

CIVIL REVISION

Present:

The Hon'ble Mr. Justice Prasenjit Mandal

Judgment on 25.08.2010

C.O. No.920 of 2008

Sitara Begum.

Versus

State of West Bengal and another.

Points:

**Vehicle owner's Duty-** To avoid order of confiscation whether the owner of a vehicle had to prove that she had taken all reasonable and necessary precautions against the commission of any offence under the Forest Act, 1927 by her driver for all the time the vehicle was lying under the control of the driver-Forest Act, 1927 S 59A(3)

Facts:

In absence of her regular driver on a particular day, the petitioner appointed one casual driver to carry the passengers from Siliguri to Darjeeling by her vehicle and in that way on April 8, 2005 the said casual driver left for Darjeeling with her vehicle. Thereafter by the news of the CCN TV in the evening, she came to know that the vehicle had been seized with some forest logs. The petitioner preferred a revisional application before the appropriate authority and the authority rejected the application. The Misc. Appeal against the said order was dismissed by the learned District Judge.

Held:

Admittedly, her vehicle was plying from Siliguri to Darjeeling route for carrying passengers but on the relevant date, time and place the vehicle was carrying forest produce for which the driver could not produce any valid

document or licence to carry the said forest produce. As per provisions of Section 59A(3) of the Forest Act, 1927 the forest officer is empowered to pass an order of confiscation of the vehicle used in committing offence on forest produce. But such a course is to be adopted after giving due notice to the person concerned. Here, I find that before passing the order of confiscation by the concerned officer under the provisions of Section 59A(3) of the Forest Act, 1927, authority concerned issued a notice upon the petitioner to file a show-cause or an objection as to why the vehicle in question should not be confiscated. Adequate opportunity was given to the petitioner before passing the order of confiscation. From the materials placed by the petitioner, Court do not find that the petitioner had taken adequate measures or she gave due caution that the casual driver so appointed would not carry any forest produce without any authority or valid paper.

Para 7

Cases cited:

(1998) 1 Crimes 86(SC); (2005) 4 CHN 565 ; (2005) 4 CHN 536; and State of West Bengal & Anr. Vs. Mahua Sarkar AIR 2008 SC 1591;

For the Petitioner : Mr. S. Chakraborty,

Mr. Abdulla Rahamani.

For the Opposite party no.2: Mrs. Rama Ghosh Dastidar.

**Prasenjit Mandal, J.:** This application is directed against the order dated December 17, 2007 passed by the learned District Judge, Jalpaiguri in Misc. Appeal No.1 of 2007 thereby affirming the order dated August 2, 2006

passed by the conservator of forests, Northern Circle and revisional authority, Jalpaiguri.

2. The short fact is that the forest officer of District – Jalpaiguri and Siliguri sub-Division passed an order dated March 9, 2006 for confiscation of the vehicle being registration no.WB- 76/3501 belonging to the petitioner in relation to an offence under the Forest Act, 1927. Thereafter, the petitioner preferred a revisional application before the appropriate authority and the revisional application was rejected by an order dated March 9, 2006. Being aggrieved, the petitioner no.2 preferred the Misc. Appeal which was dismissed by the learned District Judge. Being aggrieved, the petitioner has come up with this application.

3. Mr. Chakraborty, learned Advocate appearing on behalf of the petitioner, submits that the petitioner is a handicapped lady. She was married; but she was deserted by her husband. Thereafter, the petitioner purchased the vehicle in question with the money obtained by way of disposal of an immovable property. She took also a loan from a financial agency and thus she was getting her livelihood by plying that vehicle by a regular driver. But in absence of her regular driver on a particular day, she appointed one casual driver to carry the passengers from Siliguri to Darjeeling by that vehicle and in that way on April 8, 2005 the said casual driver left for Darjeeling with her vehicle. Thereafter by the news of the CCN TV in the evening, she came to know that the vehicle had been seized with some forest logs. Then she tried to lodge a complaint with the concerned P.S. but she was not allowed to do so. That vehicle was the only source of income of the petitioner. She had no fault for knowledge about taking the forest logs by her vehicle by the said casual driver. So, the order

of confiscation was wrong and the vehicle should be released in her favour instead of confiscation.

