

Mohamed Kasim Vs. First Addl. Sessions Judge and ors.

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Court : Karnataka

Decided On : Dec-15-2003

Reported in : ILR2004KAR1672

Judge : D.V. Shylendra Kumar, J.

Acts : [Karnataka Forest Act, 1963](#); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 386, 421 and 431; [Constitution of India](#) - Article 226

Appeal No. : W.P. No. 27222 of 2002

Appellant : Mohamed Kasim

Respondent : First Addl. Sessions Judge and ors.

Advocate for Def. : B.P. Puttasiddaish, High Court Govt. Pleader for R1 to R4

Advocate for Pet/Ap. : Kashinath Rao Patil, Adv.

Disposition : Writ petition allowed

Judgement :

ORDER

D.V. Shylendra Kumar, J.

1. Petitioner's vehicle bearing registration No. CAJ 2069 renumbered as CDL 1145 came to be confiscated as per an order dated 18.11.1983 passed by the Deputy

Conservator of Forests, Bangalore, on the ground that it was involved in certain forest offences under the [Karnataka Forest Act, 1963](#). The appeal preferred against this order in Appeal No. 55/84 came to be allowed as per order dated 10.9.1985 passed by the District and Sessions Judge, Mandya and the matter was remanded to the original authority for passing orders afresh.

2. The file relating to the seizure etc. having been transferred to the Deputy Conservator of Forests, Bangalore Division, Bangalore, as at that time there was certain administrative adjustments in the matter of territorial jurisdiction etc., it was considered by the Divisional Conservator of Forests, Bangalore Division, Bangalore, vide order dated 31/1/1986 and the vehicle was again confiscated. Petitioner preferred an appeal yet again in Crl. Mis 2/86 to the Court of the Additional Sessions Judge, Bangalore Rural District, Bangalore. This appeal also came to be allowed and the order of confiscation was set aside by the learned District Judge with a further direction to the respondent to hand over the vehicle to the petitioner.

3. The petitioner, though made repeated attempts to take delivery of the vehicle and as the vehicle was not in a running condition, could not take delivery and even the respondent having not shown any keenness or readiness to hand over the vehicle, was forced to approach the learned District and Sessions Judge by filing application I.A.II in Crl. Mis 2/86. It was averred in the application that many parts of the vehicle had been removed and the vehicle was not in running condition at all and as such the petitioner should be awarded compensation on the failure of the respondent to hand over the vehicle in a good and proper condition.

4. This application came to be allowed by the learned Additional District and Sessions Judge, Bangalore Rural District, Bangalore as per his order dated 14.6.1993 (copy at Annexure-B to this writ Petition) and the learned Judge directed that if the respondent should fail to deliver the vehicle in running condition as was required to be complied vide earlier judgment dated 17.8.1989 that has been passed by that Court, the respondent should compensate the petitioner by paying an equivalent value of the vehicle at Rs. 50,000/- with interest at the rate of 16% per annum from 17.8.1999 till such payment.

5. The respondents having not complied even with this order, the petitioner moved this Court in contempt jurisdiction by filing C.C.C. 836/93. In this proceeding it was averred on behalf of the respondent that the vehicle in question was kept in a running condition after necessary repairs and that notice had been issued to the petitioner calling upon him to take delivery of the vehicle in such running condition. In view of such submission made by the learned Government Pleader appearing on behalf of the respondent, the contempt petition was disposed of reserving liberty to the petitioner to reopen the proceeding if the order is not complied.

