

CNR NO : MHPU140044722022



Presented on : 16.12.2022
 Registered on : 20.12.2022
 Decided on : 15.09.2023
 Duration : Y M D
 00 08 25

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE, BARAMATI, DIST.
PUNE.**

(Presided over by J. P. Darekar)

Criminal Appeal No. 27/2022

Exh.No. 29

Mahendra Dharmaji Papal,
 Age – 39 years, Occ- Farmer,
 R/at. Near Khadda garuage,
 Mangalwar Peth, Pune 411011.

...Appellant

Versus

1- State of Maharashtra,
 Vanparimandal/vanparikshetra
 Adhikari,
 Indapur, Indapur division.

2- Ashutosh Shendge ,
 Assistant Conservative of Forest Pune
 Senapati Bapat Rd, Pune 411004 .

...Respondents.

Appeal under section 61-D of Maharashtra Act (Amendment).

 Advocate Mr. P. H. Dalimbe for the Appellants.
 Advocate Mr. A. V. Saturkar for the respondents.

JUDGMENT

(Delivered on 15th September, 2023)

Appellant (Original opponent) has filed this appeal under section 61-D of the Indian Forest (Maharashtra Amendment) Act, 1984 against the order dated 01.12.2022 passed by Assistant Conservator of Forest, Pune confiscating a vehicle of appellant bearing number MH-12-EF-8956, under section 52 of the Indian Forest Act, 1927 (hereinafter referred as 'Said Act').

2] Brief facts, giving rise to the present appeal are as under:

On 05.08.2022 one offence under Indian Forest Act has been registered against one unknown person alleging illegal transportation of forest produce i.e. Charcoal in one vehicle bearing registration number MH-12-EF -8956. It was reported twice to the office of ACF, Pune by Range Forest Officer, Indapur. Accordingly, show cause notice was issued to him, which is duly replied. On 03.12.2022, he received impugned order of confiscation of his above mentioned vehicle passed in Case No. 0/01/2022 by Assistant Conservator of Forest, Pune. Being aggrieved and dissatisfied by the order, he has filed present appeal.

3] Heard Mr. Dalimbe, Ld. Advocate for the appellant. It is submitted that there were two F.I.Rs. in the present case against unknown person. The vehicle was not Government property. The authorities have manipulated stationary vehicle and shown it as it was used for transportation of charcoal. Respondents have not followed the procedure as laid down in the Act and no fair trial was conducted. There was no seizure report in this case. In the notice under section 61B of the said Act, it has not been mentioned as the vehicle was repeatedly used or the appellant is habitual one. There is almost 50 days' delay in sending the property and report to the Assistant Conservator of Forest, Pune. The vehicle is illegally detained. He had produced one Notarised agreement regarding the vehicle that it was given to one Shivaji Mete for 11 months for his use. Said Shivaji Mete also agreed this fact. Respondents have not followed the rules and mandate of law. Further, lenient view should be taken as it was a first offence. Hence, prayed to allow the appeal and to set aside the impugned order of confiscation of vehicle bearing number MH-12-EF-8956 and to release and hand over it to him along with compensation and to take action against the erring officers. In support of his submissions he has relied on some ratios.

4] Per contra, Mr. A. V. Saturkar for the respondent has supported the impugned order. He has submitted that there is a presumption in the said Act that the forest produce is Government property unless contrary is proved. There was no licence or transit pass shown at the relevant time. Initially appellant had moved before the Court of Learned Judicial Magistrate First Class, Indapur under section 451 of the Code of Criminal Procedure, where appellant had submitted contrary submissions. Further, it is not a practice to prepare separate seizure memo. The concerned officer had submitted his report and vehicle on 05.08.2022. Accordingly, notice was issued. Appellant had not only filed his say but also his written arguments. There were no documents regarding ownership of transportation of Charcoal. There are submission made regarding manipulation by forcefully putting charcoal in standing vehicle is not pleaded in appeal memo. Further, the ownership has not been proved. The citation relied on in respect of Forest Rules in Madhya Pradesh and Kerala, which are not consistent with Maharashtra rules. Hence, prayed to dismiss the appeal.

