

Mohd. Aslam Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Jan-03-2013

Judge : Ashok Srivastava

Appeal No. : Criminal Revision No. 2490 of 2012

Appellant : Mohd. Aslam

Respondent : State of U.P. and Another

Judgement :

Ashok Srivastava, J.

This criminal revision has been preferred against the judgment and order dated 18.7.2012 passed by the learned Chief Judicial Magistrate, Bijnor in Criminal Case No. 2234 of 2012 (State Vs. Rais Ahmad and others) arising out of Case Crime No. 75 of 2012 under Sections 26/43/41 Forest Act, Police Station Najibabad, District Bijnore.

The brief facts of the case are that on 11.1.2012 at about 8.00 A.M., the officials of Kaudiya Range, Department of Forest, a truck having its registration No. HR 38/H-1801, was intercepted. It was laddened with timber. The timber was being carried in an illegal way and the driver of the said truck did not have any paper to transport such timber which was a prohibited forest produce. The truck was seized and later on confiscated. An application was moved by the revisionist before the learned Chief Judicial Magistrate, Bijnor apparently under Section 451/457 Cr.P.C.

The learned Chief Judicial Magistrate called for a report from the concerned forest officials/officers and after hearing both the parties, the application to release the truck was rejected by the learned Chief Judicial Magistrate. The learned Chief Judicial Magistrate was of the view that the court of a Magistrate does not have jurisdiction to release a motor vehicle involved in such type of cases. He has referred to Section 52-D of the Indian Forest Act, 1927 (for short 'the Act') as amended in the State of Uttar Pradesh. Feeling aggrieved by such order dated 18.7.2012 the present revision has been filed.

It has been submitted from the side of the revisionist that the order passed by the learned Magistrate is illegal keeping in view the provisions as contained in Section 54 of the Act. It has further been submitted that from the language of Section 54 it is clear that the Magistrate has power to dispose of such property in accordance with law and since such power is there, a detailed procedure is prescribed under Section 451/457 Cr.P.C.

The revision has been vehemently opposed by the learned A.G.A. He states that keeping in view the provisions as contained in Sections 52-A to 52-D of the Act as amended in the State of Uttar Pradesh, there is no such power with a judicial magistrate despite the fact that he has power to try the criminal cases which might be filed before him.

Heard learned counsel for the revisionist as well as the learned A.G.A. and perused the materials on record.

Chapter IX of the Act deals with penalties and procedure. Sub-section 1 of Section 52 of the Act authorises a Forest Officer or a Police Officer to seize forest produce alongwith vehicles carts etc. sub-section 2 of Section 52 requires the authorized officer or police officer to make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made. Section 53 of the Act deals with power to release the property seized under Section 52 and such power has been given to an authorized officer of a rank not inferior to that of a ranger on certain terms and conditions. Section 54 of the Act is as follows:

"54. Procedure thereupon.- Upon the receipt of any such report, the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law."

From perusal of the language of Section 54 it is evident that this section has been enacted in continuation with Section 52 and 53 but it does not have any reference of Sections 52-A to 52-D of the Act as amended in the State of Uttar Pradesh in the year 2001. Inter alia there can be no such reference because the Uttar Pradesh amendment came into existence in the year 2001. Section 52-D of the Act as amended in the State of Uttar Pradesh is as follows:-

"52-D. Bar of jurisdiction in certain cases.-

Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, whenever any forest-produce belonging to the State Government together with any tool, boat, vehicle, cattle, rope, chain or other article is seized under sub-section (1) of Section 52, the authorised officer under Section 52A or the State Government under Section 52B shall have jurisdiction, to the exclusion of every other officer, court, Tribunal or authority, to make order with regard to the custody, possession, delivery, disposal or distribution of the property."

From perusal of this section it is evident that this provision takes away power of dealing of forest produce, carriages, vehicles tools etc. from the court of a judicial magistrate and now such power lies with the authorised officer under Section 52A of the Act to the exclusion of every other officer/court/tribunal or authority. In the opening line of Section 52D it has been mentioned that "notwithstanding anything to the contrary contained in this Act or in the Criminal Procedure Code, 1973 or in any other law for the time being enforce.....".

This makes it abundantly clear that anything contained even in the Act prior to 2001 will not be applicable if it is contrary to the provision of Section 52D of the Act.

In the above circumstances, I am of the view that there is no illegality in the order passed by the learned Magistrate.

From perusal of the prayer portion of this revision it is evident that a prayer has been made therein that this Court should quash the order dated 19.5.2012 passed by respondent no. 2. This order has been passed by Prescribed Authority/Regional Office Forest Officer. Against such order provision of appeal is there under Section 52B of the Act as amended in the State of Uttar Pradesh. Therefore, the order dated 19.5.2012 cannot be interfered into by this Court under Section 397/401 Cr.P.C.

This revision does not have any force and, therefore, it is dismissed at the stage of admission itself on contest from the side of the State.

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