HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

JUSTICE SUJOY PAUL.

Writ Petition No. 5828/2015

State of Madhya Pradesh
Through Forest Area Officer
Vs.
Manish Kumar Garg

A N D

Writ Petition No. 5829/2015

State of Madhya Pradesh
Through Forest Area Officer
Vs.
Mahesh Kumar Sharma

Shri S.K.Jain, Govt. Advocate for the petitioner.
Shri Suresh Agarwal, Advocate for the respondent.

O R D E R

(06 / 11 /2015)

Learned counsel for the parties contended that these writ petitions involve similar facts and issues. On their joint request, matters were analogously heard and decided by this common order.

2. Facts are taken from WP No.5828/2015.

The State of Madhya Pradesh through Forest Area Officer, Morena has called in question the legality, validity and propriety of the order dated 24.9.2014, passed by Tenth Additional Sessions Judge, Gwalior in Criminal Revision No. 377/2013. The revision filed by the respondent was allowed, whereby the order passed by the Prescribed Authority dated 8.10.2013, affirmed by the Appellate Authority in Appeal No. 48/2013 are set aside.

3. Shri S.K.Jain, learned counsel for the petitioner urged that on 10.5.2013, during patrolling, the staff of

Forest Department near Chowki Shanichara (Area No.17) of Ghat Shanichara found that some persons were loading "Khanda" stones in a truck. On seeing this, they rushed to the spot. The driver of the said truck took the truck towards Noorabad. He was chased by the forest staff and intimation was also given to Police Station Noorabad. After chasing the said truck, the forest staff with the help of staff of Noorabad Police Station could catch the said truck near the Railway Gate, Noorabad. The truck was filled with "Khanda" stones collected from forest area. Driver Rakesh Kumar was not having any transit pass and hence, he was arrested and the truck No. RJ11/GA-5849 was seized. A spot "Panchnama" and "Japtinama" were prepared. The case against driver Rakesh Kumar was registered for offence under Sections 33-B and 41-A of Indian Forest Act, 1927 (for brevity, the "Forest Act"). The information regarding seizure of truck was given to the authorised officer. The said officer started proceedings and sent the desired information under section 52(4) and 66(b) of the Forest Act to Chief Judicial Magistrate (CJM), Morena by letter dated 11.5.2013 (Annexure P/5).

4. In turn, a show cause notice was issued to the respondent on 28.5.2013. The respondent appeared before the Prescribed Authority and submitted his reply. He denied the allegations. The Authorised Officer, after recording evidence of all the parties, passed order on 29.6.2013 and found the allegations as proved against the respondent. Thus, the truck was confiscated. The respondent feeling aggrieved by the said order preferred an Appeal No. 48/2013, which was dismissed by order dated 8.10.2013. Against said orders, Revision No. 377/2013 was preferred. The Revisional Court allowed the revision on 24.9.2014 and set aside the orders of Appellate Authority dated 8.10.2013 and Authorised

Officer dated 29.6.2013.

5. Shri S.K.Jain, learned counsel for the petitioner, submits that earlier a petition under Section 482 of the Code of Criminal Procedure (CrPC) was filed against the same order (Misc.Cri.Case No.2640/2015) but the same was held to be not maintainable. Hence, this petition is filed.

6. Shri S.K.Jain submits that the Prescribed Authority and the Appellate Authority have followed the prescribed procedure. Attention is drawn on Section 52 of the Forest Act. The Prescribed Authority recorded the evidence of the parties. The said Authority, after proper appreciation of evidence, passed a detailed and reasoned order. The said order does not suffer from any procedural impropriety or perversity. The Appellate Authority also considered all the points raised by the respondent and passed a reasoned order. The Revisional Court had limited jurisdiction. The said Court was not required to reappreciate the evidence, more so, when there exists no perversity in the finding. It is submitted that the Revisional Court's interference is not justifiable and it runs contrary to the scheme of the Forest Act. It is submitted that on irrelevant considerations, interference was made by the Revisional Court. He further submits that it was not open to the Revisional Court to reappreciate the evidence as a second appellate court and come to the conclusion that another view is possible. He relied on various provisions of the Forest Act to bolster the aforesaid submissions.

