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Court : Andhra Pradesh

Decided On : Jul-11-2007

Reported in : 2007(5)ALD725

Judge : L. Narasimha Reddy, J.

Acts : Andhra Pradesh Forest Act, 1967 - Sections 44, 44(2A), 44(2B) and 44(2C)

Appeal No. : Writ Petition No. 12647 of 2004

Appellant : Bashetty Saroja

Respondent : The Appellate Authority Under the Forest Act and li Additional District Judge (Ftc) and ors.

Advocate for Def. : Government Pleader

Advocate for Pet/Ap. : Rajani Kanth Jwala, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

L. Narasimha Reddy, J.

1. The petitioner is the owner of a lorry, bearing registration No. AP 25 T 2661. On the intervening night of 8/9-5-2003, patrolling party of the Forest Range, Echoda, Adilabad District, laid a watch, on coming to know that two empty lorries have gone into Devalnaik Tanda Village. The jeep of the patrolling party was kept across the road on National Highway No. 7. However, the driver of a lorry is said to have by passed it and proceeded in a high speed. It was chased by the officials of the department and was ultimately found, near a Dhaba Hotel at Neradigonda Village. On inspection, it was found that teak logs of about 50 cubic meters, worth about Rs. 1,10,000/-, were hidden under the manure.

2. Proceedings were initiated under Section 44 of the Andhra Pradesh Forest Act, 1967 (for short 'the Act'). Through his order, dated 28.11.2003, the Sub-Divisional Forest Officer, Echoda, the 2nd respondent herein, confiscated the timber as well as the lorry. Aggrieved thereby, the petitioner filed C.M.A. No. 15 of 2003 in the Court of II Additional District Judge (FTC), Adilabad. The appeal was dismissed on 01.04.2004. Hence, this Writ Petition.

3. It is pleaded that the petitioner did not have the knowledge of the involvement of the lorry in the forest offence and that she was not given an opportunity in the proceedings. It is also alleged that the statement of the petitioner was recorded at the initial stage, and thereafter, no notices were issued.

4. In the counter-affidavit, it is stated that the notice sent to the petitioner was returned and a notice was also published in the press on 28.07.2003. It is urged that though the petitioner had the knowledge of pendency of the proceedings and notices of different kinds were issued and served, there was no response. Respondents plead that the involvement of the vehicle was proved beyond reasonable doubt and the petitioner did not prove her innocence, as required under Sub-section (2-C) of Section 44 of the Act.

5. Sri Rajani Kanth Jwala, learned Counsel for the petitioner, submits that soon after the petitioner came to know that the vehicle was seized, she submitted a representation, dated 16.05.2003, explaining the facts and circumstances and requesting release of the vehicle, and on the same day, not only a notice was served on her but her statement was also recorded. He submits that after the said

preliminary stage, the respondents did not serve any notice on the petitioner, and thereby, the entire confiscation proceedings are vitiated.

6. Learned Counsel contends that there was not even a whisper that the petitioner is directly involved in the offence and prays for release of the vehicle, or to confine the confiscation, to a portion of cost of the vehicle.

7. Learned Government Pleader for Forests, on the other hand, submits that the vehicle was caught while it was used in committing the offence and all possible steps have been taken by the driver to flee. He contends that though a final notice, as contemplated under Section 44 of the Act, was sent to the same address of the petitioner, it was returned with an endorsement that the address is incomplete and apart from the same, publication in press was also made. He submits that the proceedings do not suffer from any illegality.

8. The officials of the forest department had to undertake a very long chase to apprehend the lorry of the petitioner. The effort of the driver to escape was so serious that the forest officials, who had initially chased the vehicle, had to take assistance of some more officials on the way and ultimately, were able to locate the lorry at an interior place. The petitioner does not contend that the lorry was not involved in the offence. In fact, the involvement of the lorry in illicit transport of timber was proved beyond any doubt. The only question from the point of view of the petitioner is, as to whether she can be extended the benefit under Sub-section (2-C) of Section 44 of the Act. The said provision reads as under:

(2-C) Without prejudice to the provisions of Sub-section (2-B), no order of confiscation under Sub-section (2-A) of any tool, rope, chain, boat or vehicle shall be made if the owner thereof proves to the satisfaction of the authorised officer that it was used in carrying the property without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of the tool, rope chain boat or vehicle in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.