5] Perused record and proceeding and from the arguments advanced from both sides, following points arise for determination and findings thereon are as follows -

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1]	Whether the impugned order is legal, just and proper?	... Yes.
2]	Whether the impugned order needs any interference?	... No
3]	What Order?	As per final order.

REASONS

AS TO POINT NO. 1:-

6] It is admitted by both sides that on 05.08.2022 one Forest case was registered against unknown person for transporting charcoal

in vehicle bearing number MH-12-EF-8956. Further, it is admitted that the said vehicle is owned by the appellant. It is also admitted that it was reported to the respondent. It is further admitted that respondent had issued notice which was replied by the appellant.

7] Learned advocate for the appellant had relied on following rulings:

i) Dashamani Vs. State of U.P [1999 Cri. L. J. 2338 (Allahabad High Court)]. The ruling is in respect of conviction and sentence. Facts of the cited ruling differs from case in hand, hence with due respect same has not been considered.

ii) S.R. Kumar Vs S. Sunaad Raghuram [Criminal Appeal No. 844 of 2015 dated 02nd July, 2015 Supreme Court]. It is in respect of amendment in the application which is not the issue in case in hand. Hence, with due respect same has not been considered.

iii) Lala @ Uma Kant Shrivastava Vs. State of Chhattisgarh and Ors. [2011 DGLS(Chh.) 318]. Wherein, it has been observed in Para No. 11 as:

“11. In absence of such proof, i.e. conviction of the offender, vehicle and other articles were not liable for confiscation in terms of Section 55 of the Act, 1927. By confiscating the vehicle and affirming the order of confiscation the authorized authority, Appellate Authority and Revisional Authority have committed illegality and jurisdictional error. Order impugned and orders passed by the Appellate Authority and authorised authority for confiscation of vehicle are not sustainable under the law.”

iv) Tirath Prasad Yadav Vs. State of Chhattisgarh and others [2012 SCC OnLine Chh 30]. Wherein, it has been observed in Para No. 11 as:

“11. In the present case, the respondents authorities have failed to show that aforesaid offender has been convicted for contravention of aforesaid provisions. In absence of such proof, confiscation of the vehicle under Section 15 of the Adhiniyam, 1969 read with section 52 of the Act, 1927 is not sustainable under the law”.

v) *The State of Madhya Pradesh Vs. Uday Singh [Criminal Appeal No. 524 of 2019 dated 26th March, 2019]*. In this ruling Hon'ble Apex Court has laid down principles to be born in mind while deciding appeals under the Said Act.

vi) *Sidheswar Panda Vs. The State [MANU/OR/0005/1954]* – It is in respect of conviction of accused.

vii) *Standard Essential Oil Industries and Ors. Vs. Forest Range Officer Kasargod and Ors.* – “Present case being related to situation prior to time of amendment in 2010 was made, amended provisions did not apply. Hence, order of confiscation of sandalwood oil was liable to be set aside.”

viii) *Bharath Booshan Aggarwal Vs. State of Kerala [MANU/SC/0798/2021]* – This ruling is in respect of conviction of accused, which is not the point involved in the present matter.

ix) *Ashok S/o. Jiwanmal Gidwani and Ors. Vs. State of Maharashtra [2006 (1) MhLj 561]*. Wherein, it has been observed in Para No. 15 as:

“15 In this context, the Division Bench also observed that the provisions of Section 61-A(3) of the Forest Act clearly give a discretion upon the Authorised Officer as to whether to confiscate the vehicle used or not. The Court further observed that while exercising this discretion, all relevant aspects, such as gravity or extenuating factors, etc., would have to be taken into consideration, keeping in mind the object of the said provision, namely, to prevent exploitation of forest produce. The court, therefore, proceeded to quash the order, which was vitiated by basic error of non compliance with the principles of natural justice”.

x) *Range Officer Kandi Range Sopore Vs. Altaf Hussain Malla [CRM(M) No. 384/2021 dated 18th May, 2022 – Jammu and Kashmir High Court]*.

