

A.F.R.

Judge

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR

SINGLE BENCH : HON'BLE MR. JUSTICE N.K.GUPTA, J.

M.Cr.C.No.394/2014

The State of Madhya Pradesh

VERSUS

Saurabh Namdeo

Shri Bramhadatt Singh, Public Prosecutor for the State/
applicant.

Shri Himanshu Chourasiya, counsel for the respondent.

O R D E R

(Passed on the 7th day of October, 2015)

The State has preferred the present petition under Section 482 of the Cr.P.C. being aggrieved with the order dated 14.9.2012 passed by the Additional Sessions Judge and Special Judge, Chhatarpur in criminal revision No.141/2012, whereby the revisionary Court has set aside the order dated 26.6.2012 passed by the appellate authority and Ex-Officio Conservator of Forest, Chhatarpur, in which order dated 20.4.2012 passed by the Authorized Officer in case No.232/23 dated 20.10.2009 was set aside and the matter was remanded back to the authorized officer for its reconsideration.

2. The facts of the case, in short, are that, on 20.10.2009, the authorized officer including Shri Nabi Ahmed, Deputy Range Officer (Forest) visited the beat No.615 in forest area and found that one Ramesh Raikwar with help of tractor M.P.16-M-4721 alongwith its cultivator was ploughing the forest land. He was stopped and the forest officers demanded the documents related to that field. Thereafter, it was found that he ploughed 5 acres of forest land and therefore, 150 small plants and various bushes were removed in that ploughing. Two trees of Sarkata were also found damaged and therefore, it was seized and forest crime No.232/23 dated 20.10.2009 was registered. On enquiry it was found that owner of the tractor was Shri Namdeo, R/o Vishwanath Colony, Chhatarpur. An intimation was given to the concerned Judicial Magistrate, Chhatarpur vide letter dated 22.10.2009 that confiscation proceeding was initiated. Authorized officer after recording evidence of the parties vide order dated 26.6.2012 found that the seizure of tractor was doubtful as to whether it was ploughing the forest land and whether being ploughed upon the direction of the owner and therefore, the authorized officer vide order dated 20.4.2012 released the tractor and cultivator. The appellate authority took a suo moto revision and remanded the matter vide order dated 26.6.2012.

3. The revisionary Court in its order dated 30.9.2013 has reversed the order passed by the appellate authority on the basis that at the time of incident, provision of Section 52-A of Indian Forest Act (M.P. Amendment) has provided an appeal against the order of confiscation but, no such provision was made if the vehicle is released by the authorised officer and therefore, the order passed by the appellate authority was reversed.

4. On 17.7.2014, after considering the submissions made by the parties, this Court has dismissed the present petition on the count that appellate authority has no right to take suo moto cognizance in a case, if Authorized Officer has released the property. However, Hon'ble the Apex Court vide order dated 11.5.2015 in criminal appeal No.772/2015, remanded the case and directed that applicability of amended Section 52-A of Indian Forest Act (M.P. Amendment) shall also be considered by the High Court. Relevant portion of that order is as under:-

“Since this is a pure question of law as to the applicability of the amended Section 52A in relation to the order passed by the Conservator dated 26th June, 2012, it is imperative that the High Court consider the said question in the petition filed by the appellant under Section 482 of the Cr.P.C. filed by the appellant.”

5. I have heard the learned counsel for the parties.

6. Learned counsel for the respondent has submitted that the vehicle was seized on 20.10.2009 and cause of action arose on that particular day, whereas Indian Forest (M.P. Amendment) Act, 2009 was published in M.P. Gazette on 27.3.2010 and assent of His Excellency the President has been received on 16.3.2010 and therefore, amended provision of Section 52-A of Indian Forest Act cannot be applied retrospectively. On the other hand learned Public Prosecutor for the State has submitted that prior to the amendment, provision of appeal was provided under Section 52-A of Indian Forest Act (M.P. Amendment), though the appellate authority shall consider an appeal against the order of confiscation, whereas after the amendment word "Order of Confiscation" was substituted as "Order of authorised officer" and therefore, by amendment it was enforced by its publication on 27.3.2010, whereas assent of His Excellency the President was received on 16.3.2010 and the suo moto cognizance was taken by the appellate authority in the year 2012 i.e. much after the amendment made in the act.

