

Soren Majhi Vs. State of Orissa

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Court : Orissa

Decided On : Jul-01-2005

Reported in : 2005(II)OLR236

Judge : R.N. Biswal, J.

Acts : Orissa Forest Act - Sections 56; Orissa Minerals (Prevention of Theft, Smuggling and Other Unlawful Activities) Act, 1988 - Sections 12, 16(1), 16(2) and 16(3); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 457; Indian Penal Code (IPC) - Sections 34, 379 and 411

Appeal No. : CRLREV No. 312 of 2005

Appellant : Soren Majhi

Respondent : State of Orissa

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : R.K. Nayak, ;P.C. Jena and ;S.K. Dash Advs.

Disposition : Application allowed

Judgement :

R.N. Biswal, J.

1. This revision has been preferred against the order dated 23.2.2005 passed by the J.M.F.C, Barbil in C.M.C. No. 25 of 2005 arising out of G.R.Case No. 32 of 2005, wherein he rejected the petition filed under Section 457, Cr.P.C. by the petitioner holding that he lacked jurisdiction to release the Tipper bearing Registration No. OR-09-D5764 in his interim custody and that he (petitioner) is not the owner of it.

2. A nub of the facts leading to filing of this revision is that as per the case of prosecution on 22.1.2005 during night hours while the aforesaid vehicle was being used in transportation of iron ores from a reserve forest, the S.I. of Police, Barbil Police Station intercepted it. On demand when the driver failed to produce any authority for transportation of the iron ores, the S.I. seized the same alongwith the Tipper and registered P.S.Case No. 12 dated 22.1.2005 for the offence under Sections 379/411/34 I.P.C. read with Section 12 of the Orissa Minerals (Prevention of Theft, Smuggling and Other Unlawful Activities) Act (hereinafter referred to as 'the Act') and Section 56 of the Orissa Forest Act giving rise to the aforesaid G.R.Case.

3. During pendency of the said case, the petitioner claiming himself to be the owner of the Tipper, filed a petition under Section 457, Cr.P.C. before the J.M.F.C, Barbil with a prayer to release it in his interim custody. The Magistrate rejected the petition on the ground that by the time of passing the impugned order, the vehicle had already been handed over to the D.F.O., Keonjhar for initiation of a proceeding under Section 56 of the Forest Act and that the petitioner was not the owner of it.

4. Being aggrieved with the said order, the petitioner has preferred this Criminal revision.

5. Learned counsel appearing for the petitioner submitted that in fact four vehicles including one Bolero Jeep were seized in Barbil P.S.Case No. 12 dated 22.1.2005 on the allegation that they were used in commission of offence under Sections 379/411/34 of I.P.C. read with Section 12 of the Act and Section 56 of the Orissa Forest Act. But the D.F.O., Keonjhar submitted a report to the effect that no forest offence was made out in connection with said P.S.case. No such report is there in

the record. But the certified copy of the order dated 23.3.2005 passed in Criminal Misc. Case No. 554 of 2005 by this Court, wherein one of the three vehicles seized in the aforesaid case was ordered to be released in interim custody of the petitioner therein shows that such a report was submitted by the D.F.O., Keonjhar. Once it is made clearer that the vehicles were not used in forest offence, proceeding under Section 56 of Orissa Forest Act cannot be initiated.

6. It would be profitable to quote Sub-sections (1)(2) and (3) of Section 16 of the Act, which read as follows :

'16. Seizure of property liable to confiscation - (1) When there is reason to believe that an offence has been committed in respect of any mineral, such mineral, together with all tools, vehicles or other conveyances used in committing any such offence may be seized by an officer authorised by the Government in that behalf (hereinafter referred to as the authorised officer) or a Police Officer.

(2) Every officer seizing any property under this section shall place on such property a mark in such manner as may be prescribed, indicating that the same has been so seized and shall as may be, except where the offender agrees in writing to get the offence compounded, either produce the property seized before the competent authority or make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

(3) Where any mineral seized under Sub-section (1) produced before the competent authority under Sub-section (2) and he is satisfied that an offence has been committed in respect thereof, he may order confiscation of the mineral so seized and produced, together with tools, vehicles or other conveyances used in committing such offence.'

7. So, as per Sub-section (1) of Section 16 of the said Act if there is reason to believe that any offence has been committed in respect of any mineral an Authorised Officer or a Police Officer can seize the minerals together with the vehicle, tools etc. used for commission of the offence. As per Sub-section (2) where the offence is not compounded the officer seizing the minerals and the vehicle, tools etc. used for commission of the offence shall either produce the

same before the competent authority or make a report of such seizure to the Magistrate having jurisdiction to try the offence. If the minerals alongwith the vehicle or tools etc. seized are produced before the competent authority and he is satisfied that an offence has been committed in respect thereof he may order for confiscation of the same under Sub-section (3) of Section 16 of the Act. So, the authorised officer or police officer as the case may be seizing the mineral, vehicle and tools etc. is not bound to produce the same before the competent authority. He may either produce the same before him or report about the seizure to the Magistrate having jurisdiction to try the offence.

8. In the case at hand, as it appears after seizure of the minerals alongwith the Tipper the S.I. of Police reported about it to the J.M.F.C., Barbil. He did not prefer to produce the seized properties before the competent authority. So the J.M.F.C. is competent to exercise his power under Section 457, Cr.P.C.

9. Admittedly the vehicle in question stands registered in the name of one Chittaranjan Mohanta. As appears from the impugned order it was transferred to the present petitioner vide an agreement dated 10.5.2004. Since this agreement was not registered the trial Court held that it was not effective. The agreement in question is not compulsorily registrable. Generally, under Section 457, Cr. P.C, a seized vehicle should be released in favour of its registered owner. But it has no universal application. In the case at hand the vehicle was transferred in favour of the petitioner. The registered owner does not lay any claim for interim custody of the vehicle. So it should not be allowed to be kept in police station under sun and rain till disposal of the aforesaid criminal case.

10. Under such premises the impugned order is set aside. The J.M.F.C., is directed to release the Tipper bearing registration No. OR-09-D-5764 in interim custody of the petitioner on suitable terms and conditions as would be deemed just and proper in an early date.

Accordingly the revision is allowed.