Wherein, it has been observed in Para No. 15 as:

“15 Apart from the above, the Authorized Officer, while passing order dated 29.01.2021, has not assigned any reason for discarding the statements of the accused and accepting the version given by the

prosecution witnesses. Simply narrating the facts of case and reproducing the evidence led by parties without giving any reasoning in support of the conclusion, does not meet the requirements of a reasoned order. The reasoning assigned in an order forms its heart and soul, without which the same becomes arbitrary in nature. A quasi-judicial authority like an Authorized Officer under the [Forest Act](#), is obliged to pass a well-reasoned order while directing confiscation of the seized property/vehicle. An order of confiscation deprives the owner of his property, as such, reasoning is a sine qua non of such a harsh order. The order of the Authorized Officer in the instant case is devoid of any reason and, as such, the same become unsustainable in law on this ground also.”

xi) Assistant Forest Conservator Vs. Sharad Ramchandra Kale. It is on the point of knowledge of the owner about unauthorised use of the vehicle.

xii) Nazir Ahmad Vs. The King-Emperor [(1936) 38 BOMLR 987]. It is in respect of powers regarding recording of confessions under section 164 of the Cr.P.C.

8] Per Contra, learned Advocate for the respondent has relied on following rulings :

i) The State of Maharashtra Vs. Vijay Bhikchand Bafna [1997 DGLS(AHC) 479] – Wherein, it has been held that:

“.... The proceedings of confiscation are independent and it is against the order of confiscation that the appeal is provided to the Sessions Court. When the Deputy Conservator of Forest was justified in onfiscating the articles inasmuch as the Respondent had failed to disclose even the name of person to whom he handed over the vehicle, the learned Sessions Judge was clearly in error in passing the impugned order.”

ii) Shaikh Said Shaikh Hussain Vs. A. D. Chaudhary and another. [1988(1) Bom.C.R. 26]. Wherein, it has been observed in Para No. 5 as:

“5 The special machinery for confiscation of illicitly felled timber or forest produce etc., by the Authorised Officer is enacted in the general public interest to suppress the mischief of ruthless exploitation of Governments Forest, by illicit felling and removal of forest produce. The power under section 61-A of the Act, is conferred on a high-officer of the status not below the rank of an Assistant Conservator of Forests.

Against an order passed under section 61-A, an appeal lies to an independent judicial officer of the status of Sessions Judge. The order could be passed where a forest offence is believed to have been committed, in respect of timber, sandalwood, firewood, charcoal or any other notified forest produce which is the property of State Government. Before an order of confiscation is passed authorised officer should be satisfied that a forest offence is committed in respect of such property and the vehicle was used in committing such offence. Section 61-B(1) and (2) and 61-D provide sufficient safeguards to the owner of the vehicle. The authorised officer is expected to pass a reasoned order. He must give good reasons in support of the order and not merely state his bald conclusion. It should be a well considered order as an appeal lies against the said order. It is also subject to the revisional jurisdiction under section 61-C. Hence, power conferred is not uncanalised. Therefore, section 61-A is not violative of Article 14 of the Constitution.”

iii) Shyamrao Kewalram Kapgatge and another Vs. State of Maharashtra [2004(1) Bom.C.R.(Cri.) 627]. Wherein, it has been observed in Para No. 9 as:

“9 Irrespective of the fact whether the property belongs to the Government or not, Rule 3 of the said Rules as seen above requires transit pass for the purpose of transportation of any forest produce. It is not the case of the petitioner that in terms of Rule 3(c) there is any notification issued exempting the forest produce which was seized by the Forest Officer from the requirement of the transit pass under the said Rules. Being so, once it is not in dispute that the petitioners had been transporting the forest produce in the absence of any transit pass for such transportation of the forest produce, the forest offence was clearly disclosed and, therefore, no fault can be found with the impugned order passed under Section 61-A and confirmed under Section 61-D of the said Act on the ground of absence of transit pass while transportation of such forest produce.”