7. Vide Indian Forest (Amendment) Act, 2009, the provision of Section 52-A of Indian Forest Act was amended for Madhya Pradesh, in which word "Order of Confiscation" was substituted as "Order of Authorized Officer". By substitution of that word, the appellate authority became competent to hear an

appeal against the order of release of vehicle passed by the authorized officer. Hence, by such amendment, the provision of appeal against the order of confiscation which was already available but, a new power of appeal was added, so that concerned forest officer may also pray for suo moto appeal before the appellate authority in case of release of the vehicle and therefore, by the amendment in Section 52-A of Indian Forest Act (Madhya Pradesh Amendment), a liability was imposed upon the person whose vehicle was under consideration of confiscation. It is the general rule of interpretation of statute that no fresh law enacted by the Parliament shall have any retrospective effect unless it is so directed. In this context, para 13 of the judgment passed by Hon'ble the Apex Court in case of "Zile Singh Vs. State of Haryana", [(2004) 8 SCC 1] may be viewed, which is as under:-

"It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only 'nova constitutio futuris formam imponere debet non praeteritis' __ a new law ought to regulate what is to follow, not the past. (See : Principles of Statutory Interpretation by Justice G.P. Singh, Ninth Edition, 2004 at p.438). It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is

made to cure an acknowledged evil for the benefit of the community as a whole. (ibid, p.440).”

In the light of aforesaid judgment, when it is clear that the amended provision was not in the benefit of public in general but, it was in benefit of concerned forest officer who seized the vehicle then, according to Article 20 of Indian Constitution, such amendment could not be considered as retrospective.

8. So far as the submission of the Public Prosecutor is concerned that the appellate authority has exercised his powers in the year 2012, after amendment of Section 52-A of Indian Forest Act (M.P. Amendment) and therefore, it cannot be said that he exercised the powers with retrospective effect. Such submission cannot be accepted. The appeal was to be filed in the matter when date of offence was 20.10.2009 and therefore, if the authorized officer would have decided the matter within the reasonable time then, certainly the appellate authority should not have power under Section 52-A of Indian Forest Act (M.P. Amendment) to entertain the appeal against the order of release of the vehicle. The authorized officer took 3 years in deciding the matter and for such a delay, the respondent No.1 could not be penalized. Hence, cause of action arose to the authorized officer on 20.10.2009. Hence, the provision of Section 52-A of Indian Forest Act (M.P. Amendment) as available on 20.10.2009 shall prevail because the Madhya Pradesh Amendment in that Act was done in the year 2010

shall not have its retrospective effect. When there was no such provision under Section 52-A of Indian Forest Act (M.P. Amendment) at the time when tractor was seized, so that the appellate authority could exercise its appellate powers against the order of release of vehicle then, it is to be said that the appellate authority was not competent to exercise such powers in absence of any retrospective effect of Madhya Pradesh amendment in Indian Forest Act done in the year 2010. Hence, the Revisionary Court has rightly found that the appellate authority has not right to entertain the appeal against the order of release of the vehicle.

9. However, it would be appropriate to decide all the points raised in the petition and therefore, needs to be considered on merits and therefore, merits of the case may also be examined at this stage. According to the prosecution, the driver Ramesh Raikwar was found cultivating the field bearing area of 5 acres with help of the aforesaid tractor and cultivator and therefore, the forest officers have registered a forest crime No.232/23 dated 20.10.2009. The authorized officer after considering the evidence of the parties found that beat No.615 consists of several pieces of land, bearing various survey numbers. Out of such survey numbers, Survey No.4, 5, 8 and 11 were of Shri Saurabh Namdeo, owner of the tractor and land bearing survey No.1, 3, and 6 was forest land. The respondent

has shown the documents to the authorized officer and he and his predecessors were in possession of that land since the year 1943-44. A civil suit No.39-A/2010 was also prosecuted and won by the respondent. Therefore, it was for the forest officers to establish that the driver Ramesh Raikwar was cultivating the land belonging to the forest department. If a memo of Spot Inspection as well as POR (FIR in Forest crime) are considered then, it would be apparent that it was mentioned in omnibus manner that the driver Ramesh Raikwar had cultivated 5 acres of land.

