

Jogender Singh and ors. Vs. State of Orissa and ors.

Jogender Singh and ors. Vs. State of Orissa and ors.

SooperKanoon Citation : sooperkanoon.com/533658

Court : Orissa

Decided On : May-17-1990

Reported in : 70(1990)CLT613; 1992CriLJ1302

Judge : G.S. Patnaik and ;J.M. Mahapatra, JJ.

Acts : Orissa Forest Act, 1972 - Sections 56, 56(1), 56(2), 56(3), 57, 58, 59, 59(2), 60 and 64; Orissa Forest (Amendment) Act, 1982; Orissa Forest (Amendment) Act, 1983; [Constitution of India](#) - Articles 14 and 226; Code of Criminal Procedure (CrPC) , 1974; Andhra Pradesh Forest Act

Appeal No. : O.J.C. Nos. 2062, 2541 and 2697 of 1983

Appellant : Jogender Singh and ors.

Respondent : State of Orissa and ors.

Advocate for Def. : Addl. Govt. Adv. and ;S.N. Sinha, Adv.

Advocate for Pet/Ap. : K.N. Jena, Adv.

Disposition : Petition dismissed

Judgement :

G.S. Patnaik, J.

1. In all these writ applications common questions of law having been raised, they were heard together and are being disposed of by this common judgment. The petitioner in each of these writ applications assails the legality of the notice issued by the forest authority for initiating a confiscation proceeding under the provisions of the Orissa Forest Act and has prayed to quash the said confiscation proceeding as well as to declare Sections 56, 57, 59 and 64 of the Orissa Forest Act, 1972 (hereinafter referred to as the 'Act'), as amended by Amendment Act of 1982, as ultra vires. In each of the writ applications, as the vehicle of the petitioner was found to be involved in commission of a forest offence, the same was seized and thereafter the Divisional Forest Officer issued notice to the petitioner to show cause as to why the vehicle involved in the commission of forest offence shall not be confiscated. The petitioner thereafter has approached this Court for the reliefs as already stated.

2. During hearing of those writ applications, Mr. Jena for each of the petitioners contends that conferment of power of confiscation upon the Authorised Officer under Sub-section (2-a) of Section 56 of the Act is liable to be struck down as no sufficient guideline has been indicated for exercise of that power. The learned counsel further urges that in respect of the same offence, providing for confiscation before the forest authorities and providing for a criminal trial before the magistrate under the Code of Criminal Procedure Code amounts to double jeopardy and, therefore, Section 56(2-a) must be held to be unconstitutional. According to Mr. Jena, the provision for confiscation is much more harsh, unreasonable and arbitrary than the power of a magistrate under the Criminal Procedure Code and, therefore, the said provision should be struck down. Mr. Jena also urges that the provisions of the Orissa Forest Act with regard to confiscation and interim release having ousted the jurisdiction of the criminal court, the said provisions must be held to be ultra vires. Mr. Jena further argues that against an order of confiscation an appeal lies to the district Judge as provided in Section 56(2-a) of the Act and against a conviction in a criminal case an appeal is maintainable to the Sessions Judge and this may create an anomalous situation and two conflicting judgments may emerge and, therefore, the provisions meant for confiscation must be held to be illegal. Lastly, Mr. Jena argues that against the decision of the Authorised Officer not to release the seized vehicle on temporary

zima, no appeal being provided for, the provision itself must be held to be unconstitutional.

3. In course of hearing of these writ applications, Mr. S.N. Sinha appearing for the Bank (opposite party No. 3) raises a contention that the order of confiscation must be subject to the Bank's right as the vehicle in question has been hypothecated to the Bank. But it is not necessary for us to consider that question since the Bank has not come against any order and it is the constitutional validity of the different provisions of the Act urged by the petitioner which are required to be considered. In that view of the matter, we do not think it appropriate to entertain and consider the contention raised by Mr. Sinha appearing for the Bank.

