

2004 CRI. L.J 1156
(PATNA HIGH COURT)
CHANDRAMAULI KR. PRASAD. J
Manoj Kumar Sharma, Petitioner v. The State of Bihar and others, Respondents.
C.W.J.C. No. 4160 of 2003. D/-4-11-2003

(A) Forest Act (16 of 1927) S. 52 (3) AV/AV/P120/2003/ABD/RTT/3552/2004 - Confiscation- S. 52 (3) contemplated confiscation of not only forest produce but also other articles including vehicle used.

(1996) I Pat LJR 77. Rel. on.

(Para 7)

(B) Forest Act (16 of 1927), S. 52 - Confiscation - Vehicle used for commission of forest offence established - Onus shifts on owner of vehicle to establish that vehicle was used without his knowledge or connivance or that of his servant and agent and also to establish that he had taken all reasonable and necessary precaution against the use of vehicle.

AIR 1998 SC 2927 Disting

(Para 10)

(C) Forest Act (16 of 1927), S. 68 (1) (a) (b) – Release of seized vehicle – Can be ordered on payment of compensation or on payment of value thereof – Vehicle cannot be released on owner filing application for compounding of offence.

AIR 2000 SC 3633 and 2001 AIR SCE 2280, Disting

(Para 16)

(D) Forest Act (16 of 1927), S. 68 (1) (b) - Release of seized vehicle - S. 52 (3) provides for confiscation of forest produce together with vehicles etc. used in committing forest offence - Before power under S. 68 (1) (b) for release of vehicle is exercised value of property liable for confiscation has to be paid.
(1998) 1 East Cri. C 687 (Pat), Rel. on.

(Para 19)

(E) Forest Act (16 of 1927) Ss. 52 (3), 68 - Confiscation of vehicle used in commission of forest offence - Release - Neither S. 68 nor S. 52 (3) provides for release of the vehicle on payment of fine.

(Para 21)

Cases Referred : Chronological Paras

K.P. Yousuff v. State of Kerala 2001 AIR SCW 2280.: (2001) 9 SCC 721 (Disting)	13, 18
Dinesh Kumar Kartike v. State of M.P AIR 2000 SC 3633 : (2000) 1 SCC 323 (Disting)	12,17
Assistant Forest Conservator v. Sharad Ramachandra Kale, AIR 1998 SC 2927 : (1998) 1 SCC 48 : 1996 AIR SCW 2318 (Disting)	8, 11
Dilip Kumar Pandey v. State of Bihar, (1998) 1, East Cri. C 687 : (1998) 2 BLJR 1103 (Rel. on)	19,22
Md. Akhtar v. State of Bihar, (1996) 1 Pat LJR 77 : (1996) 1 BLJR 234 (Rel. on)	7
Anil Kumar Gupta v. State of Bihar (1996) 1 Pat LJR 863 : (1996) 2 East Cri. C 118	20,23
Gurudev Singh Rai v. Authorised Officer-cum Assist. Conservator of Forest, AIR 1992 Orissa, 287	20
R.K. Shukla Sr. Advocate with Dinesh Jha, for Petitioner S.J Rahman. G.P. VII and Miss. Shashi Ranjan, JC to G.P. VII for Respondents.	

ORDER

1. Petitioner is the owner of a truck bearing registration No. BR-060-9592. Said truck was seized on 1-2-2001 by the Forester, Bihta while it was transporting illegal Sisamfuel wood and the driver of the truck failed to produce any document authorising transportation of such fuel.
2. A confiscation proceeding under Section 52 of the Indian Forest Act as amended by Bihar Act 9 of 1990 (hereinafter referred to as the Act) was initiated by the Divisional Forest Officer-cum-Authorised Officer. Petitioner appeared before the authorised officer and pleaded that he was not aware of the requirement of obtaining transport permit for transporting the forest produce and accordingly prayed for compounding the offence. The authorised officer by order dated 24-4-2001 (Annexure.4), however, directed for confiscation of the fuel wood as also the truck. Aggrieved by the same, petitioner preferred appeal and

the appellate authority i.e. the Collector by order dated 22-3-2002 (Annexure-5) dismissed the same. Revision filed by the petitioner also did not yield any fruitful result and the revisional authority i.e. the Secretary, Forest and Environment Department of the Government of Bihar by order dated 15-2-2003 (Annexure-1) dismissed the revision application.