6. It is the case of the petitioner that even after this development, notwithstanding the petitioner and his Advocate approaching the respondent authorities, the petitioner was not handed over the vehicle in good and proper condition; that it was never in a running condition and the respondents in fact abused and ridiculed the petitioner and his Advocate saying that they can take any step they deem fit but they will not get delivery of the vehicle. Such repeated efforts on the part of the petitioner and his Advocate having not produced any desired effect as evidenced by the copies of the memos dated 29.10.1997 (copy at Annexure-M) and 17.11.1997 (copy at Annexure-N), the petitioner moved the learned Sessions Judge by filing a petition under Section 386(e) and Section 452 of the Code of Criminal Procedure ('Cr.P.C.' for short) praying for direction to the respondent to bring the vehicle to the Court premises in a running condition and for delivery of the vehicle etc. This application came to be rejected by the learned Sessions Judge as per his order dated 10.12.1997 (copy at Annexure-T) observing that as the Court has already given option to the petitioner to either get the vehicle or the value of the vehicle, there was no occasion for the Court to issue directions as sought for by the petitioner for production of the vehicle before the Court in a running condition. The learned Judge observed that it was open to the petitioner to recover the value of the vehicle as fixed by the Court by initiating appropriate proceedings in law.

7. It is thereafter that the petitioner filed application On 23.12.1997 under Sections 421 and 431 read with Section 386(e) Cr.P.C. before the First Additional Sessions Judge, Bangalore Rural District, Bangalore, praying for recovery of the amount by attaching properties of the respondent for realisation of the sum of Rs. 50,000/-

with interest at 16% per annum from 17.8.99 (copy at Annexure-U). This application came to be disposed of by the learned Additional Sessions Judge observing that the petitioner can initiate recovery proceedings by filing an application before the Magistrate.

8. Petitioner, thereafter filed such a petition under Section 431 Cr.P.C. before the Court of the VIII Additional Chief Metropolitan Magistrate, Bangalore in CrI. Mis 22/99 (Copy at Annexure-'V' and 'W'). The petition filed under Sections 421, 431 r/w. Section 386(e) Cr.P.C. for recovery of a sum of Rs. 50,000/- with interest at 16% per annum from 17.8.1999 having been dismissed by the learned C.J.M. Bangalore District, Bangalore vide his order dated 1.4.2002 (copy at Annexure-Y), the petitioner has approached this Court by this Writ Petition praying for direction to be issued to the respondent for paying the petitioner the value of the vehicle namely Rs. 50,000/- with interest at the rate of 12% per annum from the year 1983 and also to pay compensation in favour of the petitioner at the rate of Rs. 2,000/- per month from the date of seizure i.e. from 15.12.1983.

9. Sri Kashinath Rao Patil, learned Counsel for petitioner has very strenuously urged that notwithstanding several directions issued by the learned District and Sessions Judge as well as by this Court both in Criminal revisional jurisdiction as well as in contempt jurisdiction, respondents have not complied with such directions; that they have deliberately disobeyed the Court order; that they have shown scant respect to the Court directions and Court orders; that the petitioner's vehicle which had been wrongly seized and confiscated had been directed to be delivered or restored to the petitioner after the order of confiscation was set aside; that notwithstanding till date petitioner has not been given the vehicle in a proper condition nor is he paid the amount as had been determined by the learned Sessions Judge. Learned Counsel has submitted that the conduct of the respondents in not complying with the direction and not giving effect to the orders passed, is not only violative of the Court orders, but infringing the right of the petitioner to carry on his business as guaranteed under Article 19(1)(g) of the Constitution. In this regard, learned Counsel for petitioner has placed reliance on the following reported decisions:-

1) THE TRANSPORT COMMISSIONER, ANDHRA PRADESH, HYDERABAD AND ANR. v. S. SARDAR ALI AND ORS.

2) ANWAR AHMAD v. STATE OF UTTAR PRADESH

3) STATE OF MAHARASHTRA AND ORS. v. NANDED-PARBHANI Z.L.B.M.V. OPERATOR SANGH

4) GEETHA B. RAO v. THE SECRETARY, KARNATAKA STATE TRANSPORT AUTHORITY

5) M.P. SHARMA AND ORS. v. SATISH CHANDRA, DISTRICT MAGISTRATE, DELHI AND ORS.

