

Judge Gwalior in Criminal Revision No.151 of 2013, whereby the learned ASJ qua revisional Judge has dismissed his revision filed under Section 52-B (M.P. Amendment) of the Forest Act 1927 maintaining the order dated 22.10.2012 passed by the Appellate Authority in Appeal Case No.2 of 2012 whereby the Appellate Authority had dismissed the appeal filed by the petitioner affirming the order No./12/C-10 dated 18.6.2012 passed by the Authorized Officer in Forest Case No.9808/18, whereby the tractor and trolley owned by the petitioner were confiscated along with sand being found in the trolley.

(2). The facts necessary for adjudication of this petition are given below in brief :-

(2.1) On 19.2.2012, the Ghat Incharge Barvasin and his staff were patrolling in the protected area under Jaitpur Sector of the National Chambal Sanctuary Dewari Morena (for short "the sanctuary") The patrol party noticed that from the Chambal river some labourers were loading sand onto a trolley (for short "the trolley") which was attached with a blue

colour tractor of Swaraj company Model No.735 F.E without registration plates thereon. On one side of the trolley graffiti "Kharey Wala Baba Ki Jai" and the other side of it "Shitla Mata Ki Jai" are there. Seeing the patrol party approaching, the tractor-driver took away the tractor and trolley with full speed and the labourers ran away with their tools. Thereupon, the Ghat Incharge informed Vishal Singh Tomar, the Game Ranger Dewari area, on mobile. Later, the patrol party prepared panchnama and spot map of the place wherefrom sand was being extracted. Meanwhile, the Game Ranger Dewari got an information that the police of Police Station Banmore had seized two tractors and trolleys full of sand. Thereupon, the patrol party reached the place where the police had kept the seized tractors-trolleys. The patrol party identified the tractor and trolley in which they saw sand being loaded. Thereupon, the tractor and trolley was seized and a Forest Case No.9808/18 dated 19.2.2012 was registered against an unknown driver of the tractor-trolley for the offences punishable under

Sections 27,29, 51 and 59 of the Wild Life (Protection) Act 1972 as amended in 1991 and 41 and 52 of the Forest Act 1927 (for short "the Forest Act").

(2.2) Later, on the basis of the engine number and the chassis number embedded on the tractor, it is found that the registration number of the tractor is MP06 JA 9360 and the petitioner is the owner of the tractor-trolley. It is also found that at the time of commission of the offences, one Niranjn Singh was the driver of the tractor-trolley. Thereupon, Niranjn Singh is made an accused of the case.

(2.3). The Game Ranger Dewari has submitted a proceeding before the Authorized Officer and Superintendent of the Sanctuary for the confiscation of the tractor-trolley with sand. Upon due inquiry, he passed order No./12/C-10 on 18.6.2012 whereby he has ordered the confiscation of the tractor-trolley with sand measuring about 2.5 cubic meter under the provisions of Section 52 (3) (M.P. Amendment) of the Forest Act.

(2.4). Feeling aggrieved by the order dated

18.6.2012, the petitioner filed Appeal No.2 of 2012 before the Appellate Authority and Ex-officio Conservator of Forests of the forest circle Gwalior. Vide order dated 22.10.2012, the Appellate Authority dismissed the appeal filed by the petitioner affirming the order of confiscation dated 18.6.2012.

(2.5). Again feeling aggrieved by the order of the Appellate Authority, the petitioner filed Criminal Revision No.152 of 2012 which was dismissed by the impugned order dated 25.8.2015 passed by the Ninth ASJ Gwalior.

(2.6). Hence, this petition.

(3). Learned Counsel for the petitioner submitted that the petitioner had produced the transit pass dated 30.11.2011 issued by the contractor concerned at the time of confiscation proceedings of the tractor-trolley but the Authorized Officer did not take it into consideration. Later, the Appellate Authority and the Revisional Judge did not take the notice of it during the hearing of the appeal and the revision respectively. He further submitted that the tractor-

trolley could not be confiscated unless and until the driver of the tractor-trolley is held guilty of the offences under which he has been booked by the court of competent jurisdiction. Upon these submissions, he prayed for setting-aside the orders passed by the learned Revisional Judge, the Appellate Authority and the Authorized Officer, releasing of the tractor-trolley from the confiscation and giving him on interim custody on supurdginama till the delivery of final decision of the court concerned in the case.