3. In this application prayer of the petitioner is for quashing the orders of the authorised officer, appellate authority and the revisional authority whereby the truck of the petitioner has been confiscated.
4. Mr. J.P. Shukla appears on behalf of the petitioner whereas respondents are represented by Mr. S.J. Rahman, Government Pleader No. 7.
5. Mr. J.P. Shukla has taken an extreme stand that the truck carrying the forest produce is not liable for confiscation. In his submission only the forest produce which was being transported can be confiscated. According to him for transporting forest produce of meagre amount truck of large value is not liable to be confiscated. Mr. Rahman however submits that Section 52 (3) of the Act not only contemplates of confiscation of the forest produce but also the vehicle used in transporting the same illegally.
6. The rival submission necessitates examination of Section 52 of the Act which provides for Seizure of the property and confiscation. Section 52 (3) of the Act which is relevant for the purpose reads as follows:-

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52. Seizure and its procedure for the property liable for confiscation-

(3) Subject to Sub-section (5) where the authorised officer upon production before him of property seized or upon receipt of report about seizure, as the case may be in satisfied that a forest offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded, confiscate forest produce so seized together with all tools, arms, boats, vehicles, ropes, chains or any other article used in committing such offence. The Magistrate having jurisdiction to try the offence concerned may on the basis of the report of the authorised confiscating officer, cancel the registration of a vehicle used in committing the offence, the licence of the vehicle driver and the licence of the arms. A copy of order on confiscation shall be forwarded without undue delay to the Conservators of Forests of the forest-circle in which the forest produce, as the case may be has been seized."

(Underlining mine)

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7. It is well settled that when the words of the statute are clear plain or unambiguous the Courts are bound to give effect to that meaning irrespective of its consequences and the Court is required to expound those words in their natural and ordinary sense. In such a situation no question of construction of a statute arises. Bearing in mind this principle, when I examine the language of Section 52(3) of the Act. It is crystal clear that besides the forest produce all tools, arms, boats, vehicles, ropes or any other articles used can be confiscated. In view of the clear language of the statute I have no manner of doubt that Section 52(3) of the Act contemplates confiscation of not only the forest produce but also other articles including the vehicle used. The view which I have taken finds support from a judgment of this Court in the case of Md. Akhtar v. State of Bihar. (1996) 1 Pat LJR 77 in which it has been held as follows:-

“From the aforesaid provisions it is clear that prior to the State amendment there was no provision in the Indian Forest Act empowering an authorised Forest Officer to confiscate the forest produce with regard to which offence has been committed as well as vehicle, tools etc. used in commission of the offence. These provisions are brought by the State amendment, as stated above for the object mentioned above.

8. Mr. Shukla alternatively submits that even if the truck of the petitioner is liable for confiscation but such an order can be passed only when there are materials to show that the petitioner had any knowledge of the forest produce being transported illegally. In absence thereof the orders of confiscation are vitiated, contends Mr. Shukla. In support of his submission he has placed reliance on a judgment of the Supreme Court in the case of Assistant Forest Conservator v. Sharad Ramachandra Kale. (1998) 1 SCC 48 (AIR 1998 SC 2927). In which it has been held as follows:-

1. This appeal is filed against the judgment and order of the Bombay High Court in Writ Petition No. 104 of 1988.

2. The truck of the respondent was ordered to be confiscated by the Assistant Conservator of Forests, as it was found involved in commission of a forest offence. That order was confirmed by the Conservator of Forests. Against his order, the respondent preferred an appeal to the Sessions Court but it was dismissed. Therefore, he approached the High Court with a petition under Article 227 of the Constitution. The High Court set aside the order of confiscation on the ground that the authorities had failed to establish that the owner of the truck had any knowledge that his truck was likely to be used for carrying forest produce in contravention of the provision of the Forest Act. This finding was based upon the evidence on the record. Therefore we do not consider it proper to interfere with such finding.

3. We therefore, dismiss this appeal.

9. Neither on principle nor on precedent I am persuaded to accept this submission of Mr. Shukla and for that, examination of Section 52(5) of the Act is imperative same reads as follows:-

“52(5) Seizure and its procedure for the property liable for confiscation.-

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(5) No order of confiscation under sub-section (3) of any tools, arms, boats, vehicles, ropes, chains or any other article other than the forest produce seized shall be made if any persons referred to in clause (b) of sub-section (4) proves to the satisfaction of authorised officer that any such tools, arms, boats, vehicles, ropes, chains or other article 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 of forest offence.