10. It is also the alternative submission of Sri. Kashinath Rao Patil that when once the petitioner's appeal before the learned Additional Session Judge had been allowed and the petitioners had been given the relief if entitlement for a sum of Rs. 50,000/- with interest etc., it was the duty of the learned Sessions Judge to have ensured that the amount was recovered and payment made to the petitioner by issue of a recovery certificate in this regard and the learned District Judge has failed in his duty in directing the petitioner to approach the Magistrate for such purpose. Learned Counsel also submits that the rejection of his request before the Magistrate is also equally bad as it was not within the competence of the Magistrate to have rejected the request for recovery of the amount etc.

11. Learned Counsel submits that petitioner's effort to get back his vehicle for the past over 17 years having been frustrated by the adamant attitude on the part of the third respondent the Deputy Commissioner of Forests and his subordinates and the petitioner, though has been able to get orders/judgments in his favour, has not been able to reap the benefit of the same either due to the inaction on the part of the Lower Courts in ensuring proper implementation of its own orders and also the order of this Court, but also by the deliberate disobedience on the part of third respondent Forest Officer. Learned Counsel submits that it is within the jurisdiction of this Court while exercising supervision over the functioning of the subordinate Courts to issue necessary writs not only to keep them under check but also to

ensure that an aggrieved person is given the legitimate relief that he is entitled to in law.

12. Statement of objections has been filed on behalf of the third and fourth respondents, the State of Karnataka. It is inter alia asserted that the petitioner is not entitled for the relief that he has sought for in this Writ Petition and the petition is liable to be dismissed. It is the version of the third and fourth respondents that the vehicle which had been seized was got repaired and was ready to be delivered to the petitioner way back in the year 1993 and it was only the petitioner who has not taken delivery of the vehicle; that the vehicle is ready for delivery even now and as such it is open to the petitioner to take delivery of the vehicle and under such circumstances, there is no occasion to issue any Writ as prayed for.

13. Sri B.P. Puttasiddaiah, learned High Court Government Pleader has also submitted that his instructions are that the vehicle is available for delivery even as of now, but can be delivered only at the office of the Range Forest Officer at Hoskote and it cannot be brought to the Court as requested by the learned Counsel for petitioner for delivery before the Court etc.

14. In so far as the entitlement of the petitioner either for return of the vehicle or for the value of the same, it is not in dispute any more. The limited dispute is that while the respondents the forest official and the State of Karnataka assert that the vehicle is ready for delivery even now. The version of the petitioner is that inspite of several attempts on the part of the petitioner and also his Advocate, the vehicle was never handed over in a good and running condition; that it is only because it was not handed over to the petitioner in a proper condition the petitioner is constrained to approach the Courts, time and again and now before this Court, by filing this Writ Petition.

15. The ratio of the decisions relied upon by the learned Counsel for the Petitioner no doubt indicates that the vehicle which is the subject matter of confiscation, will have to be restored to the person from whom it was seized and confiscated if the order of confiscation is set aside. It is no doubt true that on an occasion the Supreme Court had indicated that the petitioner can also claim as a matter of fact the value of the vehicle and not merely some estimated value at the time of

seizure. In the instant case, with regard to the value of the vehicle, there cannot be much dispute as the value has been determined by judicial order namely the order passed by the Additional Sessions Judge, Bangalore Rural District, Bangalore valuing it at a sum of Rs. 50,000/-. In so far as the offer made by the respondents 3 and 4 that the vehicle is ready for delivery even now is concerned, I am not inclined to accept the same for the reason that the respondents have never given effect to such offers and assurances made before the Court ever since the year 1993. The net result of the series of petition and proceedings is that the petitioner, whose vehicle was wrongly confiscated and which order has been set aside and the forest officials were directed to restore it, has not got back his vehicle though there is positive order in his favour passed by competent Courts. The order passed by the learned Additional Sessions Judge had also indicated that the petitioner along with the sum of Rs. 50,000/- was also entitled to get interest on this amount at the rate of 16% per annum from 17.8.1989 till payment. This order remains in force as on date. It is an order which entitles the petitioner to receive this amount.