4. Before answering the contentions raised by Mr. Jena for the petitioner, it would be appropriate to notice and analyse the different provisions of the Orissa Forest Act. The Orissa Forest Act was enacted in the year 1972, assent to the same having been given by the President of India on 29th of June, 1972. The Act is intended for the protection and management of the forest resources in the State and conservation of the forest is the chief object sought to be achieved through the Act. Certain provisions in the Forest Act conferring power of seizure and confiscation of the forest produce as well as the vehicle involved for the transportation of the forest produce, no doubt, prima facie appear to be a harsh measure, but the Legislature conferred such power to prevent the growing menace of ruthless exploitation of Government forests by illicit felling of valuable timbers by unscrupulous traders. One can take judicial notice of the fact that even with the measures provided for under the provisions of the Act it has not been possible to check illicit felling and the forest resources are being denuded day by day. In the State of Orissa which once upon a time was highly rich in forest resources, it is difficult now to find out a dense forest in any part of the State. The propensity and ingenuity of the human mind to become rich in the shortest possible time without much endeavour has made illicit felling and clandestine dealing of valuable timbers from the reserved forests a lucrative business with the so-called forest contractors and the impugned legislation which is being attacked in these writ applications has sought to check that illicit felling to some extent by providing for a deterrent punishment of confiscation not only of the goods involved in the

commission of the forest offence but also the carrier of such goods. Bearing in mind the aforesaid object with which the power of confiscation has been conferred on the forest authorities, we would examine the different sections of the Orissa Forest Act sought to be assailed in these writ applications.

5. Section 56(1) authorises a forest officer or a police officer to seize the forest produce together with all tools, ropes, chains, boats, vehicles or cattle used for commission of the forest offence and such power is to be exercised when the said forest officer or the police officer has reason to believe that a forest offence has been committed in respect of any forest produce. Sub-section

(2) of Section 56 provides the procedure to be adopted after seizure is made under Sub-section

(1) and in the said sub-section, a report of such seizure is required to be submitted to the magistrate having jurisdiction to try the offence. Under the proviso the Sub-section

(2) if the offence is believed to be committed in respect of the property of the Government and the offender is not known, then the seizing officer is required to report the matter to the Divisional Forest Officer. Under Sub-section

(3) of the said section, the seized property is required to be kept in the custody of a forest officer or with any third party until the compensation for compounding the offence is paid or until an order of the magistrate directing its disposal is received. While those were the provisions under the Orissa Forest Act, 1972, by Orissa Act 9 of 1983, Sub-sections (2-a) to (2-e) were added after Sub-section (2). Sub-section (2-a) empowers the authorised officer to pass an order of confiscation. Sub-section (2-b) required that no order of confiscation may be passed under Sub-section (2-a) unless a notice in writing intimating the grounds on which it is proposed to confiscate is given to the person from whom the property is seized and an opportunity of making a representation in writing within a reasonable time is given to the said person as well as a reasonable opportunity of being heard in the matters. Sub-section (2-e) enables the owner of the vehicle concerned to prove that his vehicle was used without his knowledge or connivance and

notwithstanding his taking reasonable and necessary precaution against such use the vehicle had been used and if he is able to satisfy the authorised officer on that score then the authorised officer will not pass any order of confiscation even though pre-conditions for confiscation provided in Sub-section (2-a) are satisfied. Sub-section (2-d) confers a suo motu power or on an application being made to the Conservator of Forest to call for and examine the records of a case to find out if any illegality has been committed by the authorised officer in course of a confiscation proceeding and proviso to that section further stipulates that no order prejudicial to any person shall be passed without giving him opportunity of being heard, Sub-section (2-e) provides for an appeal to the District Judge by an aggrieved person against an order of confiscation passed under Sub-section (2-a) or against an order passed by the Conservator of Forests in exercise of the suo motu power under Sub-section (2-d), Section 57 is the power to release the property seized under Section

