

Phool Singh Vs. Chief Secretary

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Court : Madhya Pradesh

Decided On : Oct-30-2012

Appellant : Phool Singh

Respondent : Chief Secretary

Advocate for Pet/Ap. : Shri. B.P.Sahu

Judgement :

W.P.No.9293 o

30. 10.2012 Shri B.P.Sahu, learned counsel for the petitioner.

Shri Piyush Dharmadhikari, learned Govt.

Adv for respondents.

Heard on the question of admission.

The petitioner has filed this petition under Article 227 of the Constitution of India for issuing appropriate writ to quash the order dated 13.6.2005, (Ann.

P-1) passed by the authorizes officer and Sub Divisional Officer of Forests (General).Sehora whereby the disputed vehicles of the petitioners seized under some Forests offence has been confiscated.

Pursuant to it, prayer for quashment of the order dated 7.2.2006 (Ann.

P-2) passed by the appellate authority, Conservator of Forests affirming the aforesaid order Annexure P-1 and of order dated 6.7.06 (Ann.

P-3) passed by Additional Sessions Judge in Criminal Revision, affirming the aforesaid order of the appellate authority (Ann.

P-2) is also made.

Besides the aforesaid, on the strength of some judgment of the Court of Judicial Magistrate, Ist Class by which the accused of the impugned Forests Offence has been acquitted by extending the benefit of doubt some proceeding for quashment of the aforesaid orders of confiscation was also filed by the petitioner before the above mentioned appellate authority, the Conservator of Forests.

The same was also dismissed, vide order dated 28.11.2011, (Ann.

P-5).On challenging such order before the Revisional Court, on consideration the IIIrd Additional Sessions Judge, Jabalpur, vide order dated 7.2.2012, (Ann.

P-6) has dismissed such revision and the petitioner has also prayed to quash these orders Annexure P-5 and P-6 with a further prayer to give him the seized vehicles.

Having heard the counsel, I have carefully gone through the papers placed on the record alongwith all the above mentioned orders from Annexures P-1 to P-3 and Annexure P-5 and P-6.

It is undisputed legal position that confiscation proceeding with respect of property seized in connection of the Forests Offence is carried out by the Forests Authority while offender of such offence is produced before the Judicial Magistrate for his prosecution.

In the case at hand also the impugned confiscation proceeding was carried out initially by the authorized official of the Forests Department who passed the initial confiscation order of the disputed vehicles on 13.6.2005, (Ann.

P-1).which was later affirmed by the appellate authority on 7.2.2006 (Ann.

P-2) and such order was again affirmed by the Additional Sessions Judge, vide order dated 6.7.2006, (Ann.

P-3) and such order was never challenged before this court under the writ jurisdiction.

Accordingly such order dated 13.6.2005, (Ann.

P-1) has got finality between the parties till the extent of confiscation of the disputed vehicles and as per provision of Section 362 of Cr.P.C. when any judgment or order has been passed and signed by the concerned court or the officer, the same could not be reviewed or modified in any manner by such Court or the officer.

So in such premises, even after acquittal of the accused - the petitioner from the criminal court by extending the benefit of doubt in respect of the impugned Forest offence he did not have any authority or the right to approach the authorized officer or the appellate authority or the revisional authority to recall the aforesaid earlier orders. Ann.

P-1 to Ann.

P-3 contrary to the provision of Section 362 of Cr.P.C. So in the aforesaid premises, it is held that in the light of aforesaid judgment of Judicial Magistrate extending acquittal to the petitioner the proceeding initiated by them before the appellate authority of the Forests Department and continuation of it through criminal revision before the IIIrd Additional Sessions Judge were not entertainable and in such premises, orders Annexure P-5 and P-6 are ab initio void and nullity.

In fact such authorities did not have any power to entertain such subsequent proceedings contrary to provision of Section 362 of Cr.P.C. So in such premises, I have not found any merits in the present petition even for admission of the same.

Consequently the same is hereby dismissed.

Dismissal of this petition does not mean that the petitioner does not have any other remedy.

It is undisputed fact on record that subsequent to completion of aforesaid proceeding of the confiscation of the vehicles the petitioner has been acquitted in the concerning criminal case by the Court of Judicial Magistrate but while extending such acquittal such Court has observed in the judgment that the seized vehicles shall be dealt with in accordance with confiscation proceeding carried out by the officials of the Forests Department and in such premises, no other specific direction was given by the Judicial Magistrate in this regard.

It is also apparent fact that at the time of delivery of the judgment in a criminal case such court had an authority to pass the appropriate order for disposal of the seized property of the case.

If such order has been passed against the interest of the petitioners then such order being passed under Section 452 of Cr.P.C. was further appealable under Section 454 of Cr.P.C. If the petitioner was aggrieved with the aforesaid direction of Judicial Magistrate regarding disposal of the seized vehicles, then instead to approach the forests authorities again they had a remedy to file the criminal appeal under Section 454 of Cr.P.C. but the same has not been filed by him.

It appears that under the bonafide advice after passing the judgment by the Judicial Magistrate the petitioner has approached again to the forests authority and its appellate and revisional authority for recalling their earlier orders with further prayer to give the aforesaid vehicles to him but such proceeding was not entertainable as held in the foregoing paragraphs.

So in such premises, while dismissing this petition, I deem fit to extend a liberty to the petitioner to file appropriate appeal against the order of the Judicial Magistrate, 1st class with respect of the direction given for disposal of the seized vehicles and the same is extended to the petitioner.

However, it is made clear that on filing such an appeal, the appellate court shall consider and decide the matter on its own merits without influencing from any observations or findings given by this court in this order.

It is also observed that on filing the appropriate application under Section 14 of the Limitation Act alongwith aforesaid appeal, the petitioner shall be entitled to get exclusion of the period of limitation in filing such appeal, which has been spent by him in prosecuting the present petition as well as proceedings on which the orders Annexure P-5 and P-6 have been passed.

The petition is dismissed but with aforesaid liberty, observation and direction.

C c as per rules.

(U.C.Maheshwari) Judge bks

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