(4). Per contra, the learned Public Prosecutor submitted that as per sub-section 5 of Section 52-B of the (M.P.Amendment Act 1983) of the Forest Act, this petition is not maintainable. He further submitted that the confiscation proceedings of the tractor-trolley under the Forest Act and the trial of the offences under Forest Act against the driver of the tractor-trolley are independent proceedings to each other, placing reliance upon the recent decision of the Supreme Court reported in State of M.P. And Others Vs. Smt. Kallo Bai, AIR 2017 SC 2516. He further submitted

that the transit pass was found by the Authorized Officer, the Appellate Authority and the Revisional Judge is antedated, therefore, it is wrongly argued that it was not taken into consideration by them. Upon these submissions, he prayed for dismissal of the petition.

(5). I have considered the rival submissions made by the learned counsel for the parties at the Bar and perused the entire material including the orders passed by the Authorized Officer, the Appellate Authority and the Revisional Judge.

(6). The first point for consideration before me is that whether this petition is maintainable in view of the provisions of sub-section 5 of Section 52-B (M.P. Amendment) of the Forest Act?

(7). Vide the M.P. Amendment Act 1983, Section 52-B is inserted in the Forest Act which 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 Session division whereof the headquarters of the Appellate Authority are situated.

Explanation.- In computing the period of thirty days under this sub-section the time requisite for obtaining certified copy of the order of Appellate Authority shall be excluded.

(2) The Court of Session 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 Session passed under this section shall be final and shall not be called in question before any Court”.

(8). This court had an occasion to interpret Section 52 inserted in the Forest Act by the M.P. Amendment Act of 1983 in the case of Ramniwas Vs. Game Range Chambal Sanctuary Bhind Headquarter, Ambah District Morena, 2012 (2) MPLJ 661, and has

held as under :

“(i) Forest Act is a Special Act;

(ii) M.P. Amendments provide a complete Code in itself by giving sufficient safeguards both substantive and procedural against any arbitrary exercise of power. It also prescribe hierarchy of adjudicatory bodies;

(iii) Section 52-C creates a bar on the jurisdiction of courts as described in it. Because of non-obstinate clause used in Section 52-C it will have an overriding effect on other laws including general provisions of Cr.P.C.”

(underlined by me)

(9). I am of the considered opinion that the aforesaid laws laid down with regard to Section 52-C (M.P. Amendment) of the Forest Act are also applicable with regard to the sub-section 5 of Section 52-B (M.P. Amendment) of the Forest Act.

(10). In Gopalsav Vs. S.D.O (Forest), 2000 (I) MPWN 155, this court held that an order passed in revision under Section 52-B (M.P. Amendment) of the Forest Act can be challenged in writ petition under Article 227 of the Constitution of India. In view of the ratio of the case-law, this petition under Section 482 is not maintainable.

(11). Upon the perusal of Section 52 of the Forest Act, I have noticed that the various States have amended the Section itself and inserted thereunder the other Sections and the State of Punjab has inserted sub-section 2 of Section 52-C of the Forest Act which reads as under :

“the order passed by the Court of Session shall be final and shall not be further called in question before any other Court”.

The provision of aforesaid Section is similar to the provision of Section 52-B (5) (M.P. Amendment) of the Forest Act.

(12). I have also noticed that the similar provision has been made in sub-section 7 of Section 33 of the Gram Nyayayalayas Act 2008 which reads thus :

“The decision of the Court of Session under sub-section (5) shall be final and no appeal or revision shall lie from the decision of the Court of Session.

Provided that nothing in this sub-section shall preclude any person from availing of the judicial remedies available under Article 32 and 226 of the Constitution”.

(13). In view of the above, I am of the confirmed opinion that since sub-section 5 of Section 52-B (M.P.

Amendment) of the Forest Act begins with the non-obstinate clause, therefore, this petition is not maintainable against the impugned order.

(14). Since this petition is not maintainable, therefore, there is no need to consider by me the other arguments raised by the learned counsel for the parties.

(15). For the foregoing reasons and discussions, I dismiss this petition only on the ground that this petition is not maintainable in view of sub-section 5 of Section 52-B (M.P. Amendment) of the Act. However, the petitioner will have liberty to challenge this order and the provisions of sub-section 5 of Section 52-B (Madhya Pradesh Amendment) of the Act before the appropriate forum subject to law of limitation, if any.

(Rajendra Mahajan)
Judge

Rks.