9. It is clear from a perusal of the provision that to avail the benefit under it, the owner of the vehicle, or the agent, or the driver, as the case may be, must prove to

the satisfaction of the authority that he, or she had no knowledge of the use of vehicle, in committing the offence. The burden squarely rests upon the person pleading such innocence.

10. The sequence of events, in the instant case, are that the lorry was seized on the intervening night of 8/9-5-2003 and claiming that she came to know the seizure only through the news in a local daily of 10.05.2003, the petitioner approached the 2nd respondent on 16.05.2003, with an application for release of the vehicle. On the same day, preliminary notice under Section 44 of the Act was served upon her and the statement of the petitioner was recorded. She pleaded that it is her husband that is looking after the vehicle and she has no concern with it. The request of the petitioner to release the vehicle was not acceded to.

11. Obviously, in view of the stand taken by the petitioner in her statement that it is her husband that is looking after the vehicle and concerned with its management, the 2nd respondent sent a notice, dated 27.10.2003 to the husband of the petitioner, but with the same address as that of the petitioner.

12. However, it was returned with an endorsement to the effect that the address is incomplete. It is relevant to note that the order of confiscation was sent to the same address and it was received by the petitioner. With the issuance of final notice, the obligation of the respondents to serve comes to an end. However, the 2nd respondent published a notice in the press on 28.07.2003 informing that the lorry, referred to above, was seized and inviting the owners thereof to participate in the proceedings. Even this did not evoke any response from the petitioner. Therefore, the 2nd respondent proceeded to direct confiscation of the vehicle.

13. At the cost of repetition, it needs to be observed that the burden squarely rests upon petitioner, or her husband to prove innocence about the involvement of the vehicle. On discharging the burden they could have availed the benefit of Sub-section (2-C) of Section 44 of the Act. No effort was made in this direction.

14. Learned Counsel for the petitioner placed reliance upon a judgment rendered by a Full Bench of this Court in Sub-Divisional Forest Officer, Chennur v. Vijay B. Gulati : 1998(1)ALD117 . The Full Bench mostly dealt with the question as to

whether the proof of innocence by the owner, agent or driver of the vehicle is concurrent, or independent. It was held that it will be sufficient if the owner proves his innocence or lack of knowledge, even if it was held that the driver was involved in the offence. All the same, the obligation of the owner to prove was recognised and it was nowhere pointed out that it is for the department to prove the involvement of the owner. The relevant portion of the judgment reads as under:

It is sufficient if the owner proves that at the time when the vehicle was entrusted to his agent or driver, if he was not accompanying to see that all legal formalities for the transportation of the vehicle were complied with and he had entrusted the transportation to the agent or driver by taking all reasonable precautions and once such steps have been taken by the owner, his responsibility and liability ceases and when vehicle leaves his control and is in the control of the agent or the driver and if the said agent or driver commits any offence like the one in the instant case, then such owner cannot be made liable for confiscation of his vehicle.

15. In the instant case, admittedly, the petitioner, or her husband did not take any steps to prove their innocence.

16. Reliance is also placed upon another judgment of the Division Bench of this Court in *Forest Range Officer, Gandhari, Nizamabad v. K. Raju* : 1998(4)ALD624 . The Division Bench dealt with the question of proportionality of punishment or nature of confiscation depending upon the knowledge or involvement of the owner. When the petitioner did not even respond to the proceedings under Section 44 of the Act, the question of considering the proportionality of the sentence, does not arise.

17. The 2nd respondent as well as the appellate Court have considered the matter from the proper perspective, and this Court does not find any basis to interfere with the same. Hence, the Writ Petition is dismissed. There shall be no order as to costs.