56. The said power has been conferred on a forest officer of the rank not inferior to that of a Range Officer to grant interim release of the seized tools, ropes, chains, boats, vehicles or cattle on the owner executing a bond that the property released would be produced whenever so required. Section 58 is the power of the magistrate to take such measures as may be necessary for arrest and trial of the offender and the disposal of the property according to law. Section 59 is the provision for confiscation and Section 59(2) stipulates that the confiscation may be in addition to any other punishment provided for such offence. Section 60 is the power of the magistrate with regard to the disposal of the forest produce in respect of which the offence has been committed at the conclusion of the trial. The other provisions of the Act are not necessary for a disposal of the writ applications.

6. We would now examine the submissions made by Mr. Jena for the petitioners. Coming to the first submission namely whether absence of a guideline in Section 56(2-a) makes the power of confiscation unconstitutional, the learned counsel contends that the said power without any guideline is arbitrary and capable of being exercised in a discriminatory manner and accordingly it must be held to be violative of Article-14 of the Constitution and should be struck down. We are unable to accept this submission of the learned counsel for the petitioner. The

power of confiscation can be exercised under Sub-section (2-a) when a forest officer seizes any forest produce under Sub-section (1) of Section 56. The seizure itself under Sub-section (1) is subject to the condition that there must be a reason to believe that a forest offence has been committed in respect of any forest produce. The expression 'reason to believe' connotes that there must be justifiable ground for the seizing officer on which he can reasonably believe that a forest offence has been committed in respect of any forest produce and it is in respect of those seizures made the power of confiscation would be exercised under Sub-section (2-a). That apart, even before the order of confiscation is passed, the authorised officer must be further satisfied that a forest offence has been committed in respect thereof. Therefore, the satisfaction of the seizing officer who can seize only when he has reason to believe that a forest offence has been committed and the satisfaction of the authorised officer before confiscation that a forest offence has been committed, are sufficient guidelines for exercise of power of confiscation. The said power is further circumscribed by the provision of Sub-section (2-b) wherein notice in writing is required to be given to the person concerned and an opportunity of making a representation in writing within a reasonable time has to be given to the said person and further a reasonable opportunity of being heard in the matter. Providing a suo motu power for the Conservator and again an appeal to the District Judge by a person aggrieved by any order passed under Sub-section (2-a) as well as under Sub-section (2-d) are sufficient precautionary measures to check any arbitrary exercise of power by the authorised officer in the matter of confiscation. In this view of the matter, the first submission of Mr. Jena is wholly devoid of any substance and the same is accordingly rejected.

7. Coming to the second submission, Mr. Jena contends that for the same offence, namely commission of a forest offence in respect of a forest produce, simultaneously proceeding for confiscation by the authorised officer as well as a criminal case could be instituted and thereby an accused would face double jeopardy for the commission of the self-same offence. This contention though prima facie sounds attractive, but does not stand a moment's scrutiny. A confiscation proceeding under the provisions of the Forest Act is distinct from the trial of an accused for the commission of a forest offence by a magistrate under

the provisions of the Criminal Procedure Code. The two proceedings before two independent forums, one for confiscation by a departmental authority and the other for the trial of the person accused of the offence are, in fact, two separate and distinct matters power being exercised by two different authorities one not overlapping the other and there is no question of application of principle of double jeopardy. The Legislature has conferred such power by amending the provisions of the Forest Act with an avowed object and we see no justification to hold the conferment of such power on the forest authorities to be unconstitutional in any manner. In fact, the Supreme Court considered a similar matter in respect of a similar provision in the Andhra Pradesh Forest Act in the case of Divisional Forest Officer v. Sudhakar Rao, AIR 1986 SC 328 : (1986 Cri LJ 357) and upheld the power of confiscation. In this view of the matter, the second submission of Mr. Jena is also without any force and is accordingly rejected.