iv) Mohd. Ashique Shaikh Ameer Vs. State of Maharashtra. [2006(2) Bom.C.R.(Cri.) 476]. Wherein, it has been observed in Para No. 7 as:

“7 Section 61-B(2) of Forest Act permits owner of vehicle to prove to the satisfaction of Authorized Officer that his vehicle was used for transporting such timber without his connivance or knowledge and he had taken all reasonable and necessary precaution against such user. As already observed above, petitioner did not lead any evidence in this respect before Authorized Officer. Not only this, there he accepted that he was also a timber merchant with 10 years experience. He has not approached this Court in that capacity but as transporter. The contents of his reply to show cause notice falsify his stand that he is merely a transporter. Thus his stand is not only mutually contradictory but also destructive. In AIR 2001 A. P. 270 - Ashok Leyland Finance Ltd., M/s. Vs.

Govt. of A. P. the Division Bench of Andhra Pradesh High Court has made following observations in this respect in paragraph 9 and 10:-

"9.-- If it is so kept in mind the financier cannot be considered to be the owner of the vehicle for the purpose of Section 44(2-C) of the Act. Therefore, the financier, solely on the ground that the vehicle was used for transporting the contraband forest produce without his knowledge or connivance, cannot seek the release of the vehicle irrespective of the fact whether the forest offence was committed with the knowledge or connivance of the hirer. Further, the provisions of sub-section (2-C) makes it abundantly clear that the burden to prove to the satisfaction of the Authorised Officer that the vehicle was used in carrying the contraband forest produce without his knowledge or connivance is on the owner of the vehicle and not on the Authorised Officer. Therefore, we do not find any merit in the contention of the learned counsel for the appellant that there is absolutely no legal evidence produced by the Authorized Officer to show that the vehicle was used for carrying the contraband forest produce with the knowledge and connivance of the hirer or the financier.

10. Thirdly, it is relevant to note that the hirer C. Venkateswarlu who should be treated as the owner of the vehicle for the purpose of sub-section (2-C) of Section 44 of the Act did not adduce any evidence to the satisfaction of the Authorized Officer that the vehicle was used without his knowledge in the commission of the forest offence. Although the appellant company chose to prefer appeal under sub-section (2-E) of the Act to the learned District Court, quite curiously, the legal representatives of the hirer who died during the pendency of the proceedings before the 2nd respondent were not impleaded as parties to the appeal. They are also not impleaded as parties to the writ petition or to this writ appeal. In the absence of total failure to discharge the burden envisaged under sub-section (2-C) of the Act that the contraband forest produce was transported in the vehicle without the knowledge and/or connivance of the hirer, no exception can be taken either to the confiscation order passed by the 2nd respondent or the orders made by the learned District Judge and learned single Judge of this Court."

v) Conservator of Forests Vs. Subhash Wamnrao Bongirwar. [2006(1) Bom.C.R.(Cri.) 696]. Wherein, it has been observed in Para No. 7 as:

"7. In this case, it may be seen that in the respondent's reply to the show cause notice issued by the Authorised Officer the respondent had himself stated that the jeep driver had in collusion with persons of criminal tendencies allowed the jeep to be loaded with teak wood. Thus, there can be no doubt that the person in-charge of the vehicle, namely driver Rajkumar had not only allowed the vehicle to be used for transporting the forest produce illegally but had colluded in such user. As the provisions of Section 61-B(2), reproduced above, would show that it is incumbent upon each of the persons namely, owner as well as person in-charge of the vehicle, to take necessary precautions against the misuse. Therefore, in this case, since the respondent had failed to show before the Authorised Officer that the vehicle was used

without his knowledge and the knowledge of persons in-charge of the vehicle, the order passed by the competent Authority cannot be assailed.”

