

**Md. Ayub Vs. State of Bihar and ors.**

**Md. Ayub Vs. State of Bihar and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/133097](http://sooperkanoon.com/133097)

**Court :** Patna

**Decided On :** Jan-27-2004

**Judge :** Chandramauli Kr. Prasad, J.

**Appeal No. :** CWJC No. 5598 of 2003

**Appellant :** Md. Ayub

**Respondent :** State of Bihar and ors.

**Advocate for Def. :** S.J. Rahman, GP-VII and Manoj Kumar, JC to GP-VII

**Advocate for Pet/Ap. :** Bachan Jee Ojha, Adv.

**Disposition :** Application dismissed

**Judgement :**

**Chandramauli Kr. Prasad, J.**

1. This application has been filed for issuance of a writ in the nature of certiorari for quashing the order dated 21.1.2003 whereby the appeal preferred by the petitioner against the order of confiscation has been dismissed.

2. Short facts giving rise to the present application are that while a truck bearing registration No. UP. 7 IA-6300 loaded with Khair wood was coming from Kochas towards Buxar on 18.6.1996, it was seized and a confiscation proceeding was

initiated. The Authorised Officer-cum-Divisional Forest Officer by order dated 16.12.1996 directed for confiscation of the truck as also Khair wood loaded on it. Aggrieved by the said order, petitioner preferred appeal before the Collector and when the said appeal was not being disposed of, he preferred Md. Ayub v. State of Bihar and Ors., CWJC No. 754 of 1997, before this Court. This Court by order dated 18.12.1997 directed for disposal of the appeal as expeditiously as possible. In the light of the order of this Court, the appellate authority dismissed the appeal by order dated 27.7.2000. Petitioner aggrieved by the same, preferred Revision Case No. C-25 of 2000 Md Ayub v. Divisional Forest Officer, Shahabad Forest Davison, Sasaram, and the revisional authority i.e., the Secretary. Environment and Forest Department, Bihar by order dated 2.2.2002 dismissed the revision application.

3. Petitioner being aggrieved by the aforesaid orders filed CWJC No. 5547 of 2002 Md. Ayub v. Secretary, Environment and Forest Department, Bihar Patna and others, before this Court assailing the aforesaid orders. This Court by order dated 30th of October, 2002 remitted the matter back to the District Magistrate for reconsideration of the appeal. In the light of the order of this Court, petitioner appeared before the District Magistrate and after hearing both the parties, he by the impugned order dated 22.1.2003 dismissed the appeal.

4. Mr. Bechan Jee Ojha appearing on behalf of the petitioner submits that there is nothing on record to show that petitioner had any knowledge that the forest produce were being transported illegally hence, the truck and forest produce are not fit to be confiscated. In support of his submission he has placed reliance on a judgment of the Supreme Court in the case of Assistant Forest Conservator and Anr. v. Sharad Ramchandra Kale, (1998) 1 SCC 48. In the said case it has been held as follows :--

'1. This appeal is filed against the judgment and order of the Bombay High Court in writ petition No. 104 of 1988.

2. The truck of the respondent was ordered to be confiscated by the Assistant Conservator of Forests, as it was found involved in commission of a forest offence. That order was confirmed by the Conservator of Forests. Against his order, the

respondent preferred an appeal to the Sessions Court but it was dismissed. Therefore, he approached the High Court with a petition under Article 227 of the Constitution. The High Court set aside the order of confiscation on the ground that the authorities had failed to establish that the owner of the truck had any knowledge that his truck was likely to be used for carrying forest produce in contravention of the provision of the Forest Act. This finding was based upon the evidence on the record. Therefore, we do not consider it proper to interfere with such finding.'

5. I had the occasion to consider the submission in somewhat detail in CWJC No. 4160 of 2003, Manoj Kumar Sharma v. The State of Bihar and Ors., disposed of on 4th November, 2003 wherein I have held as follows :--

'Generally speaking whoever seeks relief from an adjudicating authority on existence of a particular fact such person has to prove that fact but the legislature in its wisdom can alter this rule and put on the other person the onus to prove such facts. In my opinion when the legislature has cast duty on the owner to satisfy certain requirement to avoid confiscation the Court cannot substitute its opinion according to its own notion of justice. Here the legislature has chosen to provide that no order of confiscation shall be made if the owner of the property or the person interested in such property proves to the satisfaction of the Forest Officer that vehicle was used without his knowledge or connivance and not only this all reasonable and necessary precautions were taken against use of the vehicle. In the face of the aforesaid language there is no escape from the conclusion that once it is established that vehicle has been used in commission of forest offence, the onus shifts on the owner of the vehicle to establish that the vehicle was used without his knowledge or connivance or that of his servant and agent and also to establish that he had taken all reasonable and necessary precaution against the use of the vehicle. Nothing has been brought on record by the petitioner to satisfy those requirements and as such the authority did not err in confiscating the truck in question.'

