

Abdul Khader Vs. Forest Range Officer, Rayachoti, Cuddapah Dist. and Others

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SooperKanoon Citation : sooperkanoon.com/441773

Court : Andhra Pradesh

Decided On : Nov-06-2000

Reported in : 2000(6)ALD681; 2000(6)ALT754; 2001CriLJ2617

Judge : Elipe Dharma Rao, J.

Acts : Andhra Pradesh Forest Act, 1967 - Sections 15(6) and 44(2-A, C and E); Madhya Pradesh Van Upaj Van Upaj (Vyapar Vinmiyaman) Act; [Constitution of India](#) - Article 14, 19(1) and 300-A

Appeal No. : WP No. 4342 of 1992

Appellant : Abdul Khader

Respondent : Forest Range Officer, Rayachoti, Cuddapah Dist. and Others

Advocate for Def. : Government Pleader for Forests

Advocate for Pet/Ap. : Mr. Duba V. Nagarjuna Badu, Adv.

Judgement :

1. This writ petition was filed against the order dated 16-8-1991 in Forest Appeal No.4 of 1988 on the file of the II Addl. District Judge, Cuddapah, confirming the order of the I respondent in OR.22 of 1987-88 (R) /A.5 dated 8-4-1988,

confiscating the lorry of the petitioner bearing No.ADM-3879, being illegal and arbitrary and consequently pass such other orders which are deemed fit and proper in the circumstances of the case.

2. The petitioner is the owner of the lorry bearing No.ADM-3879 and he was admitted in Kumool General Hospital in the month of June, 1987 and underwent treatment from 17-6-1987 to 20-6-1987 and during that period he instructed the driver of his lorry Sri Shaik Khaja Peer to look after the running of the lorry, that after discharge from the hospital, he came to know that his lorry was seized by the first respondent on 19-6-1987 on the allegation that red sandal logs were transported in the lorry and a show-cause notice was issued to the petitioner under sub-section (2) of Section 44 of the A.P. Forest Act, 1967 (for brevity the Act) and he replied to the show-cause notice giving his explanation duly bringing to the notice all the material facts stating that on-the date of seizure of the vehicle he was not in Cuddapah and undergoing treatment at Kurnool General Hospital and the allegation of illegal transportation of red sandal wood by his driver happened in his absence and without his knowledge and connivance, but the firstrespondent without considering his explanation, ordered confiscation of the lorry through proceedings OR.22/87-88 (R)/A.5 dated 8.4.1988. Aggrieved by the above said order, he preferred an appeal before the Appellate Authority under Section 44(2-E)-cum-II Addl. District Judge, Cuddapah in Forest Appeal Suit No.4 of 1988 which was dismissed on 16-9-1991 confirming the order of the first respondent.

3. Assailing the correctness of the above said order, the present writ petition was filed contending that the order of confiscation of the petitioner's lorry is contrary to law, weight of evidence and probabilities of the case, that the first respondent has not considered his explanation and the evidence adduced by the petitioners, that the statements of the driver establish that the petitioner has no knowledge of the commission of the offence and therefore, should not have passed the impugned order confiscating the lorry of the petitioner. It is further contended that the first respondent has failed to consider the fact that the petitioner was undergoing treatment in Kumool General Hospital and thus he had no knowledge of the commission of offence and therefore, the first respondent should not have passed the impugned order. The petitioner further contended that he was not present in

the vehicle at the time of commission of offence, that the first respondent has no evidence to pass the impugned order. It is also contended that as per Section 44 (2-C) of the Act, if the owner proves to the satisfaction of the Authorised Officer that the vehicle was used in carrying the property without his knowledge or connivance no order of confiscation could be passed, that the impugned order was passed as a result of non-application of mind to the various provisions of the Act and, therefore, for all the above stated reasons, it is prayed that the impugned order passed by the first respondent and confirmed by the III respondent-the Appellate Authority, be set aside.

4. On the other hand, the respondents submit that the order of the confiscation of the lorry of the petitioner was passed after completing all the formalities like giving of adequate opportunity to the petitioner, as per the provisions of the Act, conducting a detailed enquiry and having satisfied with the facts, the Authorised Officer-cum-Divisional Forest Officer, Cuddapah passed the order confiscating the lorry of the petitioner ADM 3879 under the provisions of sub-section (2-A) of Section 44 of the Act and the same was confirmed by the Appellate Court. It is further submitted that the Authorised Officer-cum-Divisional Forest Officer, Cuddapah conducted enquiry on 12-11-1987 and the driver and cleaner of the said lorry have given contradictory statements with regard to the way of loading the red sandal timber in the lorry, that the cleaner of the lorry during cross examination has accepted the fact that the owner of the lorry-the petitioner, has followed the lorry on the day of offence in a jeep and therefore, His contention of the petitioner that he has no knowledge about the commission of the offence is far from truth. Further the contention of the petitioner that he was undergoing treatment in Kurnool General Hospital on the date of occurrence of the offence is a concocted story and after thought and this plea was taken after lapse of nearly five months and therefore, the order passed by the first respondent is sustainable in law.