16. The petitioner has sought for relief in this Writ Petition for payment of Rs. 50,000/- with interest at 12% per annum from 1983 as also compensation at the rate of Rs. 2,000/- per month from the year 1983.

17. While there is no impediment for issuing a writ in the nature of mandamus on the strength of the order dated 17.8.1989 and 14.6.1993 passed by the Court of the Additional Sessions Judge, Bangalore Rural District, Bangalore in CrI. Mis.2/86 and as this order gives a right to the petitioner to receive this amount, the prayer for interest from the year 1983 as well as compensation from the year 1983 at the rate of Rs. 2,000 per month, is a matter which requires to be adjudicated and then only it can be granted, if it is found that the petitioner is entitled for the same.

18. Though Sri Kashinath Rao Patil, learned Counsel for petitioner has relied upon the decision of the Supreme Court reported in : [2000]1SCR357 (STATE OF MAHARASHTRA AND ORS. v. NANDED-PARBHANI Z.L.B..M.V. OPERATOR SANGH) as also the decision of this Court reported in : ILR 1994 KAR2063 (GEETHA B. RAO v. THE SECRETARY, KARNATAKA STATE TRANSPORT

AUTHORITY), I am not inclined to examine the petitioner's request for such payment in this Writ Petition for more than one reason. Petitioner is seeking for such relief from the year 1983 by filing a Writ Petition in the year 2002. The mere fact that the petitioner was agitating before the other forums even for his basic entitlement of Rs. 50,000/- and interest thereon, cannot be a ground to justify the delayed request for such entitlement of interest from the year 1983 as also the compensation from the year 1983 in the petition filed in the year 2002. I am not inclined to examine such request in this Writ Petition.

19. It is no doubt true that the respondents have been most inconsistent and irresponsible in their conduct and attitude and in obeying Court orders. But that in itself cannot be made a ground for determination of compensation or interest from an anterior date in a petition under Article 226 of the [Constitution of India](#). While the conduct on the part of the third respondent and officers under him is only to be deprecated, that such conduct is clearly in violation of the orders and directions issued by the learned Sessions Judge as well as by this Court and also clearly in contravention of the principles laid down by the Supreme Court in such cases, it will be sufficient to direct the fourth respondent State to ensure that recovery of losses if any to the State Government by this order from the person responsible during the relevant time and that will suffice meeting the ends of justice in the present case. Though petitioner has sought for interest at the rate of 12% per annum and from the year 1983, while I am not inclined to examine the grant of interest from the year 1983 for the reasons mentioned earlier, interest at the rate of 16% per annum as had been allowed by learned Additional Sessions Judge is maintained while granting relief in this Writ Petition based on the order passed by the learned Additional Sessions Judge.

20. In the circumstances, the Writ Petition is allowed. A writ in the nature of mandamus is issued directing respondents 3 and 4 to pay the petitioner a sum of Rs. 50,000/- with interest at the rate of 16% per annum from 17.8.1989 till payment.

21. Petitioner is also awarded costs in a sum of Rs. 10,000/-payable by the third and fourth respondents. In so far as the request for compensation for the

deprivation of the vehicle to the petitioner all these days are concerned, I am of the view that the award of interest itself will take care of this aspect also and therefore no separate compensation is being awarded on this account. Though this request may be rejected on the ground of laches also, the fact that the petitioner is being awarded interest from the year 1989 definitely compensates the petitioner to a great extent in this regard.

22. The costs and losses to the State in view of the conduct of third respondent in this petition can be recovered by the State from the third respondent and the Officers who were responsible at the relevant point of time.

23. Now that the petitioner is being compensated by an amount in lieu of the vehicle that had been confiscated, it is open to the State to sell away the vehicle if it is still with them and to realise the proceeds in favour of the State.

24. Writ Petition allowed as indicated above.

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