

Baddu. Vs. the State of Madhya Pradesh.

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Court : Madhya Pradesh Jabalpur

Decided On : Mar-22-2011

Judge : Ajit Singh ; Sanjay Yadav, Jj.

Acts : [Constitution of India](#) - Articles 226, 227 ; [Indian Forest Act, 1927](#) - Sections 26(1), 52, 52A, 52B, 52(4), 52(5) ; Madhya Pradesh Vanopaj (Vyapar Viniyaman), Adhiniyam, 1969 - Sections 5(1), 15(6) ;

Appeal No. : Writ Petition No. 9266 of 2008.

Appellant : Baddu.

Respondent : The State of Madhya Pradesh.

Advocate for Def. : Shri S. M. Lal, Adv.

Advocate for Pet/Ap. : Shri J.N. Tripathi, Adv.

Judgement :

1. This petition under Article 226/227 of the [Constitution of India](#) is directed against the order dated 09-06-2008 passed by First Additional Sessions Judge, Seoni, whereby Criminal Revision No. 7 of 2008 preferred by the petitioner has been dismissed and the order of confiscation passed by Authorised Officer-cum-Sub Divisional officer, Seoni, in Forest Offence No. 2802/04 dated 21-03- 2006 confiscating the tractor and trolley bearing Chassis No. 711188 M-3 EF 187 and affirmed in Appeal decided by Conservator of Forests/Appellate Authority, Seoni Circle, Seoni, has been upheld. Relevant facts briefly are that, on the intervening

night 20-03- 2006 and 21- 03-2006 forest officers during course of patrolling at village Khursipar, South Seoni Forest Division (Territorial) apprehended tractor trolley bearing Registration No. MP-22-B/4588 carrying fresh 8 logs of Beeja wood measuring 0.811 cubic feet. Since the forest produce was being transported without any valid or authorised document, the same was seized along with the tractor and trolley in question.

2. Spot panchnama and seizure memo were prepared and a forest offence vide POR No. 2501/04 dated 21/03/2006 under section 26(1), 52 of the [Indian Forest Act, 1927](#) read with section 5(1) of the Madhya Pradesh Vanopaj (Vyapar Viniyaman), Adhiniyam, 1969 was registered. Proceeding to confiscate the tractor and trolley was initiated as is contemplated under section 52 (as applicable in the State of Madhya Pradesh) of the [Indian Forest Act, 1927](#) (hereinafter referred to as 'the Act of 1927'); wherein the petitioner/owner was noticed and after considering the defence put forth by him and the material on record including the evidence led on behalf of the department as well as by the petitioner, Authorised Officer on 21-03-2006 passed the order of confiscation of the vehicle in question. Against the said order petitioner preferred an appeal under section 52A of the Act of 1927 before the Conservator of Forest, Forest Circle, Seoni. The appellate authority dismissed the appeal preferred by the petitioner by order dated 31-12-2007. The petitioner thereafter preferred a revision under section 52B of the Act of 1927.

3. The revision was also dismissed by the First Additional Sessions Judge by its order dated 09-06- 2008. This petition is thus directed against the order of confiscation and the subsequent orders which are passed affirming such confiscation. The impugned confiscation is assailed on the ground that, the procedure as is prescribed under section 52 of the Act of 1927 has not been adhered to. It is contended that under subsection (2) of Section 52 it is obligatory on the part of the officer seizing the property in question that he shall place the same before the authorised officer "as soon as may be". It is urged that in the instant case though the alleged seizure was made on 21-03- 2006, however, the property in question was not placed before the authorised officer as soon as it was seized. It is further contended that even the authorised officer has passed the

order of confiscation without recording the reasons as is required to be under sub-section (5) of Section 52, that, a forest offence is made out and that there was a knowledge or connivance of the owner, i.e., the petitioner. It is contended that sub-section (5) of Section 52 of the Act of 1927 casts an obligation on the authorised officer to record his satisfaction that the vehicle, as the present one, was used with the knowledge/connivance of the petitioner or his driver for transporting the forest produce in question. It is contended that it was the categorical stand of petitioner that the vehicle (tractor and trolley) was used for carrying 8 logs of Beeja wood without his knowledge as he came to know only after when notice was served on him under sub-section (4) of Section 52 of the Act of 1927.

4. It is emphatically submitted that there being non-fulfilment of statutory obligation, the finding recorded by the authorised officer suffers from the vice of perversity and the order of confiscation based on such perverse finding is liable to be quashed being without any foundation. Learned counsel appearing for the respondents/State contravenes the submissions put forth on behalf of the petitioner. It is contended that the procedure as is prescribed under section 52 for confiscation of a seized property has been duly followed in the matter. It is contended that immediately after the seizure information was sent to the authorised officer vide letter No. mi/217 dated 21-03-2006, on the basis whereof the proceedings were initiated by the authorised officer. It is urged that simultaneously information was also sent to the Chief Judicial Magistrate. It is further contended that the petitioner, the owner of vehicle in question, was also issued a show cause notice and after giving him opportunity of hearing order of confiscation was passed as the petitioner had failed to prove that, the vehicle in question was being operated for carrying forest produce without his knowledge or connivance or that he has taken reasonable and necessary precautions. It is contended that since a forest offence was committed and the vehicle of the petitioner was found involved therein, the authorised officer was within his right in confiscating the vehicle in question. It is accordingly urged that no interference is warranted in the matter. Considered the rival submissions and perused the original record furnished by the respondents. Undisputed facts which emerge from the submissions put forth by the respective counsel and the material on record indicate that in the intervening night of 20-03- 2006 and 21- 03-2006 a tractor trolley