5. As per the statement of the cleaner, the petitioner had no knowledge of the commission of the offence, is not believable, but it is clearly established that the petitioner has followed the lorry in the jeep and therefore, it can be concluded that with the knowledge and consent of the petitioner, the offence was committed by

the driver and cleaner. As per Section 44(2-C) of the Act, even if the Agent of the lorry owner i.e., driver and cleaner in this case are involved in commission of the offence, the lorry is liable to be confiscated, that the manner in which the red sandal wood logs were loaded beneath lime (Choonam) covered with tarpaulin would clearly show that the petitioner, the driver and the cleaner had an intention to commit forest offence. Therefore, the action initiated by the respondents is in accordance with Section 44(2-C) of the Act, it is further stated that, when the driver and cleaner were absconding, notice was given to the petitioner to produce them for enquiry on 20-7-1987, though the receipt of notice was acknowledged by the petitioner on 14-7-1987, he failed to appear before the Enquiry Officer fixed on 20-7-1987 and also did not produce the driver and cleaner. On the other hand, he approached this Court for the release of vehicle by filing writ petition. Accordingly, the enquiry was fixed on 11-11-1987 and the driver and cleaner appeared before the Authorised Officer-cum-Divisional Forest Officer, Cnndapah with their defence Counsel, but they could not put forth any reliable evidence to prove the innocence of the lorry owner, his agent or the person incharge of the lorry in committing the offence. For the above stated reasons, the respondents submit that the impugned order passed by the first respondent confiscating the lorry of the petitioner is in accordance with the provisions of Section 44 of the Act and therefore, it is sustainable in law and prayed to dismiss the writ petition.

6. While arguing on behalf of the petitioner, the learned Counsel submits that the respondents have not conducted proper enquiry, they have not produced any evidence that the petitioner had any knowledge of the commission of offence by the driver and cleaner of the lorry inasmuch as he was undergoing treatment in Kurnool General Hospital, during the period from 17-6-1987 to 20-6-1987 and therefore, the impugned order passed by the first respondent and confirmed by the third respondent is contrary to the provisions of Section 44(2-C) of the Act and it is liable to be set aside. In support of his contention he relied on a decision of Full Bench of this Court in Sub-Divisional Forest Officer Chennur v. Vijaya B. Gulati and others, : 1998(1)ALD117 (FB), which is a case referred by an earlier Division Bench for consideration of the question how a disabling legal provision confiscatory in nature has to be construed and what is the degree of disproof to be considered in such cases. The facts in brief of the case are that the first

respondent-owner of the lorry bearing No.MMP-1699, a resident of Bombay, that the said lorry was sent on hire for transporting ACC cement from Mancherial of Adilabad District, Andhra Pradesh to Mumbai (Bombay), the second respondent driver of the vehicle left Mumbai to pickup cement at Mancheriat in the second week of December, 1981, that there was some delay in loading the cement and the second respondent-driver on his own had accepted transportation of timber, a forest produce within the meaning of the Act, without there being a valid permit, the second respondent driver contended that some papers were shown to him by the owner of the timber purporting to have been issued by the Forest Officials. The Authorised Officer while accepting that the first respondent-owner was not having any knowledge about the transportation of the timber illicit or otherwise, and even without his consent, has curiously held that the vehicle was liable to be confiscated for the forest offence and such order was passed in exercise of the powers under Section 44(2-C) of the Act, which was appealed against and the District Judge, Adilabad, had reversed the confiscation order basing upon the judgment of the Division Bench and the Forest Range Officer appealed against that judgment in WP No.1819 of 1992 which was dismissed by a learned single Judge. Against the order of the learned single Judge, writ appeal was filed. In referring the matter of the Full Bench by the Division Bench, it expressed the opinion that the last limb of Section 44(2-C) of the Act i.e., '..... that each of them had taken all reasonable and necessary precautions against such use'.....has not been considered by the earlier Division Bench and it is a settled principle of interpretation that no part of a provision of law should be rendered nugatory or considered surplusage. It was indicated that the earlier Bench was of the view that not only the owner, but his agent and also person-in-charge of the vehicle should also prove collectively and that if even one of them had knowledge of the commission of forest offence in the transportation of timber, then the vehicle should be confiscated and it is of no consequence if the owner alone proves his want of knowledge or consent in the commission of forest offence.

