

HIGH COURT OF MADHYA PRADESH**BENCH AT GWALIOR****SINGLE BENCH****PRESENT:****HON'BLE MR. JUSTICE G.S. AHLUWALIA****Misc. Criminal Case No. 6271 OF 2014****Vijay Singh****-Vs-****State of M.P. & Ano.**

Shri P.S. Pal, counsel for the applicant.

Shri R.K. Awasthi, Public Prosecutor for the respondents/State.

ORDER
(02/12/2016)

This petition has been filed under Section 482 of Cr.P.C. for setting-aside the order dated 05.05.2014 passed by Additional Sessions Judge/Special Judge (Electricity), Gwalior in Criminal Revision No.241/2013 arising out of the order dated 20.06.2013 passed by the Appellate Authority-cum-Conservator of Forest, Circle 1, Gwalior in Appeal No.12/2013 by which the order dated 28.01.2013 passed by the Prescribed Authority-cum-DDFO Ghatigaon, District Gwalior confiscating the Tractor No.MP07-A-7933 and trolley was affirmed.

The facts of this case in short are that on 04.01.2012, when the in-charge of forest post Rehat was on round along with his staff, he found that one tractor along with trolley was illegally loading flagstones. When the accused noticed the forest employees, he took away his tractor and trolley which was chased by the staff of the forest. The tractor and trolley was stopped and seized. On

interrogation, the driver of the tractor disclosed his name as Raje S/o Mohan Singh Tomar. 15 pieces of flagstones of 3x2 sizes were found loaded. Spot Panchnama and seizure memo were prepared, tractor and trolley were seized and the flagstones were kept in the custody of Ghatigaon Police Station. The present applicant is the registered owner of the tractor and trolley. A show cause notice was issued to the driver and the applicant. The applicant along with his reply filed the copies of the registration of the tractor and since the reply filed by the applicant was not found satisfactory, therefore, the case was fixed for recording of statements of prosecution witnesses.

It is submitted by the counsel for the applicant that it would be apparent from the order-sheets of the Prescribed Authority that although the show cause notice was issued to the applicant and applicant had also filed his reply along with the *vakalatnama* of his counsel but those documents are not available on record. Further, it is submitted that the reply filed by the applicant was not taken into consideration and no opportunity was given to the applicant to lead evidence in his defence.

From the order-sheets of the Prescribed Authority, it is clear that on 13.8.2012, the driver of the tractor filed his written reply and informed that the applicant is the registered owner of the tractor. Accordingly, it was directed that show cause notice be issued to the applicant. On 26.10.2012, applicant filed his written reply to the show cause notice and his counsel also filed his *vakalatnama*. In the same order-sheet, it is mentioned that as the written reply was not found satisfactory, therefore, the case is fixed for recording of the prosecution witnesses on 22.12.2012. On 22.12.2012, Narendra Kumar Sharma was examined and

he was cross-examined by the counsel for the applicant. Thereafter, the case was fixed for 31.12.2012. On 31.12.2012, the statements of R.C. Sharma, Joda Ram Jatav and Devendra Singh Tomar were recorded. They were cross-examined by the counsel for the applicant. The order-sheet further discloses that thereafter on 28.01.2013, the order confiscating the tractor was passed. In order-sheet dated 31.12.2012, it is not mentioned that whether the prosecution has closed its case or not. There is nothing on record to the effect that the applicant has expressed his unwillingness to examine any witness in his defence. Even the case was not fixed for final arguments and after recording the statements of three witnesses on 31.12.2012, the final order of confiscating of the vehicle was passed directly on 28.01.2013. Admittedly, the principle of natural justice has been violated. Except mentioning in the order-sheet dated 26.10.2012 that the written reply submitted by the applicant is not found satisfactory, no other reason has been assigned by the Prescribed Authority to hold that the applicant had knowledge of the commission of offence. There is not even a single whisper in the order of confiscation with regard to the defence which was raised by the applicant. Surprisingly, even the copy of the reply and *Vakalatnama* of his counsel is not available in the record of the Prescribed Authority. Even otherwise, unless and until the applicant expresses his unwillingness to examine any witness in his defence, his right to lead evidence in his defence cannot be closed. Where the proceedings involved penal consequences, the right of natural justice cannot be given go-bye. Not only the applicant was deprived to lead his evidence in his defence, even the case was not fixed for final arguments so as to give an opportunity to the applicant

to point out any infirmity in the evidence of the prosecution witnesses.

Accordingly, it is held that the order dated 28.01.2013 passed by the Prescribed Authority is bad having been passed in utter violation of the principles of natural justice. Consequently, the order dated 28.01.2013 passed by the Prescribed Authority and the orders passed by the Appellate Authority dated 20.06.2013 and by Revisional Court on 05.05.2014 are hereby set-aside.

The matter is remanded back to the Prescribed Authority for proceeding further from 31.12.2012. The Prescribed Authority is directed to give opportunity to the applicant to lead evidence in support of his defence and after considering the written reply and the evidence of the parties as well as the final arguments, the Prescribed Authority shall decide the matter afresh on the question that whether the tractor is liable to be confiscated or not. As the incident is of 04.01.2012, therefore, the entire exercise should be done within a period of six months from the date of receipt of certified copy of this order.

The petition is accordingly allowed. No order as to costs.

(G.S. AHLUWALIA)
Judge
(02.12.2016)

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