vi) State Vs. Rajesh Gaonkar [2000(5) Bom.C.R. 581]. Wherein, it has been observed in Para No. 8 as:

“8. In view of the conclusion arrived at on the basis of the panchanama and in the absence of any material to rebut the presumption under section 69 of the said Act, it can, prima facie, be said at this stage that the produce in question can be said to be the produce from the property of the Government unless contrary is proved. The confiscation proceedings are pending before the Authorised Officer, who shall deal with the same and dispose of the same within a period of 2 months from today. The respondent may place all material in support of his case before the Authorised Officer in the said proceedings. The observations made in this order shall, not, in any manner, influence the Authorised Officer while dealing with and disposing of the show cause given to the respondent under section 61B as amended, of the Forest Act, 1927.”

vii) State of Maharashtra Vs. Vinayak Dagadu Jadhav [1995(1) Mh.L.J. 318]. Wherein, it has been observed in Para No. 13 as:

“13. It further provides that all such persons, which include agents, servants etc. to take reasonable and necessary precautions against such use of the vehicle. Thus it would be clear that the responsibility is also extended to the agent and servant of the owner of a vehicle. In the circumstances the findings recorded by the learned Additional Sessions Judge are unsustainable.”

viii) Uday Chandra Pattnaik Vs. State of Orissa and others [2005 Cri. L.J. 1928]. Wherein, it has been observed in Para No. 8 as:

“8. Rule-4 of the T.T. Rules lays down that except as provided in Rule-5 all forest produce in transit by land, rail or water shall be covered by a permit to be issued free of cost by the Divisional Forest Officer or Assistant Conservator of Forest in that behalf. Hand sawn Sal sizes are forest produce as defined u/s 2(g)(i)(a) of the Orissa Forest Act. The same are not covered under Rule-5 of the T.T. Rules. Violation of Rule-4 of T.T. Rules is punishable under Rule-21. So, the jeep in question was used in commission of a forest offence.

Section 56(2-c) of the Orissa Forest Act reads as follows :-

"Without prejudice to the provisions of Sub-section (2-b), no order of confiscation under Sub-section (2-a) of any tool, rope, chain, boat, vehicle or cattle shall be made if the owner thereof proves to the satisfaction of the authorised officer that it was used without his knowledge or connivance or the knowledge or connivance of his agent,

if any or the person in charge of the tool, rope, chain, boat, vehicle or cattle, in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.

In the case at hand as stated earlier the petitioner utterly failed to prove that his vehicle was used without his knowledge or connivance or the knowledge or connivance of the driver.”

ix) State of Maharashtra and Ors. Vs. Mohd. Idris s/o. Umarbhai Memon (Godil) and Ors. [1997(1) ALL MR 218]. Wherein, it has been observed in Para No. 12 as:

“12 Admittedly, the first respondent had no pass to transport the goods on 5.5.95. The one pass he had taken was for a different date i.e. 3.5.95 and for a different quantity. It is also admitted fact that the first respondent had used the pass on 3.5.95 to transport one consignment of goods and again he was using the same pass to transport one more consignment when the lorry was intercepted and the goods came to be seized. First respondent has pleaded guilty and compounded the offence by paying compensation. It is too late in the day for him now to turn round and say not committed any forest offence and goods in question are not forest produce. The learned Sessions Judge erred in setting aside the order of the Authorised Officer, who had confiscated the goods. We may also notice that as far as forest produce is concerned, presumption in section 69 of the Act provides that every forest produce is presumed to be the property of the government unless contrary is proved. The first respondent has not placed any material on record to show that this forest produce does not belong to the Government. In the above circumstances, we are constrained to hold that the order of the learned Sessions Judge is not sustainable and is liable to be set aside.”