7. Answering the issue raised therein, the Full Bench has held that it would not be proper to extend the scope of that provision by reading into words which are not there and thereby widen the scope of the provisions relating to confiscation. The words referable to owner of the vehicle and the word 'or' used therein are all

disjunctive and cannot be read in conjunction and do not connote that all of them have to collectively prove their innocence with regard to want of knowledge or consent of commission of forest offence. The words 'each of them had taken all reasonable and necessary precautions against such use' can not be understood to mean that all of them have to prove their want of knowledge or innocence collectively but (not) individually. If the driver accompanying the vehicle proves his innocence, question of referring the matter of either the owner or his agent does not arise at all. For criminal offence anyhow, the person in charge of the vehicle will be proceeded against, but insofar as civil consequences are concerned, it is owner who loses the property and if the commission of forest offence had taken place, without his knowledge or consent, and if he had no role to play in the said offence, then it would highly be unreasonable to punish him by confiscation of his vehicle, which would be arbitrary violating Article 14 of the [Constitution of India](#) and also will be an unreasonable restriction of his fundamental right guaranteed under Article 19(1)(g) of the [Constitution of India](#) and ultimately it may breach the constitutional guarantee under Article 300-A. It was further observed by the Full Bench that authority of law does not mean enactment of law providing for confiscation, but such enactment should conform to the fundamental rights guaranteed under Part-III of the [Constitution of India](#) and also the constitutional guarantee under Article 300-A. May be contextually the word 'or' may have to be read as 'and' and sometimes the word 'and' may have to be read 'or'. But the above legal provision involved for interpretation in the instant case can be given a plain meaning understanding 'or' as 'or' only and fastening liability of proving innocence on the owner, agent and driver not collectively but individually and even if there is failure of proving innocence on the part of the driver or agent, and if the owner proves innocence, his vehicle can not be confiscated. 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 transportation of the vehicle was 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, then such owner cannot be

made liable for confiscation of his vehicle. Confiscation of a vehicle which is used for unlawful purposes in normal course can be ordered only if the owner connived or had the knowledge of the unlawful use of the vehicle or that his agent did only such things as the owner desired and thus agent's culpability was shared by the owner and in the case of the servant namely, the driver in particular, only when it is shown that he was carrying out the desires of the owner. With this proposition of law, the Full Bench set at rest the controversy. Ultimately the Full Bench has held that if the owner connived or had the knowledge of the unlawful use of the vehicle or that his agent did only such things as the owner desired, and thus agent's culpability was shared by the owner and in the case of servant namely, the driver in particular, only when it is shown that he was carrying out the desires of the owner, the vehicle can be confiscated which is used for unlawful purposes in normal course.

8. The learned Counsel for the petitioner also relied on another Full Bench decision of this Court in Govt. of A.P., through Forest Range Officer, Burgumpad v. Dindu Kanakamma and others, : 1998(5)ALD436 (FB). This is also a case arising out of Section 44 of the Act. The question that came up for consideration before the Full Bench was that whether the appellate Court can exercise its jurisdiction under Section 44(2-E) of the Act in view of the confiscation of the vehicle and release the vehicle on payment of some money, which might form part of the value of the vehicle.

9. After considering the provisions of law bearing on the issue, it was held that sub-section (2-A) of Section 44 enjoins that where the authorised Officer before whom the seized timber or forest produce has been produced is satisfied that a forest offence has been committed in respect thereof, he may order confiscation of the timber or forest produce seized or produced together with all tools, ropes, chains, boats or vehicles used in committing such offence. Therefore, it goes without saying that if on enquiry it is found that no forest offence has been committed in transporting the timber or forest produce, the question of confiscating does not arise. The Authorised Officer or the appellate authority viz., District Court, should necessarily address itself to the question whether a forest offence has in fact been committed, if a dispute is raised in that behalf. As far as the vehicle is

concerned, there is another situation in which the vehicle has to be released. That is in a case where sub-section (2-C) applies. Subsection (2-C) mandates that an order of confiscation of the vehicle shall be made if the owner thereof proves to the satisfaction of Authorised Officer that it was used in carrying the property without his knowledge or connivance or of his agent or the person-incharge of the vehicle in regard to commission of offence and that each of them had taken reasonable precautions against such use. If these ingredients are satisfied in the sense that the lack of knowledge on the part of the vehicle owner or of his agent or person-incharge of the vehicle is proved, the ban under subsection (2-C) against passing an order of confiscation operates, likewise, the satisfaction be 'reached in this regard by the appellate Court as well.