7. *Per Contra,* Shri Suresh Agarwal, learned counsel for the respondent, supported the order of the Revisional Court. He submitted that admittedly, the only "Japti Panchnama" is prepared at Noorabad. Thus, indisputably there is no material to show that forest produce is seized in forest area. Thus, the Revisional Court has not

committed any error in disturbing the orders of Prescribed Authority and Appellate Authority. He placed reliance on Sections 30 and 33 of the Forest Act in support of his submission that the offence under the said Act can be proved only when it is covered under Section 33 of the Forest Act. He submits that the petitioner has miserably failed to show that any office is committed by the respondent. He supported the impugned revisional order.

8. No other point is pressed by learned counsel for the parties.

9. I have heard the parties at length and perused the record.

10. Before dealing with the rival contentions of the parties, it is apposite to mention certain definitions from Forest Act. The same read as under:-

> *"2(3) "Forest-offence" means an offence punishable under this Act or under any rule made thereunder.*
>
> *2(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, (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, reds 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 lime-stone, laterite, mineral oils, and all products of mines or quarries).*

Section 52 (b) (MP Amendment vide MP Act 25 of 1983) reads as under:-

> *"52B. Revision before Court of Sessions against order of Appellate Authority.-- (1) Any party to the appeal, aggrieved by final order or by order of consequential nature passed by the Appellate Authority, may within thirty days of the order sought to be impugned, submit a petition for revision to the Court of Sessions division whereof the headquarters of the Appellate Authority are situate.*
>
> *Explanation.- In computing the period of thirty days under this sub-section the time requisite for obtaining certified copy of order of Appellate Authority shall be excluded.*
>
> *(2) The Court of Sessions may confirm, reverse or modify any final order or an order of consequential nature passed by the Appellate Authority.*
>
> *(3) Copies of the order passed in revision shall be sent to the Appellate Authority and to the Authorised Officer for compliance or for passing such further order or for taking such further action as may be directed by such Court.*
>
> *(4) For entertaining, hearing and deciding a revision under this section, the Court of session shall as far as may be, exercise the same powers and follows the same procedure as it exercises and follows while entertaining, hearing and deciding a revision under the Code of Criminal Procedure, 1973 (Act No. 2 of 1974).*
>
> *(5) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure , 1973 (Act No. 2 of 1974) the order of the Court of Sessions passed under this section shall be final and shall not be called in question before any Court."*
>
> **(Emphasis Supplied)**

11. The prescribed authority passed a detailed order dated 29.06.2013. The said authority narrated the factual backdrop of the matter and rival contentions of the parties. Thereafter he analyzed the statement of prosecution witnesses Shri Anil Kumar Sharma, Pancham Singh, Shivkumar Jatav, Rakesh Kumar Garg, Hari Singh Kushwah and Matadeen Sharma. It is relevant to mention that after mentioning about the deposition of prosecution witnesses, the learned prescribed authority considered the cross-examination of those witnesses. The same procedure was adopted by the said authority in relation to defence witnesses. The essence of the statement of defence witnesses and its cross-examination is considered and analyzed by him. He also framed issues

and thereafter assigned reasons by a detailed analyses. He devoted seven paragraphs on said analysis. On the basis of said analysis, he recorded his conclusion in the last paragraph of the order. Thus, there is no procedural impropriety in the order of the said authority. He has discussed the entire material available before him.

12. The appellate authority also passed a detailed order dated 08.10.2013. This order contains description of rival stand of the parties and it deals with relevant provisions. After due analysis, the appellate authority came to hold that there is no merit in the appeal. Analysis / reasons are contained in about fourteen paragraphs. It is seen that the appellate authority has applied mind and there is no procedural impropriety in this order also. Appellate authority has upheld the order of prescribed authority.