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10. Generally speaking whoever seeks relief from an adjudicating authority on existence of a particular fact such person has to prove that fact but the legislature in its wisdom can alter this rule and put on the other person the onus to prove such facts. In my opinion when the legislature has cast duty on the owner to satisfy certain requirement to avoid confiscation the Court cannot substitute its opinion according to its own notion of justice. Here the legislature has chosen to provide that no order of confiscation shall be

made if the owner of the property or the person interested in such property proves to the satisfaction of the Forest Officer that vehicle was used without his knowledge or connivance and not only this all reasonable and necessary precautions were taken against use of the vehicle. In the face of the aforesaid language there is no escape from the conclusion that once it is established that vehicles has been used in commission of forest offence, the onus shifts on the owner of the vehicle to establish that the vehicle was used without his knowledge or connivance or that of his servant and agent and also to establish that he had taken all reasonable and necessary precaution against the use of the vehicle. Nothing has been brought on record by the petitioner to satisfy those requirements and as such the authority did not err in confiscating the truck in question.

11. Now referring to the authority of the Supreme Court in the case of Assistant Forest Conservator (AIR 1998 SC 2927) (supra), same does not in any way support the plea of the petitioner. The provision which was under consideration before the Supreme Court has not been mentioned in the Judgment. Therefore it cannot be deciphered as to the background in which the said judgment was rendered and the statutory provision which was under consideration. Here in the present case as observed earlier, the legislature has in its wisdom put on the owner of the vehicle the onus to prove that he had no knowledge and connivance in transporting the forest produce illegally and as such the decision relied upon in no way supports the case of the petitioner.
12. Mr. Shukla points out that immediately after the confiscation proceeding was initiated, petitioner filed application for compounding and as such the authorised officer ought to have allowed the same and should not have proceeded with the confiscation proceeding. In this connection he submits that Section 68 of the Act obliges for release of the vehicle. In support of his submission Mr. Shukla has placed reliance on a judgment of the Supreme Court in the case of Dinesh Kumar Kartike v. State of M.P. (2000) 1 SCC 323 : (AIR 2000 SC 3633). In which it has been held as follows:-
 1. Leave granted.
 2. After hearing the counsel on both sides and after going into the facts, we are of the view that the following order would meet the ends of justice.
 3. The appellant challenges an order of confiscation of truck bearing No. MPQ 6783. Notice was issued by this Court on 16-11-1998 calling upon the respondent to show cause why an appropriate order in terms of Section 19 (11)(b) of the Madhya Pradesh Van Upaj (Vayapar Viniyaman) Adhinyam 1969 should not be passed. Section 19(1)(b) of the Act reads as follow:

“19 Composition of offence - (1) The State Government may by notification, empower a Forest Officer.-

 - (a) * * *
 - (b) when any property other than a specified forest prodce has been seized as liable to confiscation to release the same on payment of the value thereof as estimated by such officer.”
 4. On a perusal of the SLP paper book we find that the Forest Officer concerned had not focussed his attention on the enabling provision of Section 19(1)(b) of the Act. We therefore, direct the Forest Officer concerned to consider the question of release of the truck already confiscated under Section 19(1)(b) of the Act and pass appropriate orders in the facts and circumstances of the case. The appeal is disposed of accordingly No. orders as to costs.

13. Yet another decision on which Mr. Shukla has place reliance is the judgment of the Supreme Court in the case of K.P. Yousuff v. State of Kerala, (2001) 9 SCC 721 : (2001 AIR SCW 2280), wherein the Supreme Court has observed as follows:-

1. After hearing the learned counsel for the parties, we are in agreement with the decision of the High Court to the effect that the provisions of the Kerala Forest Act have been contravened and the vehicle of the appellant which was transporting illicit timber was liable to be confiscated.
2. When the special leave was granted, interim order was passed as a result of which the vehicle was restored to the appellant subject to the appellant depositing a sum of Rs. 10,000 in the Court of the District Judge concerned.
3. According to Section 68 of the Act some of the offences can be compounded an offence under Section 61-A and 61-B being one of them. Keeping in view the fact that the vehicle has been in possession of the appellant for nearly 11 years after the passing of the interim order by this Court and the depreciated value of the said vehicle would be very little, we accepted the submission of the counsel for the appellant that the offence may be compounded.
4. We accordingly dispose of this appeal by upholding the judgment of the High Court out directing that instead of confiscation of the vehicle. Rs. 10,000 will be paid by the appellant as compounding fee. Payment of Rs. 10,000 which already lies deposited with the District Judge, Tellicherry be handed over to the State authorities.”

