if any, or the person in charge thereof and that each of them had taken all reasonable and necessary precautions against such use. A B

8. The language used is very clear. It is the owner who has to prove that the vehicle was used in carrying timber or other forest produce without his knowledge or connivance or that of his agent. C

9. The requirement is mandatory that the owner has to prove that he had no knowledge or had not connived. It is a matter which is within his knowledge. Mere assertion without anything else will not suffice. There is another requirement that either he or his agent, if any, or the person in-charge thereof had taken all reasonable and necessary precaution against such use. This aspect has to be established by the concerned person by sufficient material. As noted above, mere assertion in that regard could not be sufficient. D E

10. The Forest Officer and the Appellate Authority clearly noted that the owner failed to establish his alleged lack of knowledge or connivance or taking necessary precaution. The High Court came to an abrupt conclusion and held that without knowledge of the owner of the vehicle driver was carrying forest produce illegally. The High Court held that unless the driver of the vehicle acted as an agent of the owner of the said vehicle and indulged in carrying forest produce illegally and that too with the knowledge and connivance of the owner, neither the vehicle could be confiscated nor could the owner be prosecuted for such alleged offence. F G

11. Both the forest officer and the Appellate Authority H

A categorically held that the lack of knowledge as asserted was not established. High Court did not record any finding that all possible care had been taken to prevent such misuse.

B 12. The High Court has not even analysed the factual position and only concluded that the vehicle was being used for carrying illegal timber without the knowledge and connivance of the owner. It has not even referred to the materials which weighed with the forest officer and the first Appellate Authority to conclude that the onus in law on the owner has not been discharged.

C 13. In *State of Karnataka v. K. Krishnan* (2000(7) SCC 80), it was inter alia noted as follows:

D “6. Chapter VI of the Act makes provision for control of timber and other forest produce in transit. The authorised officer has the power to seize any forest produce together with all tools, boats, vehicles or cattle or any other property used in connection with the commission of an offence in respect of any forest produce. An authorised officer has also the power to release the property seized under Section 62. All timber or forest produce, which is not the property of the 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 are liable to forfeiture by the State Government subject to the provisions of Section 71-G of the Act. Section 71-A authorizes the Forest Officer to order confiscation of the seized property in certain cases. Any person aggrieved by an order passed under Section 71-A or Section 71-C has the right to file an appeal to the Sessions Judge having jurisdiction over the area in which the property to which the order relates has been seized.

G 7. Learned counsel appearing for the appellant State has submitted and we agree that the provisions of the Act are required to be strictly complied with and followed for the purposes of achieving the object for which the Act was enacted. Liberal approach in the matter with respect to
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the property seized, which is liable to confiscation, is A
uncalled for as the same is likely to frustrate the provisions
of the Act. Before passing an order for releasing the forest
produce or the property used in the commission of the
forest offence, the authorised officer or the appellate B
authority has to specify the reasons which justify such
release, apparently, prima facie excluding the possibility
of such forest produce or the property being confiscated
ultimately. Generally, therefore, any forest produce and
the tools, boats, vehicles, cattle, etc., used in the
commission of the forest offence, which are liable to C
forfeiture, should not be released. This, however, does not
debar the officers and the authorities under the Act
including the appellate authority from passing appropriate
orders under the circumstances of each case but only
after assigning valid reasons. The liberal approach in the D
matter would perpetuate the commission of more offences
with respect to the forest and its produce which, if not
protected, is surely to affect mother earth and the
atmosphere surrounding it. The courts cannot shut their
eyes and ignore their obligations indicated in the Act
enacted for the purposes of protecting and safeguarding E
both the forests and their produce. The forests are not
only the natural wealth of the country but also protector of
human life by providing a clean and unpolluted atmosphere.
We are of the considered view that when any vehicle is
seized on the allegation that it was used for committing a F
forest offence, the same shall not normally be returned to
a party till the culmination of all the proceedings in respect
of such offence, including confiscatory proceedings, if any.
Nonetheless, if for any exceptional reasons a court is
inclined to release the vehicle during such pendency, G
furnishing a bank guarantee should be the minimum
condition. No party shall be under the impression that
release of vehicle would be possible on easier terms,
when such vehicle is alleged to have been involved in
commission of a forest offence. Any such easy release H

A would tempt the forest offenders to repeat commission of such offences. Its casualty will be the forests as the same cannot be replenished for years to come.

B 8. The approach adopted both by the Authorised Officer and the High Court completely ignores the importance of the forests and the purpose of the object for which the Act was made. As the appellant State has not prayed for quashing the order of the Authorised Officer we refrain to deal with that even though we do not approve of it. We are, however, satisfied that the High Court had adopted a very casual approach while disposing of the petition under C Section 482 of the Code of Criminal Procedure. Besides that the order impugned is contrary to law, we have our reservations with respect to the powers of the High Court under Section 482 Cr.P.C in the matter which we do not D express in this case.

14. The position in law was again reiterated in *State of West Bengal v. Gopal Sarkar* (2002 (1) SCC 495). The High Court was not justified in setting aside the confiscation. But there is another aspect which needs to be noted. The vehicle in E question was released pursuant to the High Court's order. Though the appeal is allowed, there is no point in directing restoration of the vehicle. We direct that a sum of Rs.20,000/- shall be deposited by the respondent within three months from today so that the restoration of the vehicle shall not be necessary. F The amount shall be deposited with the concerned Forest department of the State of West Bengal. The appeal is allowed to the aforesaid extent. No costs.

D.G.

Appeal partly allowed.