13. The revisional authority interfered with the matter by re-appreciating the evidence. It is held that seized material can be treated to be a forest produce only when it falls within the ambit of Section 2(4) of the Forest Act, 1927. It is held by the authorities that to establish that relevant produce was forest produce, the prosecution is first required to establish that the relevant material was produce of forest area. He then considered the Panchanama which was prepared at Noorabad. He opined that Panchanama relates to the place of seizure i.e. near railway crossing Noorabad. No panchnama is produced which pertains to the place from where stones were illegality carried by the respondent. He opined that prosecution has failed to establish that stones were taken out from the forest area. He criticized the order of authorities below wherein they have disbelieved the statement of truck driver Deendayal that he was carrying stone from Rancholi mine. It was disbelieved because no transit pass was shown by the said driver. He disbelieved it on the ground that prosecution witnesses are

employees of forest department whereas owner of vehicle has deposed his own statement. He also recorded that although the defence witnesses have not deposed anything against the officials of forest department, they have deposed against police. In para 15, he recorded that witnesses should have been cross-examined to great extent to establish that police was not involved in any bungling / extortion of money. Thus, he opined that in absence of cross-examination to that extent, the 'possibility' is that vehicle is not seized by the officials of Forest Department but it was seized by police authorities. In para 18 again, the finding was given that for the sake of argument even if it is accepted that the truck was seized by the forest officials and not by police authorities, still there are two possibilities: (i) the stones were carried in the truck from the forest area (ii) from valid mine of Rancholi, as per the defence of other side. He then opined that second 'possibility' is more attractive. The relevant finding reads as under :-

> "18. उपरोकत के अलावा जहां अभियोजन का मामला यह है कि दिनांक 10.05.2013 को सायं 6.30 बजे वनचौकी शनिचरा के प्रभारी कक्ष क्र. 17 में जब भ्रमण पर थे तभी जब्तशुदा ट्रक में कुछ लोग पत्थर भर रहे थे वन अमले को आता देख वे ट्रक को भगा ले गये जिसका पीछा वनकर्मियों द्वारा किया गया और पुलिस की मदद से उसे नूराबाद रेल्वे फाटक पर पकड़ा गया । इन तथ्यों को प्रमाणित करने के लिये अभियोजन को अपने मामलों की नींव घटनास्थल के रूप में उस स्थान को चिन्हित करके अर्थात नक्शामौका आदि बनाकर रखनी थी जहां से पत्थर का अवैध उत्खनन संरक्षित वन क्षेत्र से बताया गया है जबकि यहां पर तो नक्शामौका पंचनामा आदि बनाकर आरंभ नूराबाद रेल्वे फाटक को घटनास्थल मानकर किया गया है जो कि न तो अधिसूचति संरक्षित वन क्षेत्र है और न ही तथाकथित घटनास्थल, जहां पर ट्रक को पकड़ा या था। यदि तर्क के लिये यह भी मान ले कि वह पुलिस द्वारा न पकड़कर वमकर्मियों ने पकड़ा है तब भी दोनो संभावनायें है अर्थात खण्डा पत्थर प्रतिबंधित वन क्षेत्र से लाया जा सकता है और रंचौली की वैध खदान से भी, जैसा बचाव पक्ष का अभिवाक है। पूर्वोक्तानुसार किये गये मामले के तथ्यों व साक्ष्य के विश्लेष्ण के बाद पश्चातवर्ती स्थिति अधिक संभाव्य प्रतीत होती है।''
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> **(Emphasis Supplied)**

14. The Court below devoted almost one paragraph to

show how the information of seizure given by forest officer was defective. Lastly, it is held that prosecution has failed to establish that stones were brought from the notified forest area.

15. The question is whether these findings given by the court below in revisional jurisdiction are justifiable? This is trite law that there is marked distinction between powers of appellate authority and revisional authority. The appellate authority can re-appreciate the evidence and on said re-appreciation can come to a different conclusion. However, in revisional jurisdiction Section 397 CrPC vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case.

16. In *(1999) 2 SCC 452 (State of Kerala Vs. Puttumanaillath Jathavedan Namboodiri)* the Apex court in para 5 held as under :-

> " In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court not can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it could not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

17. The object of revisional jurisdiction is to set right a patent defect or an error of jurisdiction or law. There has

to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of them bear a token of careful consideration and appear to be in accordance with law. Revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. Normally a revisional jurisdiction should be exercised on a question of law. However,when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

18. The scope of jurisdiction of revisional authority is considered by the Supreme Court in catena of judgments. In *(Amit Kapoor Vs. Ramesh Chandra and Anr.)* reported in *(2012) 9 SCC 460* has taken the aforesaid view mentioned in para 14 above. If the impugned judgment is examined on the anvil of aforesaid principles laid down by the Supreme Court, it will be crystal clear that said authority has acted as an appellate authority. In absence of any manifest impropriety or palpable perversity, it was not open for the revisional authority to come to a different conclusion. Even if two views are possible, revisional authority cannot interfere on a plausible view. Revisional authority cannot base its finding on surmises and conjunctures.