10. Let us see sub-section (2-C) of Section 44 of the Act, which reads as under:

'.....44- Seizure of property liable to confiscate and procedure thereupon:

(1).....

(2).....

(2-A).....,

(2-B)....

(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-incharge of the tool, rope, chain, boat or vehicle in committing the offence and that each of them had taken all reasonable and necessary precaution against such use'.....

11. A reading of sub-section (2-C) of Section 44 mandates that no order of confiscation of the 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 of his agent or the person-incharge of the

vehicle in regard to commission of offence and that each of them had been taken reasonable precaution against such use. The Authorised Officer passing an order confiscating the vehicle involved in the offence arises only if the owner fails to prove to his satisfaction that it was used for carrying the property without the knowledge or connivance of the owner, or his agent or person-incharge of the vehicle in regard to the commission of the offence.

12. Keeping in view the ratio laid down by two Full Benches of the this Court, let us examine the facts and circumstances of the instant case. It is the case of the respondents that the vehicle bearing NO.ADM3879 was intercepted at Check Post, both the driver and cleaner ran away from the spot stopping the lorry, that the timber was concealed under lime covered by tarpaulin, that when an opportunity was given to the petitioner by notice dated 7-10-1987, to produce the driver and cleaner for enquiry to be conducted on 20-7-1987, he failed to produce them, though he acknowledged the receipt of the said notice. Once again the Authorised Officer has given notice dated 10-9-1987 to the petitioner to give another opportunity to make representation on 17-9-1987, even then he did not avail the opportunity and hence, the Officer finally issued notice dated 31-10-1987 fixing the date of enquiry as 11-11-1987, the petitioner, driver and cleaner appeared for the enquiry before the Authorised Officer with their Defence Counsel, but they could not put forth any reliable evidence to prove their innocence of the lorry owner or his driver. On the other hand, when notice was received by the petitioner, instead of appearing before the Authorised Officer for enquiry, he straightaway approached this Court by filing Writ Petition No.12140 of 1981 for release of the vehicle.

13. The Authorised Officer has further stated that the route from Cuddapah to Madras which the driver has chosen also deserves to be considered minutely, inasmuch as the distance from Cuddapah to Madras via Rayachoty, Chittoor or through Piler and Tirupathi is 328 Kms. Whereas, the other route from Cuddapah to Madras via Rajampet, Renigunta is only 252 Kms. Had the driver been innocent in his deeds and the load was only lime, he would have chosen shortest route, but the driver has intelligently chosen the long route which is excess by 76 Kms., with a view to avoid checking by Forest thanas.

14. It is further observed by the Authorised Officer that both the driver and cleaner have given contradictory statements. According to the driver of the lorry, while he was proceeding towards Rayachoty, 80 members stopped the lorry near Rayachoty river and forcibly loaded some logs in the lorry on the lime, five of them followed him to the lorry upto bus stand and got down there and instructed him to proceed, stating that they will follow him by jeep. After that he proceeded towards the Check Post and stopped the lorry at a distance of 100 yards to the check post and got down from the lorry, left it and came to Cuddapah to convey the same to the petitioner. He admitted that he did not make any complaint to the police with regard to the forcible loading of the wooden logs. According to the version of the cleaner, while proceeding towards Rayachoty, their lorry was detained near the bridge by 10 to 20 persons, forcibly removed the tarpaulin, removed some lime from the lorry and loaded wooden logs in the lorry threatening them, that himself and the driver were in the cabin while the logs were being loaded, that the persons who loaded the logs tied the tarpaulin to the lorry, and one person got into the cabin and directed the driver to start the lorry, they reached the check post, that thereafter the driver and himself got down from the lorry and ran away. The driver has stated that 80 persons stopped the lorry whereas, the cleaner stated that 10 to 20 persons stopped the lorry and according to the driver of the lorry he has not given and compliant to the police with regard to alleged loading of timber logs into the lorry. According to the petitioner, from 17-6-1987 to 20-6-1987 he was undergoing treatment in Kurnool General Hospital, but he has not filed any medical certificate to that effect. On the other hand, he instructed the driver to look after running of the vehicle. Though the petitioner was given opportunity to prove that he had no knowledge about the commission of offence, yet he failed to produce any evidence and also tried to avoid the enquiry and it is only when the Authorised Officer issued final notice, himself, the driver and cleaner appeared before him with their Defence Counsel and could not place any material evidencing their innocence and failed to prove that he has no knowledge of the commission of offence by his agent or the person-in-charge of the vehicle.

