

The State of Madhya Pradesh Vs. Aditya Narayan Shukla

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Court : Madhya Pradesh

Decided On : Jun-27-2012

Appellant : The State of Madhya Pradesh

Respondent : Aditya Narayan Shukla

Judgement :

MCrC No.1785/2012.

27.6.2012.

Shri Rahul Jain, Govt.

Advocate, for the petitioners-State.

Shri K.S.Rajput, Advocate for respondent.

With consent, matter is finally heard.

This is a petition, under Section 482 of the Code of Criminal Procedure.

The petitioners are aggrieved by the order-dated 30.9.2011 passed by Fourth Additional Sessions Judge, Khandwa in Cri.

Revision No.139/11, setting aside the order passed on 6.7.2010 by the Empowered Officer viz.

Conservator of Forests, Khandwa, whereby the order-dated 28.4.2008 passed by Licensing Officer, so far as it related to release of saw-mill machinery, seized for violation of sub-section (5)(c) of Section 6 and Section 9 of M.P.Kashtha Chiran (Viniyaman) Adhiniyam, 1984 [for short the Adhiniyam]., was annulled and the same was directed to be confiscated.

As indicated already, the impugned order was passed in a case, registered as Cri.

Revision whereas a bare perusal thereof would reveal that it was treated to be criminal appeal.

However, fact of the matter is that the order of confiscation was passed by the Empowered Officer, in exercise of suo motu power, conferred by sub-section (3) of Section 12 of the Adhiniyam, and the same could be challenged by preferring an appeal (not a revision) under sub-section (4) thereof before the District Court (not the Court of Session).within local limits of whose jurisdiction the area wherein property has been seized is situated.

Needless to say that the District Court means a principal Civil Court of original jurisdiction (See.

clause (4) of Section 2 of the Code of Civil Procedure).Thus, the provisions of sub-sections (3) and (4) of Section 12 of the Adhiniyam are not in pari materia with sub-section (2) of Section 52-A and sub-section (1) of Section 52-B of the Indian Forest Act, 1927, as applicable to the State of Madhya Pradesh.

For a ready reference, these provisions may be reproduced as under -
M.P.Kashtha Chiran Indian Forest Act, 1927 (Viniyaman) Adhiniyam

12.

Confiscation of unlawful 52-A.

Appeal against order of stock of wood, plants and confiscation.

machinery etc.(1) (1) (2) (3) Any Forest Officer not below (2) The Appellate Authority referred the rank of a Conservator of to in sub-section (1).may, where no

Forests empowered by the State appeal has been preferred before Government in this behalf by him, suo motu.

within thirty days of notification, may within thirty date of receipt of copy of order of days from the date of order of confiscation by him, and shall on confiscation by the licensing presentation of memorandum of officer under sub-section (1). appeal issue a notice for hearing of either suo motu.

or an appeal or, as the case may be, of application, call for and examine suo motu.

action to the officer the records of that order and effecting seizure and to any other may make such enquiry or cause person (including appellant, if any) such enquiry to be made and who in the opinion of the Appellate pass such orders as he may Authority is likely to be adversely thinks fit : affected by the order of confiscation, Provided that no order and may send for record of the case prejudicial to any person shall be : passed without given him an Provided that no formal opportunity of hearing heard.

notice of appeal need be issued to such amongst the appellant, officer effecting seizure and any other person likely to be adversely affected as aforesaid, as may waive the notice or as may be informed in any other manner of date of hearing of appeal by the Appellate Authority.

52-B.

Revision before Court of Sessions against order of Appellate Authority (4) Any person aggrieved by an (1) Any party to the appeal, order passed under sub-section aggrieved by final order or by order (3) may, within thirty days from of consequential nature passed by the date of communication to the Appellate Authority, may within him of such order, appeal to the thirty days of the order sought to be District Court having jurisdiction impugned, submit a petition for over the area in which the revision to the Court of Sessions property has been seized and within the Sessions division whereof the District Court shall, after the headquarters of the Appellate giving an opportunity to the Authority are situate.

parties to be heard, pass such order as it may think fit and the order of the District Court so passed shall be final.

Where an order of confiscation of any property passed under sub- section (1) or sub-section (3) or sub-section (4) has become final in respect of the whole or any portion of such property, such property or portion thereof, as the case may be, shall vest in the State Government free from all encumbrances.

Emphasis supplied Accordingly, the appeal preferred by the respondent ought to have been entertained and decided as a Civil Appeal.

Now, even if it is assumed that the expression 'District Judge' includes an Additional District Judge as well as an Additional Sessions Judge, it would not be legally permissible to interfere, under the inherent powers preserved by Section 482 of the Code, with the order, thus, deemed to have been passed by an Additional District Judge.

The petition, therefore, stands dismissed as not maintainable with liberty to file a Writ Petition, under Article 227 of the Constitution of India, for the same relief.

Certified copy of the impugned order be returned to the A.G.Office after retaining its photocopy on record.

C.C.as per rules.

(R.C.MISHRA) JUDGE

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