14. I do not find any substance in the submission of the learned counsel for the petitioner and the authorities relied on in no way support the case of the petitioner.

15. Section 68 of the Act which is relevant for the purpose reads as follows:-

“68 (1) The State Government may by notification in the Official Gazette, empower a Forest Officer-

- (a) To accept from any person against whom a reasonable suspicion exist that he has committed any forest offence other than an offence specified in clauses (c) and (d) to Section 26, clauses (c) and (d) to Section 33 or Section 62 or Section 63 sum of money by way of compensation for the offence which such person is suspected to have committed and
 - (b) When any property has been seized as liable for confiscation, to release the same on payment of the value thereof as estimated by such officer.
2. On the payment of such sum of money or such value or both as the case may be to such officer, the suspected person in custody shall be discharged, the property if any seized shall be released and no further proceedings shall be taken against such person or property.
 3. Forest Officer shall not be empowered under this section, unless he is a Forest Officer of a rank not inferior to that of an Assistant Conservator of Forest.”

16. Section 68(1)(a) of the Act provides for acceptance of compensation for the offence from a person suspected to have committed the offence whereas Section 68(1)(b) provides for release of the property seized and liable for confiscation on payment of the value thereof by Forest Officer empowered by the State Government. Thus the two provisions operate in different field and whereas Section 68(1)(a) contemplates of payment of compensation for the offence by a person suspected to have committed the offence. Section 68(1)(b) provides for release of the property seized and liable for confiscation on payment

of the value thereof. Here at no point of time the petitioner ever made any prayer for release of the truck on payment of value thereof. It is on payment of compensation or the value of the property seized the suspected person in custody shall be discharged and property released, as the case may be and further proceeding shall not continue against such person, which would be evident from Section 68(2) of the Act. In such circumstances. I am of the opinion that the authorised officer did not err in proceeding with the confiscation proceeding and ultimately passing the order of confiscation.

17. So far as the authority of the Supreme Court in the case of Dinesh Kumar Kartike (AIR 2000 SC 3633) (Supra) same is of no assistance to the petitioner. In the present case, as observed earlier, there is nothing on record to suggest that the petitioner ever offered to pay the value of the truck before the confiscation proceeding was initiated or for that matter at any point of time to accept the value of the truck.
18. So far as the authority of the Supreme Court in the case of K.P. Yousuff (2001 AIR SCW 2280) (supra) is concerned, in the said case taking into account that by way of interim order the vehicle remained in possession of the owner for nearly eleven years and for the depreciated value of the vehicle the Supreme Court directed that instead of confiscation of the vehicle. Rs. 10,000/- will be paid by the owner as compounding fee. Here no such facts exist.

19. Mr. Shukla lastly submits that for release of the vehicle under Section 68(1)(b) of the Act, petitioner is liable to pay the price of the forest goods and not the value of the truck. I do not find any substance in the submission of Mr. Shukla, Section 68(1)(b) of the Act contemplates release of the property seized and liable for confiscation and Section 52(3) of the Act provides for confiscation of the forest produce together with vehicles etc. used in committing forest offence. In that view of the matter I have no manner of doubt that before power under Section 68(1)(b) is exercised value of the property liable for confiscation has to be paid. The view which I have taken finds support from a Division Bench judgment of this Court in the case of Dilip Kumar Pandey. v. State of Bihar, (1998) 1 East Cr C 687, wherein it has been held as follows:-

“..... However, clause (b) to sub-section(1) of Section 68 specifically says that when any property has been seized as liable for confiscation, to release the same on payment of the value thereof as estimated by such officer. Thus, it is clear that a vehicle, which is liable for confiscation under Section 52 of the Bihar Act, may be released on payment of the value of the vehicle and not otherwise.....”

