

State of Jharkhand and anr. Vs. Pradeep Kumar Dey and anr.

State of Jharkhand and anr. Vs. Pradeep Kumar Dey and anr.

SooperKanoon Citation : sooperkanoon.com/516575

Court : Jharkhand

Decided On : Mar-16-2004

Reported in : 2004(2)BLJR1326; 2005CriLJ2304; [2004(2)JCR499(Jhr)]

Judge : P.K. Balasubramanyan, C.J. and; Tapen Sen, J.

Acts : [Indian Forest Act, 1927](#) - Sections 52(5); Bihar Forest Act; Jharkhand Forest Act; [Constitution of India](#) - Article 226

Appeal No. : LPA No. 232 of 2003

Appellant : State of Jharkhand and anr.

Respondent : Pradeep Kumar Dey and anr.

Advocate for Def. : M.K. Dey, Adv. for Respondent No. 1

Advocate for Pet/Ap. : Pradip Modi, GP-I and; S. Kumar, JC to GP-I

Disposition : Appeal allowed

Judgement :

ORDER

1. Heard both sides, with the consent of both sides, this appeal is being disposed of finally even at this stage.

2. This Letters Patent Appeal is filed by the State of Jharkhand and its forest officials, the respondents in WPC No. 1206 of 2002. WPC No. 1206 of 2002 was filed by the writ petitioner, respondent No. 1 herein claiming to be the owner of a truck bearing No. BR-18M-1568. The said vehicle was found carrying illicit timber and was detained by the forest authorities. The driver, who was in the vehicle, on being confronted, stated that the timber was illicitly purchased. It was found that he had no valid papers for transit of the timber. Therefore, the timber was confiscated and a proceeding for confiscation of the vehicle that carried the illicit timber, was initiated. The owner of the vehicle, the writ petitioner, was given notice. He filed a show cause stating that he was not aware of illicit timber being carried in his vehicle and that he had given the vehicle for the use of one Sanju Sharma and Kishan Lal Sharma and it was probably at their instance that timber was being carried in the vehicle. Thus, he sought to distance himself from the alleged illicit transport of timber. The original authority, the Divisional Forest Officer, held that the owner of the vehicle has not discharged the burden cast on him in the light of Section 52(5) of the Indian Forest Act as amended in Bihar and that the vehicle was liable to be confiscated. On an appeal filed by the owner of the vehicle, the appellate authority, even without issuing notice and hearing the State, proceeded to set aside the order of the Divisional Forest Officer, ordering confiscation. The Forest department took up the matter in revision before the revisional authority, the Secretary, Forest and Environment, Government of Jharkhand. The revisional authority, on a consideration of the relevant aspects, including Section 52 of the Act as amended in Bihar and the decision of Supreme Court in Divisional Forest Officer and Ors. v. G.V. Sudhakar Rao and Ors., AIR 1956 SC 328, came to the conclusion that the Divisional Forest Officer was fully justified in ordering confiscation of the vehicle, since the owner of the vehicle has not established the elements required to be established by him under Section 52(5) of the Act, thus the revisional authority, by order dated 26.3.2002, set aside the order of the appellate authority and restored the order of the original authority.

3. The owner of the vehicle filed the writ petition challenging the order of the revisional authority. He reiterated his contention that there was no finding that he was responsible for the illicit transport of timber. He also submitted that in a criminal prosecution launched, he had been acquitted. On these grounds, he

sought interference by this Court with the order of the revisional authority. The learned Single Judge, without considering the effect of Section 52(5) of the Act, as amended in the State of Bihar and Jharkhand, proceeded to hold that the confiscating authority had not established the connivance of the owner of the vehicle. In fact, it is not very clear as to what exactly is the finding of the learned Single Judge. Whatever it be, the revisional order was interfered with and the order of the appellate authority dropping the proceedings was restored and the vehicle was directed to be released to the writ petitioner after verifying his ownership,

4. Challenging the decision of the learned Single Judge, learned Government counsel submitted that the learned Single Judge has lost sight of Section 52(5) of the Act. He also referred to the decisions of this Court in *Bahadur Bedia v. State of Jharkhand and Ors.*, 2003 (4) JCR 108 (Jhr) and in *Dilip Kumar Mahato v. State of Jharkhand and Ors.*, 2003 (4) JCR 174 (Jhr). It was submitted that even going by the show cause filed by the writ petitioner, the vehicle was permitted by him to be used by one Sanju Sharma and Kishanlal Sharma and even if at their instance, the driver has used the vehicle for transport of illicit timber, the owner cannot disown liability, unless he proves the elements contemplated by Section 52(5) of the Act. It is submitted that the learned Single Judge has clearly erred in interfering with the well considered order of the revisional authority.

5. Learned counsel for the writ petitioner, respondent No. 1 herein, sought to support the decision of the learned Single Judge by submitting that the writ petitioner was acquitted in the criminal case. He also relied on a decision of Supreme Court in *Assistant Forest Conservator and Ors. v. Sharad Ramchandra Kale*, (1998) 1 SCC 58 and contended that confiscation should not have been ordered in this case.

6. We must notice that the decision of the Supreme Court relied on by counsel for the writ petitioner did not deal with a case where a provision like Section 52(5) of the Act was available. Section 52(5) of the Act places a burden on the owner of the vehicle to establish the facts referred to therein. Once a vehicle is found to be transporting illicit timber, a presumption arises that it was with the connivance of

the owner of the vehicle. After all the driver is an agent of the owner and normally, a driver acts only at the behest of the owner. The Statute has given an opportunity to the owner to establish that he had taken all precautions against such acts while giving his vehicle to an agent, the driver, and the transportation was without his knowledge and in spite of such precaution illicit timber was transported. As rightly pointed out by the Government counsel, the owner of the vehicle has not established those aspects in this case.

7. On going through the order of the revisional authority, we find that the revisional authority has considered all the relevant aspects in the proper perspective and it cannot be said that it has committed any error of law apparent on the face of the record justifying interference by this Court in exercise of its jurisdiction under Article 226 of the [Constitution of India](#). We must also remember that this case relates to degradation of forest and uprooting of trees and must be approached in the manner indicated by the Supreme Court in *State of Karnataka v. K. Krishnan*, AIR 2000 SC 2729.

8. Thus on the whole, we are satisfied that the decision of the learned Single Judge deserves to be interfered with. The writ petitioner, respondent No. 1 herein, has not made out a case for interference with the order of the revisional authority. Hence, we allow this appeal, set aside the decision of the learned single and dismiss the writ petition.

9. We are not expressing any view whether the petitioner, respondent No. 1 herein would be entitled to have the vehicle released on payments of the value of the vehicle as contemplated by Section 68 of the Indian Forest Act, as amended in Bihar. That question has to be considered when he approaches the concerned authority in that behalf.