8. So far as the third submission of Mr. Jena is concerned, the same is based upon the fact that the provision for confiscation is more harsh than the trial in a criminal court and, therefore, the same should be held to be unconstitutional. As we have already stated, the provision for confiscation is an independent measure provided for in the Forest Act itself conferring power on the forest authorities and once the power of confiscation has been taken away to be exercised by the forest authorities, to that extent the power of the magistrate no longer exists. Then again, in view of the analysis of the different provisions of the Orissa Forest Act made by us earlier, it cannot be said that the power of confiscation is in any way harsh. Sufficient care and precaution has been taken so that power of confiscation could be exercised only when pre-conditions are satisfied namely, a forest offence is committed in respect of a forest produce and then that order of confiscation is further liable to be scrutinized by a Conservator of Forests in exercise of suo motu jurisdiction as well as on an application being made. Then again, there is a further right of appeal before the District Judge against an order of confiscation as well as against any order of the higher authority under Section 56(2-d). In this view of the matter, we really do not find any substance in Mr. Jena's argument that the procedure for confiscation is much harsh and we have no hesitation to reject the same.

9. Coming to the question of ousting of jurisdiction of the criminal court, the same was also considered by the Supreme Court in the case referred to earlier. The Supreme Court took note of the fact that the amendment made to the Forest Act curtailed the power conferred on the magistrate to direct confiscation of timber or forest produce upon conviction of the accused, but conferment of such power of confiscation on the authorised officer under the Forest Act on his being satisfied that a forest offence has been committed in respect of a forest produce is not dependent upon whether a criminal prosecution for the forest offence has been launched against the offender or not and the proceeding for confiscation was considered to be separate and distinct than that of a trial before the court for commission of the offence and the Supreme Court held such a power on the forest authorities conferred by the Legislature not to be unconstitutional. In view of the decision of the Supreme Court referred to supra, there is hardly any substance in Mr. Jena's contention which must accordingly be held to be devoid of any force.

10. The next submission of Mr. Jena is that an appeal to the District Judge against an order of confiscation having been provided under the Forest Act and an appeal to the Sessions Judge having been provided against the order of conviction passed by a Magistrate, it may tantamount to passing of conflicting orders by the same authority and, therefore, the impugned provision is illegal. This submission cannot have any substance in view of our conclusion that the proceeding for confiscation and a criminal proceeding for commission of offence are two distinct and separate proceedings having different and separate procedure and having independent provisions for appeal. The question of passing of conflicting judgments will also not arise since the District Judge while hearing an appeal against an order of confiscation considers the legality of the order of confiscation, whereas when a Sessions Judge hears an appeal against an order of conviction of an accused having committed a forest offence, he hears the legality of the order of conviction. The question of overlapping or conflict of judgments would not arise at all. Consequently, we reject the said submission of Mr. Jena, the learned counsel for the petitioners.

11. The only other submission that survives for our consideration is whether not providing any remedy against refusal of interim release under Section 57 would

make the provision of Section 57 of the Orissa Forest Act unconstitutional. Section 57 is merely the power of the concerned forest officer to grant interim custody of the seized articles subject to certain terms and conditions mentioned therein. It is true that when a forest officer refuses to grant interim release of the property seized, the aggrieved person has no right of appeal to any higher authority under the Forest Act, but that by itself cannot make the provision arbitrary or unconstitutional. An aggrieved person being dissatisfied with an order of refusal can well approach the High Court under Article 226 of the Constitution and, in fact, several such applications are being entertained and appropriate orders are being passed thereon so far as this Court is concerned. In this view of the matter, we are unable to agree with the submission of Mr. Jena that non-providing of a remedy against an order of refusal under Section 57 makes the provision unconstitutional. The said submission must accordingly be rejected.

12. All the contentions having failed, these writ applications fail and are hereby dismissed, but in the circumstances, there will be no order as to costs. All interim orders passed in these cases stand vacated.

J.M. Mahapatra, J.

13. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com