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Chief Conservator of Forests Vs. Mohammad Ismail Dar and ors.

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Court : Jammu and Kashmir

Decided On : Jun-24-1998

Reported in : 1999CriLJ1697

Judge : Syed Bashir-Ud-Din, J.

Acts : Jammu and Kashmir Forest Act, 1987 Smvt. - Sections 26 and 45; ;Jammu and Kashmir Saw Milling Regulation Act; ;Jammu and Kashmir Saw Mill Rules; ;Jammu and Kashmir Saw Mills Registration and Control Rules, 1968; ;Jammu and Kashmir Forest Rules; ;Jammu and Kashmir Code of Criminal Procedure (CrPC) , 1989 Smvt. - Section 561A

Appeal No. : Misc. Petition No. 561-A, Cr.P.C. in W.P. No. 2 of 1998

Appellant : Chief Conservator of Forests

Respondent : Mohammad Ismail Dar and ors.

Advocate for Def. : Malik Mohiuddin, Adv.

Advocate for Pet/Ap. : Zahoor A. Shah, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Syed Bashir-Ud-Din, J.

1. Order dated 14-10-1997 of Munsiff, Judicial Magistrate, Pulwama along with proceedings in file No. 17/C of 97 on the file of Judicial Magistrate, Pulwama are under challenge and prayed to be quashed under Section 561-A, Cr.P.C. on grounds to follow hereafter.

2. That the order of Magistrate, releasing the spares and parts of the Bandsaw Machine, mentioned in his order of release (after these articles were seized by the Chief Conservator of Forests) under Section 26 of Forest Act and provisions of Criminal Procedure Code is illegal in so far as these articles have been seized by the Chief Conservator of Forest in exercise of his executive powers vested in him by Jammu and Kashmir Saw Milling Regulation Act. No complaint or case has been lodged against the petitioners before the Magistrate. There is no case pending against them. Therefore, the release of the articles under the provision of the Forest Act is illegal in so far as the Magistrate concerned has jurisdiction to release the articles only in respect of a Forest offence. By the impugned order, the Magistrate has interfered with the duties carried by the Chief Conservator of Forests under the statutory provisions of the Jammu and Kashmir Saw Mill Rules. The release order amounts to abuse of the process of the Court and the order is sought to be quashed. Not only so, it is further alleged that the Court below has on the assumed jurisdiction passed the impugned order and conducted proceedings against respondents and issued notices thereto.

3. The record of the Judicial Magistrate is available. Counsel for the parties have been heard. Record examined and matter considered.

4. Chapter VI of the Forest Act, 1987. provide for penalty and procedure. Section 26 provides that a Forest Officer or Police Officer may seize any forest produce together with tools, boats, carts, motor vehicles and cattle used in committing any offence in respect of any forest produce.

Section 26(a) also gives powers to specified forest officer, on conditions provided thereto, to enter a premise, make search and order confiscations provided the contravention of the provisions of the Act is relatable to forest produce.

Sections 27 and 29 gives powers to the Magistrate for disposal of the property during pendency or at the conclusion of the trial in respect of Forest Offence.

Section 32 provides for appeal against any such order to the Court to which order of the Judicial Magistrate are ordinarily appealable. It is seen that the powers of the Magistrate to release the property is subject to the condition that the property sought to be released has been seized or confiscated in respect of Forest offence or 'offence in respect of Forest produce' and that the property/articles having been seized in respect of an offence triable under the provisions of Forest Act.

5. In this case, admittedly no complaint has been registered with the Magistrate. There has not been any incriminating report or allegation registered with the Police. No FIR is lodged with police. There is no pending case against the respondents. There is no allegation that the articles seized have been used or have been seized/ confiscated in connection with commission of an offence or an offence relatable to the forest produce. Therefore, to say that the order has been passed under Chapter VI of the J. and K. Forest Act, 1987 is held misplaced. To this extent the exercise of powers by Magistrate are held beyond pale of law. But all the same, question arises under what provision of law the articles have been seized and whether the Magistrate was still justified to release the said articles.