6. Now referring to the authority of the Supreme Court in the case of Assistant Forest Conservator and others (supra), same does not in any way support the plea

of the petitioner. The provision which was under consideration before the Supreme Court has not been mentioned in the judgment. Therefore, it cannot be deciphered as to the background in which the said judgment was rendered and the statutory provision which was under consideration. Here in the present case as observed earlier, the legislature has in its wisdom put on the owner of the vehicle the onus to prove that he had no knowledge and connivance in transporting the forest produce illegally and as such the decision relied upon in no way supports the case of the petitioner. .

7. Hence this submission of Mr. Ojha is fit to be rejected.

8. Mr. Ojha then submits that the value of the forest produce alleged to have been transported on the petitioner's truck was of meagre amount for which truck ought not to have been confiscated. In support of the aforesaid submission reliance has been placed on a decision of this Court in the case of Anil Kumar Gupta v. The State of Bihar and Ors., 1996 (1) PLJR 863, and my attention has been drawn to paragraph 9 of the judgment, which read as follows :--

'9. learned counsel for the petitioner had argued that the Court may consider the desirability of setting aside the order of confiscation on the ground that the value of the contraband found on the truck was very small compared to the value of the truck and in lieu thereof impose a fine. He argued that though Section 52(3) of the Forest Act does not provide for imposition of fine in lieu of confiscation, such a provision can be read therein in the interest of justice and in that connection he relied on the observations made by a Division Bench of the Orissa High Court in Gurudev Singh Rai v. Authorised Officer-cum-Asstt. Conservator of Forest, AIR 1992 Orissa 287. The Court while dealing with the confiscation of vehicle under Section 56(2-a) of the Forest Act somewhat similar to the provisions of Section 52(3) of the Indian Forest Act as amended by Bihar Act 9 of 1990 was pleased to observe to quote :--

'Thus if in a particular case the authority may not feel satisfied that confiscation of the vehicle is demanded, keeping in view of the magnitude of the offence, but the authority may also feel that some sort of punishment deserves to be inflicted on the owner, the Court may generally feel that a lacuna has been left in the statute

which must be supplied to implement the real intention of the legislature. When such a defect comes to the knowledge of a Judge, he has to supplement written words in such a situation by asking the question as to how the legislature would have acted had it known about the defect in question and then do what the legislature would have done according to the Judge. Thus if the deficiency in Section 56(2-a), would have come to the knowledge of the legislature, it would have definitely provided for imposition of fine as an alternative punishment. Therefore, Section 56(2-a) can be read to include power of imposing fine in lieu of confiscation of vehicle in appropriate cases.'

9. In the instant case the order of confiscation of a truck valued at Rs. 5 lacs for carrying contraband worth Rs. 2000/- or a little more does not appear to be justified and imposition of fine in lieu thereof shall meet the ends of justice and Section 52(3) can be read to include such a power. Thus the order confiscating the vehicle and the orders passed by the appellate authority and the revisional authority upholding the confiscation of the truck are set aside and in lieu of confiscation the petitioner is directed to pay a fine of Rs. 10,000/- (ten thousand). The fine should be paid within a month whereupon the truck shall be released to the petitioner, if not released earlier.'

10. I do not find any force in this submission of Mr. Ojha.

11. I had considered this question also in the case of Manoj Kumar Sharma, (supra) wherein I have held as follows :--

'Neither Section 68 nor Section 52(3) of the Act provides for release of the vehicle on payment of fine. Judge made law is one of the sources of law and by process of interpretation such law is made but the question is as to whether in the absence of any provisions contemplating release of the vehicle on payment of fine in case of confiscation same can be done? In my opinion, certainly not. I am of the considered view that this would be enacting the law and not interpreting the same which is not permissible. In other words it will amount to legislation and not interpretation. It is well settled that a Court can merely interpret a statute, it cannot re-write, re-cast or re-design the same and while interpreting the provision, the Court makes explicit the intention of the legislature which enacted the law and no

more. The legislature had nowhere provided for release of the vehicle on payment of fine.'

12. A Division Bench of this Court had the occasion to go into this question in a little detail in the case of Dilip Kumar Pandey, (supra) in which on review of the decisions of this Court and the authority of Supreme Court, the Division Bench observed as follows :--

'Thus it is absurd to think that a vehicle, which has been found illegally transporting any forest produce of meagre value, can be released merely on payment of the value of articles loaded on the vehicle by way of compensation. It is to be remembered that no procedure is there by which a vehicle can be released in lieu of fine.'

13. The Division Bench in paragraph 18 of the said case had also found the decision of this Court in the case of Anil Kumar Gupta, (supra) relied on by the petitioner not to be a good law and in fact overruled the same. Same reads as follows :--

'18. Having given my anxious thought on the points raised before us, I am of the view that the decision in the case of Anil Kumar Gupta, (supra) cannot be held to be a good law and is thus overruled.'

14. In the result I do not find any merit in this application and it is dismissed accordingly.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**