4. In support of his contention Mr. Chakraborty has referred to the decision reported in (1998) 1 Crimes 86(SC), (2005) 4 CHN 565 and (2005) 4 CHN 536. By referring to these decisions Mr. Chakraborty submits that when the owner of the vehicle had no knowledge about carrying the forest produce by her vehicle by the casual driver so appointed, the vehicle should be returned in view of the above decisions.

5. On the other hand, Mr. Mitra appearing on behalf of the opposite party, submits that this is a serious offence and that as per evidence on record, the owner of the vehicle in question had a duty to see that her vehicle was not got involved in any illegal activities particularly carrying forest produce without any permit or valid document. So the order impugned has been rightly passed by the learned District Judge.

6. Therefore, the question that emerges for decision is whether the learned District Judge was justified in dismissing the misc. appeal.

7. Upon hearing the learned Advocate for the parties and on going through the materials on record, I find that there is no dispute that the petitioner was the owner of the vehicle no.WB- 76/3501. Admittedly, her vehicle was plying from Siliguri to Darjeeling route for carrying passengers but on the relevant date, time and place the vehicle was carrying forest produce for which the driver could not produce any valid document or licence to carry the said forest produce. As per provisions of Section 59A(3) of the Forest Act, 1927 the forest officer is empowered to pass an order of confiscation of the vehicle used in committing offence on forest produce. But such a course is to be adopted after giving due notice to the person concerned. Here, I find that before passing the order of confiscation by the

concerned officer under the provisions of Section 59A(3) of the Forest Act, 1927, authority concerned issued a notice upon the petitioner to file a show-cause or an objection as to why the vehicle in question should not be confiscated. Adequate opportunity was given to the petitioner before passing the order of confiscation. The contention of the petitioner is that her regular driver was on leave and her casual driver committed the mischief without her knowledge. It was not possible for her to know if the casual driver was violating any forest rule after taking the vehicle from her in the morning. From the materials placed by the petitioner, I do not find that the petitioner had taken adequate measures or she gave due caution that the casual driver so appointed would not carry any forest produce without any authority or valid paper.

8. Mr. Chakraborty submits that as soon as the vehicle was taken out by the driver, the owner had no control over such vehicle to see whether any forest produce was carried by the said driver or not and for that reason the owner should not be held liable and the order of confiscation was, therefore, bad. This submission, I hold, cannot be accepted because as per provisions of the Forest Act, the owner had a great responsibility to see that her vehicle was not used for any illegal activities. Here the question is whether the owner took sufficient measures to check such illegal activities of the so-called driver. The owner had to prove that she had taken all reasonable and necessary pre-cautions against the commission of any offence under the Forest Act, 1927 by her driver for all the time the vehicle was lying under the control of the driver. Alternatively, it could be stated that the owner of the vehicle should hand over the vehicle to a driver to whom the owner believes him to be an honest man who would not misuse the vehicle for commission of any offence. If any lenient view is taken the object of the Act

of 1927 would be frustrated. In the instant case, there is no such evidence on the part of the owner / petitioner of the vehicle. The decision of State of West Bengal & Anr. Vs. Mahua Sarkar reported in AIR 2008 SC 1591 clearly indicates that the owner of the vehicle has to prove that he had taken all reasonable and necessary pre-cautions against such use. This decision is very much relevant in the instant case. This decision of State of West Bengal & Anr (supra) is passed by the Hon'ble Apex Court is binding upon us and so the ratio decided thereon should be followed by all the Courts subordinate to the Hon'ble Apex Court. In view of such decision of the Apex Court, the decisions of 2005 (4) CHN 536 & 2005(4) CHN 565 need not be followed. The other decision of the Apex Court cited by Mr. Chakraborty does not lay down the fact of the case in details, while the decision of AIR 2008 SC 1591 lays down fact of the case in details which has similarity with the present one. So, the decision cited by Mr. Mitra, I hold, should be followed in the instant case.

9. On perusal of the materials on record, it does not appear that the petitioner had taken all reasonable and necessary precautions against use of the vehicle for carrying forest produce. Therefore, the concurrent findings made by the concerned authorities and supported by the appellate authority should not be interfered with in exercising the revisional jurisdiction of this Court. Therefore, I am of the view that there is nothing to interfere with the impugned order. The learned District Judge is, therefore, justified in dismissing the Misc. Appeal.

10. Accordingly, the application is dismissed.

11. There will be no order as to costs.

12. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

**(Prasenjit Mandal, J.)**