6. The counsel for petitioner submits that Saw Mills Registration and Control Rule 1968 (SRO 434 dated 28-10-1968) gives powers to the Chief Conservator of Forest to exercise control in executive capacity and to confiscate article as such. However, this argument does not sound well for the reason to follow hereafter.

7. The Saw Mill Registration and Control Rule 1968, have been made under enabling provisions of Section 45 of the Jammu and Kashmir Forest Act. This section authorise the Government to make subsidiary rules inter alia, for registration,. regulation and control of saw mills and prescribing fees for registration. The rules in terms provide the conditions on fulfilment of which a Saw Mill, can be licenced by the licencing authority and engrafts restrictions thereon as also prescribes licence fee and period of validity of the licence. The rule no where provide that the licencing authority or for that matter any officer has powers to confiscate or seize the spares/parts of a Saw Mill or any other articles lying in the

premises of such mill. The rules only provide that on contravention of provisions of the Saw Mills Registration and Control Rules, 1968, the licencing authority can suspend or cancel the licence. Besides the licencing authority or an officer authorising by him with a view to ensure compliance with the rules can enter and search any Saw Mill and seize stock of timber in respect of which contravention of the rules is suspected. But the rules nowhere provide that the licence authority is authorised and empowered to seize and carry away the parts of the machine for sawing (installed in such premises), like power motor, pattas, transformer, diesel engine, handle, saw wheels etc. Therefore, the contention of the counsel that these articles were seized under the enabling provisions of the Saw Mills Registration and Control Rules, 1968 is not correct and is based on misinterpretation of law.

8. From the objections and the Annexures thereto, placed on record by the counsel for the Respondents, it is found that the Saw mill of respondent-Ismail Dar, is licenced under the Saw Mills Registration and Control Rules 1968 and ending December 1996 he has paid the fee even for subsequent year. Khurshid Ahmad Shah, is also a licenced Saw Miller and his licence is also valid for the year 1996 and has paid fee for the subsequent year. Mohammad Hayat Dar, who is also licenced holder has paid the fee upto ending December, 96. Their licences' for renewal ,are under process with the licencing authority. Not only so, it is revealed from record that the Chief Conservator of Forests has already ordered release of these tools/parts of the saw machine on 27-8-97 and directions have been passed to the Urban Forest Division Srinagar and Forest Division Shopian.

9. All circumstances go to show that the seizure and confiscation of the articles in question and subsequently released is not covered by the Jammu and Kashmir Saw Mills Registration and Control Rules, 1968. No other law or rules or orders of the competent authority has been placed before the Court to show that the Chief Conservator of Forests or any other officer of the Forest Department had competence and was empowered to seize the tools and parts of the Saw-Mills in question.

10. After the matter was brought before the Judl. Magistrate, it was incumbent upon the Magistrate to pass orders regarding the tools/ parts of the Sawing machines on having been seized & confiscated by the forest officials or may be even in cases where police officials seize such articles. The Magistrate under the enabling provisions of the Criminal Procedure Code has the power to order restoration of the possession thereof to the persons from whose custody and possession same were recovered. It cannot be said that the licenced Saw-mill owners whose sawing machines, tools, parts and spares were seized by the Forest authorities, under no authority of law, have no remedy to seek release and restoration of the possession of these articles. It may be that the forest authorities did not complain or have not registered a case in respect of Forest produce against these Saw-mill owners, but all the same the fact remains that the inspections were conducted and premises of these Sawmills entered upon under the provisions of the Forest Act and the Rules framed thereunder. The action of seizing of the articles on the part of the Chief Conservator of Forest, though subsequently released, in under the assumed powers of regulation and registration and control of saw mills in terms of the rules of contravention of the provisions of these rules. Obviously, the Forest authorities in this case have suspected contravention of rules, which when read with other provisions of the Forest Act is an offence under the Forest Act. Therefore, seen thus, the orders of the Judicial Magistrate cannot be said to be not covered by law. The impugned order is found not beyond the pale of law.

11. With the result that the petition for quashment of the proceedings under Section 561-A Cr. P.C. is dismissed.

12. Certify the decision to the Court below, while forwarding the record to the Court concerned.