9] ‘Forest Produce’ is defined in Section 2(4) of the Said Act. It prescribes that:

(4) “forest-produce” includes—

(a) the following whether found in, or brought from, a forest or not, that is to say:—

timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds 1[, kuth] and myrabolams, and

(b) the following when found in, or brought from, a forest, that is to say:—

(i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,

(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,
(iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and
(iv) peat, surface soil, rock, and minerals (including limestone, laterite, mineral oils, and all products of mines or quarries);
(4A) “owner” includes a Court of Wards in respect of property under the superintendence or charge of such Court;]

10] Now the question arise whether the proper procedure regarding the confiscation was carried out or not. On 05.08.2022 one offence was registered by the Forest Officials. Said F.I.R. shows that the offence is registered against unknown person but the R.T.O. registration number has been mentioned in it. Similar contents are mentioned in the spot cum seizure panchanama. The name of the owner of the vehicle was traced from the documents which were found in vehicle and further it has been verified from the concerned department. These two documents show that there was charcoal in the said vehicle. Admittedly, no document was shown by the appellants or any person related with said vehicle regarding valid permit for the said transport. Thus, it is clear that it is a Forest produce and this finding has not been agitated.

11] It is the case of the appellant that prior to the incident said vehicle was transferred by the appellant to one Mete. It is seen that one notarised document was produced during confiscation proceeding. Said document is shown to be executed by appellant favouring one Shivaji Mete on 02.08.2022. It is seen that the document is not a complete one, as last pages and page of signatures are missing. Thus, the document fails short to inspire confidence. It is also worth to consider that the said person i.e. Shivaji Mete has not assailed the confiscation order.

12] Learned advocate for the appellant has submitted that those charcoal was forcibly kept by the officials in his vehicle for some unknown reasons. Further, it is worth to consider here that appellant and Shivaji Mete were represented by one and the same Counsel during the confiscation proceeding. These contentions have neither made in the appeal memo nor in the application made before learned J.M.F.C. under section 457 of the Code of Criminal Procedure. Further, there are no documents on record to show that Shivaji Mete had complained about the incident to any competent authorities or the Court prior to this order.

13] Further, the competent authority had issued notices to appellant as well as Shivaji Mete during the confiscation proceeding. Further, they both had submitted their written notes of arguments and produced documents on record. All these documents have been considered by the Competent Authority while passing the order.

14] In the ratio laid down by Hon'ble Apex Court in case of ***Uday Singh***, *Cited Supra*, it has been laid down in Para No. 27 as:

“27. Sub-clause (g) of Article 51A provides : “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.” For, it is only when the interpretation of law keeps pace with the object of the Legislature that the grave evils which pose a danger to our natural environment can be suppressed. The avarice of humankind through the ages has resulted in an alarming depletion of the natural environment. The consequences of climate change are bearing down on every day of our existence. Statutory interpretation must remain eternally vigilant to the daily assaults on the environment....”

15] Considering above discussion, it is seen that the charcoal found in the said vehicle is a forest produce. Further, neither appellant nor his agent had produced valid permit for transport of said charcoal. There are other offence registered against the appellant. Under such

facts and circumstances, in the light of cited rulings the vehicle needs to be confiscated. Hence point No.1 is answered in affirmative.

AS TO ISSUE NO. 2.

16] Thus, it is clear that the Competent authority has followed the due process of law and arrived at a right conclusion. Thus, the order of confiscation is legal, valid and justifiable. Therefore, no interference is warranted therein. Hence, the point No.2 is answered in negative and in answer to point No. 3 following order is passed.

ORDER

Appeal is dismissed.

Date :- 15.09.2023.

(J. P. Darekar)
Additional Sessions Judge,
Baramati, Dist. Pune.

Certificate

I affirm that the contents of this P.D.F. file Judgment are same word for word as per original Judgment.

Name of Steno	:-	I. E. Deshmukh Stenographer (Grade-I)
Court Name	:-	J. P. Darekar Additional Sessions Judge, Baramati, Dist. Pune.
Date	:-	15.09.2023.
Judgment signed by P.O. On	:-	03.10.2023.
Judgment uploaded on	:-	03.10.2023.