bearing Registration No. MP- 22- B/4588 / chasis No. 711188 M-3 EF 187 was apprehended carrying 8 logs of Beeja wood without any transit pass or authority. Admittedly, the tractor and trolley belongs to the petitioner and was driven by one Wakeel s/o Kuddus Khan, who was employed as driver by the petitioner. Immediately on the seizure of aforesaid vehicle information vide letter No. mi/217 dated 21-03-2006 was sent to the prescribed officer, Sub Divisional Officer (Forest), South Forest Division, Seoni as also to the Chief Judicial Magistrate, Seoni. Sub-section (2) of Section 52 stipulates that "(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, either produce the property seized before an officer not below the rank of an Extra Assistant Conservator of Forest authorised by the State Government in this behalf by notification(hereinafter referred to as the authorised officer) or where it is, having regard to quantity of bulk or other genuine difficulty, not practicable to produce the property seized before the authorised officer, make a report about the seizure to the authorised officer or where it is intended to launch criminal proceedings against the offender immediately, make a report of such seizure to the magistrate having jurisdiction to try the offence on account of which the seizure has been made: Provided that when the forest produce with respect to which offence is believed to have been committed is the property of Government and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior." In the case at hand it is observed from the record that the procedure is prescribed under sub- section (2) of Section 52 has been adhered to after seizing the vehicle in question. Furthermore, sub-section (4) of Section 52 stipulates :- "52. Seizure of property liable to confiscation and procedure therefore.- (1) When there is reason to believe a forest offence has been committed in respect of any forest produce, such produce, together with all tools, boats, vehicles, ropes, chains or any other article used in committing any such offence may be seized by any Forest Officer or Police Officer." It is observed from the record that notice was sent to the petitioner, owner of the vehicle in question, calling upon him to show cause and an enquiry was held after receiving the reply from the petitioner wherein the petitioner was afforded an opportunity to lead evidence also. It is during the process whereof the fact emerged that the

driver of the vehicle on the basis of some statement made by the owner of confiscated 8 Beeja wood (8 logs of Beeja wood), permitted to carry the same in the tractor trolley. Banking upon this statement an attempt is made on behalf of the petitioner that the same has to be construed as if the petitioner was not having any knowledge or connivance. In our considered opinion this statement of the petitioner loses the strength if tested on the touchstone of sub-section (5) of Section 52 of the Act of 1927 which stipulates :-

"

(5) No order of confiscation under sub-section

(3) of any tools, vehicles, boats, ropes, chains or any other article (other than the timber or forest produce seized shall be made if any person referred to in clause (b) of sub-section

(4) proves to the satisfaction of authorised officer that any such tools, vehicles, boats, ropes, chains or other articles were used without his knowledge or connivance or as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission." Fair reading of the aforesaid provision goes a long way to show that the burden is on the owner of the vehicle, petitioner herein, to prove that all reasonable and necessary precautions were taken by him in respect of use of the vehicle. In the instant case evident it is from the reply filed by the petitioner in response to notice sent to him under sub-section

(4) of Section 52, that being an infirm person he was banking upon the driver. It is thus apparent that the petitioner's action lacks reasonable and necessary precaution. There is no iota of evidence on record that the petitioner has taken due care to prevent any unauthorised illegal activities being carried out by his servant, the driver. In *State of Madhya Pradesh vs. Suresh Kumar*; AIR 1997 S.C. 1017, the Supreme Court while dwelling upon a similar provision i.e. section 15(6) of the Madhya Pradesh Vanopaj (Vyapar Viniyaman) Adhiniyam 1969, Amendment Act, 1986 (which stipulates "(6)No order of confiscation under sub-section

(4) of any tools, vehicles, boats, ropes, chains or any other articles (other than specified forest produce seized) shall be made if any person referred to in clause (b) of sub-section

(5) proves in the satisfaction of authorised officer that any such tools, vehicles, boats, ropes, chains or other articles were used without his knowledge or connivance or as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of objects aforesaid for commission of an offence under this Act. (reproduced from the judgment)") observed that, "8. A bare reading of sub-section

(6) of Section 15 of the Adhiniyam quoted hereinabove shows that the burden is on the owner to prove the satisfaction of the authorised officer that his vehicle was used without his knowledge or connivance and that all reasonable and necessary precautions were taken by him against use of his truck on the commission of an offence under this Adhiniyam.....Under sub-section

(6) burden is cast upon the owner of the truck to prove that his truck was used for illegal activities without his knowledge and not with his connivance." Similarly, in State of West Bengal and another vs. Mahua Sarkar; AIR 2008 S.C. 1591, while dwelling upon a similar provision, (section 59(a) and 59(b) of the Indian Forest Act, 1927 as applicable in State of West Bengal) it is held that "8. The language used is very clear. It is the owner who has to prove that the vehicle was used in carrying timber or other forest produce without his knowledge or connivance or that of his agent.

5. The requirement is mandatory that the owner has to prove that he had no knowledge or had not connived. It is a matter which is within his knowledge. Mere assertion without anything else will not suffice. There is another requirement that either he or his agent, if any, or the person in charge thereof had taken all reasonable and necessary precaution against such use. This aspect has to be established by the concerned person by sufficient material. As noted above, mere assertion to that regard could not be sufficient." In the instant case, a clear finding is recorded by the authorised officer as well as the appellate authority that the petitioner/owner has failed to establish his lack of knowledge or connivance or

taken necessary precaution. In view whereof we decline to interfere with the finding so recorded. In the result, the petition fails and is hereby dismissed. However, no costs.

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