10. The forester Umashankar Pateriya has accepted in his evidence that he was posted in that particular area for last 3-4 years and till his posting, he was looking that the respondent No.1 was cultivating the fields registered in his name with help of his servants. Hence, when it was established that land bearing survey No.4, 5, 8 and 11 was of the respondent No.1 and he was competent to cultivate the same then, it was for the prosecution to prove that the driver of the respondent had cultivated some additional land belonging to the forest department. The authorized officer has clearly mentioned in its report that trace map was traced without help of topography sheet. It was for the concerned forest officer to mention the area of the respondent's land and to specifically mention in the trace map that the cultivation was done in which portion of the

land belonging to forest department and what was the area of such cultivation. The map prepared by the forest officer who seized the tractor was not according to the topography sheet. After seizure of the tractor, no forest officer would have examined that whether the trees and other plantation was remained in the area, which was in the control of the forest department and such bushes etc. were removed from the land which was not in possession of the respondent. Hence, prima facie the authorized officer could not prove that the driver Ramesh Raikwar cultivated the land which was in possession and control of the forest department. The authorized officer has already found that the investigation which was required to be done by the authorized officer was not complete but, it was only superficial. When the concerned forest officer could not prove prima facie that the driver Ramesh Raikwar cultivated any portion of the land belonging to the forest department then, prima facie no offence as alleged against the driver Ramesh Raikwar was made out and therefore, tractor alongwith cultivator could not be confiscated in absence of any forest crime.

9. Also, it is important to examine as to whether there was connivance of owner of the vehicle in committing the forest crime. It is established that few pieces of land adjacent to the forest area were of the respondent and he was getting them

cultivated by his servants and therefore, it shall be presumed that if he had sent his driver Ramesh Raikwar to cultivate the field then, he would have sent him to cultivate his fields and not the land of the forest department and therefore, if it is found that the driver had cultivated some land of the forest department then, by the activities of the driver, it cannot be said that the respondent was involved in the conspiracy to encroach the land of the forest department. Hence, it was found that the driver Ramesh Raikwar had cultivated the land of forest department then, still the tractor and cultivator of the respondent could not be confiscated.

10. The authorized officer took an appropriate view. Hence, the appellate authority being Conservator of Forest could not remand the matter for reexamination. Also, he was not competent to exercise his appellate powers according to the provision of Section 52-A of Indian Forest Act (Madhya Pradesh Amendment) of that time when crime was committed. Hence, the Revisionary Court has rightly set aside the order passed by the appellate Authority. There is no reason to invoke the inherent powers of this Court in favour of the petitioner/State. Before concluding the present order I have to make it clear that scheme of Section 52-A of Indian Forest Act (M.P. Amendment) is to provide an impartial Forest Officer as an Authorized Officer and thereafter, the appellate authority and the officers who have

to exercise the powers of authorized officer and appellate authority are expected to function as authorized officer and appellate authority impartially. At that time such thinking should not be in the mind that being an appellate authority, the officer is also the highest authority of the District relating to Forest. Function of authorized officer and appellate authority should be done without any prejudice, having impartial and judicious attitude.

11. On the basis of the aforesaid discussion, the present petition under Section 482 of the Cr.P.C. filed by the State is hereby dismissed.

12. Copy of the order be sent to the Revisionary Court, Appellate Authority and Authorized Officer alongwith their respective records for information.

(N.K.GUPTA)
JUDGE
07/10/2015

Pushpendra