19**.** Apart from this, the definition of 'forest produce' makes it clear that when it is found in or brought from the forest it should be treated as forest produce. The

forest officials have deposed their statements that stones were brought from the notified forest area but defence could not effectively cross-examine the same nor it could demolish the correctness of such statements of prosecution witnesses. Genuineness of their statements could not be doubted unless effective cross-examination is done on them. There was no justification for the revisional court for disbelieving the statement of forest officials and disturb the concurrent findings of authorities below.

20. In the considered opinion of this court, even if no 'Panchnama' is prepared at a place from where the stones were brought, fact remains that there is sufficient evidence on record to show that the stones were brought from the 'forest area'. Merely because the truck was seized outside the forest area, that will not give any benefit to the respondent because definition of 'forest offence' is wide enough to include the produce brought from the forest.

21. Justice Deepak Mishra (as his Lordship then was) in *(Hadiya Begum Vs. State of M.P. & Ors.)* reported in *2008 (2) MPLJ 644* considered the issue whether the forums constituted under the Forest Act have committed any illegality by not accepting the transit pass. In the said case also the transit pass could not be produced at the time of seizure of the truck and it was produced later on. The facts of said case have glaring similarity with the present case in as much as production of transit pass at the time of seizure is concern. In the present case, as noticed above, revisional authority has interfered despite the fact that transit pass was not produced at the time of seizure and it was produced later on. In *Hadiya Begum* (supra) also oral evidence was there to show that vehicle carrying boulders was chased by the forest officials and truck was caught up on the road afterwords and opined that since

loading of boulders is originated in forest, it is sufficient to hold that boulders were forest produce. Paragraphs 11 and 12 of said judgment read as under :-

> "11. The next issue that arises for consideration is whether the forums below have committed illegality by not accepting the transit pass which was produced by the husband of the petitioner in course of inquiry. The orders passed by the forums below, it is clear as day, that the same was not produced at the time of seizure. The Departmental authroities as well as the revisional authority, the learned Additional Sessions Judge, has arrived at an unequivocal conclusion that the transit pass bore different number. In view of the aforesaid obtaining factual matrix, the submission is sans substance and I unhesitatingly repel the same.
>
> 12. The next aspect that is required to be dealt with is whether the boulders which had been seized, could be regarded as forest produce. Submission of Mr. Pandey, learned Counsel for the petitioner is that no notification has been filed that they have been removed or excavated from the protected forest. The learned Sessions Judge has accepted as a matter of fact, that no notification has been produced, but, a significant and fertile one, the controversy cannot be allowed to rest in such a narrow spectrum. The appellate authority after due scrutiny of the material brought on record has recorded a categorical finding that the vehicle carrying boulders was chased by the forest officials and eventually was caught up on the road belonging to the Public Works Department. There can be no shadow of doubt that the loading of boulders originated in the forest. When there is ample material on record that the origin of the offence was in a protected forest filing of the notification is not imperative to make it a forest offence. That apart, the origin also gets bolstered inasmuch as when the boulders were carried without requisite transit pass."

(Emphasis Supplied)

22. On the basis of foregoing analysis, in my view, the revisional court has committed an error of jurisdiction in disturbing the impugned order and travelled beyond the scope revisional jurisdiction. Since case was decided by the prescribed authority and appellate authority on merits, the aspect of sending information at the time of seizure to the judicial magistrate has lost its significance. This aspect cannot be a ground to set aside the orders impugned. Accordingly, the revisional authority's orders dated 24th September, 2014 passed in Criminal Revision No. 378/2013 filed by Mahesh Kumar Sharma and Criminal Revision No. 377/2013 filed by Manish Kumar Garg are bad in law and are set aside.

23. The Principal Registrar of this Bench is directed to send a copy of this order to the learned Judge who has passed the impugned revisional orders. Petitions are allowed.

(Sujoy Paul)
Judge

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