

Manoj Kumar Vs. District and Sessions Judge, Hardwar and Others

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Court : Allahabad

Decided On : Sep-12-1997

Reported in : 1998(1)AWC188

Judge : P.K. Jain, J.

Acts : [Forest Act, 1927](#) - Sections 26, 41, 41 (2), 42 and 55

Appeal No. : Crl. Misc. Writ Petition No. 1252 of 1997

Appellant : Manoj Kumar

Respondent : District and Sessions Judge, Hardwar and Others

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Anurag Pathak, Adv.

Judgement :

P.K. Jain, J.

1. Heard Sri Anurag Pathak, learned counsel for the petitioner and the learned A. G. A.
2. The writ petition is being finally disposed of at the admission stage after hearing the parties, counsel at length.

3. Tata Truck No. 407, registration No. UP 10A/5336 was Intercepted by forest authorities of district Hardwar and it was found that wood was being unauthorisedly transported. A case under Section 26(f), 41/42, of the Forest Act was registered. The present revisionist, Manoj Kumar, moved an application before the Judicial Magistrate, Roorkee, for release of the vehicle and the learned Magistrate by order, dated 29.1.97 allowed the application for release on certain conditions mentioned in the order. The forest authorities did not release the vehicle in compliance of the order dated 29.1.97. Therefore, application dated 5.2.97 was moved on which the learned Magistrate passed the order, dated 5.2.97 issuing show cause notice to the forest authorities for non-compliance of the order, dated 29.1.97. The forest authorities submitted their reply dated 5.2.97 stating that the registered owner never appeared before them and, therefore, the compliance could not be made. On 6.2.97 Forest Officer, Roorkee Range moved another application stating that the said vehicle was involved in another case under the Forest Act in Crime No. 69/96-97 and in this respect photocopy of the report of Forest Officer, Khanpur, was being submitted. The petitioner moved another application dated 10.2.97. This application was opposed by the forest authorities on the ground that the vehicle was also used earlier and was involved in The learned Magistrate observed in his order that the vehicle was being used repeatedly in commission of the crime and hence rejected the same. He also fixed a date for disposal of the confiscation application moved by the forest authorities. On 2.4.97 the learned Magistrate passed another order observing that the vehicle was involved in an offence under the Forest Act which occurred in the night of 21/22.1.97 and offences committed on 3.1.97 and 16.1.97 and this is the same truck which was intercepted by the forest authorities on 25.1.97. It was also observed in the order that the truck was seized earlier and released by the court but it was being repeatedly used in commission of the crime and, therefore, another application for release of the vehicle was rejected.

4. The revision preferred against the order dated 2.4.97 was dismissed by the Sessions Judge, Hardwar observing that proceedings for confiscation was pending. Therefore, the vehicle cannot be released.

5. In this writ petition the order dated 2.4.97 passed by the C. J. M., Hardwar and the judgment and order, dated 20.5.97 passed by the learned Sessions Judge are challenged.

6. Opportunity was given to the Additional Government Advocate for filing counter-affidavit, but no counter-affidavit has been filed despite opportunity being granted several times.

7. The petitioner has filed supplementary affidavit specifically denying the fact that the vehicle was ever seized by the forest authorities prior to 25.1.97. It was also stated that the forest authorities were annoyed on account of contempt application having been moved against them by the petitioner, and, therefore, false cases prior to 25.1.97 were registered.

8. It is contended by the learned counsel for the petitioner that the vehicle cannot be detained on the ground that it was seized earlier, was released by the court and was being regularly used for commission of the crime and also on the ground that confiscation proceedings are pending. Learned A. G. A. contends that there are allegations of repeated use of the vehicle in commission of the crime. Therefore, the application for release has been rightly refused by the courts below.

9. So far as the observation of the learned Sessions Judge in his judgment and order that in respect of the vehicle, confiscation proceedings are doing on, is concerned, attention of this Court is drawn to Section 55 of the Forest Act which reads as follows :

'55. Forest produce, tools, etc., when liable to confiscation.--(1) All timber or forest produce which is not the property of Government and in respect of which a forest offence has been committed, and all tools, boats, carts and cattle used in committing any forest offence, shall be liable to confiscation.

(2) Such confiscation may be in addition to any other punishment prescribed for such offence.'

10. Bare perusal of the section would show that it is not clear from subsection (1) as to who can pass the order of confiscation. Sub-section (2), however, gives an

indication in this regard which says that such confiscation may be In addition to any other punishment prescribed for such offence. It appears to be the Intention of the Legislature that the order of confiscation may be passed only on conclusion of the trial after the guilt of the accused is proved. Therefore, an order of confiscation may be passed by the trial court at the time of the conclusion of the trial and not prior to that.

11. In the circumstances, confiscation proceedings cannot be initiated prior to the conclusion of the trial. The release of the vehicle cannot be disallowed on the ground that confiscation proceedings have been initiated.

12. No counter affidavit has been filed on behalf of the respondents. The petitioner. In his supplementary affidavit, has categorically stated that the vehicle was never seized by the Forest Department prior to 25.1.97, when for the first time the vehicle was seized by the forest authorities. From the various orders passed by the Judicial Magistrate as well as the Chief Judicial Magistrate and the stand taken by the forest authorities, it would appear that the forest authorities were changing their version. On 5.2.97 they took the stand that the petitioner did not appear for obtaining possession of the vehicle. On 6.2.97 they suddenly moved an application stating that the vehicle was involved in another ' Crime No. 69 of 1996-97 as reported by Forest Officer of Khanpur range. Then again before the C. J. M. stand was taken that the vehicle was involved in offences under the Forest Act committed on 3.1.97 and 16.1.97 and 21/22.1.97. There is no material produced before this Court showing that the vehicle was seized earlier prior to 25.1.97. In these circumstances, the contention on behalf of the State cannot be accepted.

13. The question whether the vehicle was involved in offences under the Forest Act prior to the offence alleged to have been committed on 25.1.97 can be decided at the proper stage by the trial court if the petitioner is chargesheeted for such offences and in this writ petition no finding in this regard can be given. However, looking to the changing stands taken by the forest department, it appears just and proper that the vehicle of the petitioner may be released in his favour in view of the order dated 25.1.97 passed by the Judicial Magistrate, Roorkee.

14. Consequently, the petition is allowed. Impugned orders dated 2.4.97 passed by C. J. M., Hardwar and 20.5.97 passed by learned Sessions Judge are quashed and it is directed that the vehicle shall be released in favour of the petitioner in compliance of the order dated 29.1.97 passed by Judicial Magistrate, Roorkee.

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