20. Mr. Shukla lastly submits that the value of the forest produce alleged to have been transported by the petitioner's truck being too small the truck of a high value as not fit to be confiscated and it is a fit case in which truck be directed to be released on payment of fine. In support of the submission reliance has been placed on a decision of this Court in the case of Anil Kumar Gupta v. State of Bihar (1996) 1 Pat LJR 863 and my attention has been drawn to paragraph 9 of the judgment which reads as follows:-

“9. Learned counsel for the petitioner had argued that the Court may consider the desirability of setting aside the order of confiscation on the ground that the value of the contraband found on the truck was very small compared to the value of the truck and in lieu thereof impose a fine. He argued that though Section 52(3) of the Forest Act does not provide for imposition of fine in lieu of confiscation, such a provision can be read therein in the interest of justice and in that connection he relied on the observations made by a Division Singh Ral v. Authorised Officer-cum-Asstt. Conservator of Forest AIR 1992 Ori 287. The Court while dealing with the confiscation of vehicle under Section 56(2)(a) of the Forest Act somewhat similar to the provisions of Section 52(3) of the Indian Forest Act as amended by Bihar Act, 9 of 1990 was pleased to observe to quote:-

“Thus if in a particular case the authority may not feel satisfied that confiscation of the vehicle is demanded, keeping in view of the magnitude of the offence, but the authority may also feel that some sort of punishment deserves to be inflicted on the owner, the Court may generally feel that a lacuna has been left in the statute which must be supplied to implement the real intention of the legislature. When such a defect comes to the knowledge of a Judge, he has to supplement written words in such a situation by asking the question as to how the legislature would have acted had it known about the defect in question and then do what the legislature would have done according to the Judge. Thus if the deficiency in a AA(RA), would have come to the knowledge of the legislature. It would have definitely provided for imposition of fine as an alternative punishment. Therefore S. Section can be read to include power of imposing fine in lieu of confiscation of vehicle in appropriate cases.”

In the instant case the order of confiscation of a truck valued at R. 5 lakhs for rying contraband worth Rs. 2000/- or the more does not appear to be justified imposition of fine in lieu thereof shall not the ends of justice and Sec. 52(3) can be read to include such a power. Thus there under confiscating the vehicle and the order passed by the appellate authority and the revisional authority upholding the confiscation of the truck are set aside and in the confiscation the petitioner is directed to pay a fine of Rs. 10,000/- (ten thousand). The fine should be paid within a month where upon the truck shall be released to the petitioner, if not released earlier.

21. I do not find any force in this submission of Mr. Shukla. Neither Section..... nor Section 52(3) of the Act provides the release of the vehicle on payment of fine the judge made law is one of the sources of laws and by process of interpretation such laws made but the question is as to whether the absence of any provision contemplated release of the vehicle on payment of fine in case of confiscation same can be done? my opinion, certainly not I am of the considered view that this would be enacting a law and not interpreting the same which is not permissible. In other words it may amount to legislation and not interpretation. It is well settled that a Court can merely interpret a statute. It cannot re-write, re-align or re-design the same and while interpreting the provision, the Court makes explain the intention of the legislature which enact the law and no more. The legislature nowhere provided for release of the vehicle on payment of fine.
22. A Division Bench of this Court in the occasion to go into this question has little detail in the case of Dilip Kumar Pandey, (1998 (1) East CrI C 687) (Patna) (supra) in which on review of the decision of this Court and the authority of Supreme Court, the Division Bench observed as follows:-

“.....Thus it is absurd to think that a vehicle which has been found illegal transporting any forest produce of meagre value, can be released merely on payment of the value of articles loaded on the vehicle by way of compensation. It is to be remembered that no procedure is there by which a vehicle can be released in lieu of fine.....”
23. The Division Bench in paragraph 18 of the said case had also found the decision of this Court in the case of Anil Kumar Gupta (1996(1) Pat LJR 863) (supra) relied on by the petitioner not to be a good law and in fact overruled the same. Same reads as follows:-

“18. Having given my anxious thought on the points raised before us, I am of the view that the decision in the case of Anil Kumar Gupta (supra) cannot be held to be a good law and is thus overruled.”
24. All the submissions made on behalf of the petitioner having no substance I do not find any merit in the application and it is dismissed with costs. Hearing fee is assessed at Rs. 550/- to be paid by the petitioner to the respondents.

Application dismissed.