

Mani Vs. Sub-divisional Forest Officer-cum-authorised Officer and anr.

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Court : Madhya Pradesh

Decided On : Apr-07-2000

Reported in : 2000(4)MPHT105

Judge : J.G. Chitre and ;A.K. Gohil, JJ.

Acts : Madhya Pradesh Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 - Sections 15(6) and 19(1)

Appeal No. : Letters Patent Appeal No. 212/99

Appellant : Mani

Respondent : Sub-divisional Forest Officer-cum-authorised Officer and anr.

Advocate for Def. : S. Kemkar, Adv. for Respondent Nos. 1 and 2

Advocate for Pet/Ap. : S.R. Saraf and ;Yogesh Purohit, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

J.G. Chitre, J.

1. Heard Shri Saraf at length. Perused the order which is being assailed by this L.F.A. Shri Saraf pointed out that learned Single Judge has not property

considered the provisions of Section 15(6) of the M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 (in short called 'Adhiniyam' for convenience). He further submitted that the learned Single Judge has drawn conclusion that husband of appellant Smt. Mani Jain was present in the said truck bearing No. MP-09-D-6091 when that was apprehended by Shri Pavan Joshi and other Forest employees. Shri Saraf submitted that as the learned Single Judge did not properly considered the Writ Petition, the appellant has been constrained to file this appeal. He prayed that the said order be set-aside by admitting this LPA for final hearing.

3. Shri Kemkar pointed out that the learned Single Judge has considered all necessary facets of the matter and there is absolutely no error whatsoever in the judgment and order which is being assailed by this LPA.

4. Shri Saraf placed reliance on the judgment of the Supreme Court in the matter of Baddula Lakshmaiah and Ors. v. Shri Anjaneya Swami Temple and Ors., reported in 1996 MPLJ 1074, as well as the judgment of Supreme Court in the matter of Dinesh Kumar Kartike v. State of M.P. and Ors., reported in (2000) 1 SCC 323.

5. Supreme Court has taken the view in the matter of Baddula Lakshmaiah (supra) that Letters Patent Appeal is normally an intra-Court appeal whereunder Letters Patent Bench corrects its own orders in exercise of same jurisdiction as vested in Single Judge. It is not an appeal against an order of a subordinate Court. In the matters of Ku. Varsha Shrivastava v. State of M.P., LPA 16/2000, 2000 (3) MPHT 292, Madhur Agrawal v. State of M.P., LPA 17/2000, 2000 (3) MPHT 292 and Saumi Chatterjee v. State of M.P., LPA 20/2000, 2000 (3) MPHT 292, the Division Bench of this Court has also taken a view that the attitude of Division Bench while deciding the LPA has to be strict keeping in view the incoming flood of LPAs. The LPA is intra-Court appeal. Therefore, the Division Bench should not be scanning out the order passed by the Single Bench from all corners. If the order is good enough to deal with the averments made in the matter of Writ Petition and if it is sound on legal grounds, the Division Bench should be slow in disturbing it. It is not to be dealt with as if it is first appeal. That order is not to be decided on all facets by examining inch by inch. Thus, keeping in view the ratio of the judgment of the

Supreme Court in Baddula Lakshmaiah case and Ku. Varsha Shrivastava case, this matter would be dealt with by this Court as mentioned hereunder.

6. As a criticism has been made by Shri Saraf, this Court specially perused the judgment and order which has been passed by Shri H.P. Singh, Up Vanmandaladhikari Evam Pradhikrit Adhikari, Mhow Vanmandal, Indore dated 28-8-1995 on page 5 of the said judgment and order it has been pointed out by the said authority that the said logs of wood were wet and Shri Komalchand Jain, the husband of present appellant Smt. Mani Jain, was present in the said truck. He has also pointed out that the said information of the incident was given to Smt. Mani Jain by her husband Komalchand Jain. That authority has further pointed out that there was no explanation given from the side of Smt. Mani Jain as to where Shri Komalchand Jain was at the relevant time.

7. The poachers, Forest products traffickers have started following novel devices and tricks to steal the forest products. The defence that when driver of the truck was drinking tea somebody drove the said truck has been disbelieved at all stages. Thus, tricks have been exposed by presence of Komalchand Jain in the said truck. That cannot be ignored.

8. Learned Single Judge has pointed out in the

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that he considered the submissions advanced by Shri Saraf very minutely though he was scanning it as 4th Court, second Court of revision. The learned Judge has minutely examined the submissions advanced by Shri Saraf and all relevant facets of the matter. He has discussed the submissions advanced by Shri Saraf and the present appellant Smt. Mani Jain in his

that he considered the submissions advanced by Shri Saraf very minutely though he was scanning it as 4th Court, second Court of revision. The learned Judge has minutely examined the submissions advanced by Shri Saraf and all relevant facets of the matter. He has discussed the submissions advanced by Shri Saraf and the present appellant Smt. Mani Jain in his

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in detail. When that is so proper cognizance of that bullet be kept in this Court.

9. Shri Saraf also pointed out the judgment of the Supreme Court in the matter of Dineshkumar Kartike (supra) wherein the Supreme Court pointed out ; -at when there is confiscation of seized truck, the authority should follow proper procedure and before passing an order of confiscation, Forest Officer should consider the question of the release of the truck under Section 19 (1) (b) and pass appropriate order in the facts and circumstances of the case.

10. According to our opinion, the appellant cannot take the advantage of the observation of the Supreme Court in the said case because the record does not show that nowhere such prayer was made and was refused and the appellant was having grievance in that context.

11. It is being intra-Court appeal and reiterating the same view taken by Supreme Court in Baddula Lakshmaiah (supra) and the view taken by this Court in KU. Varsha Shrivastava's case, this Court is not thinking of touching the order which has been passed by the Single Judge with firmness.

12. Thus, in the result this appeal stands dismissed with no order as to costs.