15. In support of the contention the learned Government Pleader has placed reliance on a judgment of the Supreme Court in State of Madhya Pradesh v. Suresh Kumar, : AIR 1997 SC1017 , wherein the Supreme Court has considered

Section 15(6) of the Madhya Pradesh Van Upaj (Vyapar Vinmiyaman) Act, which is analogous to Section 44(2-C) of the A.P. Forest Act, 1967. The facts in nutshell are that when the forest officials tried to stop the truck bearing NO.MPW4015, belonging to the first respondent therein, the inmates of the said truck opened fire from the fire arm and tried to escape from the truck to avoid being caught, the truck was then brought to the forest depot and it was revealed that it was carrying 120 logs of teakwood covered by tarpaulin, that on conclusion of the preliminary investigation, confiscation proceedings were initiated and on conclusion of the confiscation proceedings, the truck was confiscated in exercise of powers under sub-section (6) of Section 15 of the Adhiniyam. The facts were held proved by the Forest Authorities and on the proved facts, the forest authorities concluded that the driver of the truck in connivance with the other inmates of the truck was carrying the wooden logs illegally. Therefore, under sub-section (6) burden casts upon the owner of the truck to prove that his truck was used for illegal activities without his knowledge and not with his connivance. The statement of owner therein was recorded by the competent authority and the explanation sought to be given by him did not find favour with the said authority. The respondent did not produce any other material on record to discharge the burden under sub-section (6) and therefore, it cannot be said the competent authority and the Appellate Authority have committed an error in coming to the conclusion that the respondent owner has failed to satisfy the authorised Officer that the illegal activities committed by the driver of the truck was without his knowledge or connivance. Mere ipse dixit of the respondent-owner cannot be said to be sufficient evidence to discharge burden Section 15(6) of the Adhiniyam. Therefore, their Lordships of the Supreme Court opined that the High Court has totally misread and misinterpreted provisions of Section 15(6) and therefore, the reasoning of the High Court and the Sessions Court was held to be unsustainable as regards the interpretation of Section 15(6).

16. Applying the principle laid down by the Supreme Court in Suresh Kumar's case (supra), in the instant case, when the lorry was intercepted at Check Post, both the driver and cleaner fled away leaving the vehicle and there were about 150 red sandal wood logs weighing 5539 K.Gs. valued at Rs. 1,60,000/- concealed under lime covered by a tarpaulin. The said property was produced before the Authorised Officer and when the Authorised Officer has given notice to the owner,

driver and cleaner of the vehicle to appear before him for conducting enquiry, they did not avail the opportunity and when final notice was given, the petitioner came with a plea that he was undergoing treatment in Kurnool General Hospital during that period and directly approached this Court and obtained order for release of the vehicle. That apart, the driver and cleaner of the vehicle gave contradictory statements with regard to loading of the wooden logs forcibly into their lorry by some persons. No police complaint was lodged against the alleged action. Except oral assertion that the petitioner was hospitalised during the period from 17-6-2000 to 20-6-2000, he has neither examined the doctor who treated nor produced any material before the Authorised Officer that he had no knowledge or connived with the driver and cleaner for the illegal transportation of red sandal logs. Therefore, as held by the Supreme Court and the Full Benches of this Court, under Section 44(2-C) of the Act, the burden lies on the owner of the vehicle to prove that he had no knowledge or connived with the agent or the person-in-charge of the vehicle for illegal transportation of the forest produce. From the facts and circumstances of the case, it is clear that the petitioner failed to discharge the burden to prove that he had no knowledge or that he was connived with the agent or person-in-charge of the vehicle. The Authorised Officer and the Appellate Authority have satisfied themselves the material placed before them to confiscate the vehicle and it cannot be said that both the authorities have committed any error or violated provisions of law in passing the order of confiscation.

17. As I have held that the petitioner has failed to prove that he had no knowledge or that he has not connived with his agent or the person-in-charge of the vehicle, in committing the offence, he is not entitled to any relief in the writ petition. The writ petition deserves to be dismissed and is accordingly dismissed. No costs.