

HIGH COURT OF JUDICATURE MADHYA PRADESH,
JABALPUR

SB : HON'BLE SHRI JUSTICE SUBODH ABHYANKAR, J

WRIT PETITION NO.666 OF 2017

Vishwanath Singh

Vs.

State of M.P. and others

Present :-

Shri Manas Mani Verma, Advocate for the petitioner.

Shri G.S. Thakur, Government Advocate for the respondents/State.

Whether Approved for Reporting : Yes

Law Laid Down : S.52 of the Indian Forest Act, 1927 – in absence of seizure of forest produce or its Panchanama, entire confiscation proceedings initiated in respect of vehicle cannot be allowed to sustain.

Significant Paragraph No.8, 9, 10, 11 & 12

ORDER

(Passed on this the 11th day of January, 2018)

This petition, though has been filed under Article 226 of the Constitution of India is being entertained under Article 227 only for the reason that the order dated 21.9.2016 passed by the Second Additional Sessions Judge to the Court of First Additional Sessions Judge, Jabalpur is under challenge wherein the order dated 31.8.2015 passed in Appeal No.02/2015/2016 by

the respondent No.2/Chief Conservator of Forest, Jabalpur has been confirmed. The aforesaid appeal before the Chief Conservator of Forest arose out of the order dated 2.6.2014 passed in Case No.216/17 by the respondent No.3/Presiding Officer and Sub Divisional Forest Officer, Maharajpur West, District Mandla. Vide the aforesaid order dated 2.6.2014 the petitioner's JCB machine has been confiscated by the respondents under Section 52 of the Indian Forest Act, 1927 (hereinafter referred to as '**the Forest Act**').

2. In brief the facts of the case are that the petitioner is the owner of a JCB machine bearing Registration No.MP17DA-0138. According to the petitioner, he is also a contractor and was awarded a work order on 20.4.2012 by the M.P. Rural Road Development Authority for construction of road as also for its maintenance for a period of 5 years. The aforesaid contract was given to the firm owned by the petitioner in the name of M/s A.V. Constructions. The JCB machine owned by the petitioner was used for the purpose of maintenance of road and it was driven by one Guddu Ansari - the driver appointed by the petitioner.

3. It is further alleged that on 1.6.2014 the Forest Officer, Maharajpur West, at around 8.30 p.m. found that a JCB machine was illegally excavating soil 4 meters away from the main road Bamar – Maldha. On this basis, the JCB machine belonging to the petitioner was seized although the place of seizure is shown as the “main road” and not “jungle”. On 10.7.2014 a show cause notice regarding confiscation was issued to the petitioner which was duly replied by him on 24.7.2014. In the reply, it was pleaded by the petitioner that the JCB machine was driven by his driver at the relevant point of time without his knowledge and the petitioner was unaware that his JCB machine was driven to forest area by his driver.

4. It is further stated by the counsel for the petitioner that at the time of confiscation proceeding driver Guddu's statement was also recorded in which he has stated that the JCB machine was parked on the main road because it ran out of fuel and he went along with one Anil Yadav the other driver for purchasing diesel. The order of confiscation was passed on 08.01.2015 (Annexure P/3) and the appeal preferred against the aforesaid order before the Chief Conservator of Forest was also dismissed

vide order dated 31.8.2015 (Annexure P/2). Subsequently the petitioner also preferred a revision under Section 52-B of the Forest Act before the Second Additional Sessions Judge to the Court of the First Additional Sessions Judge, Jabalpur but the same was also dismissed vide order dated 21.9.2016 (Annexure P/1) which is under challenge before this Court.

5. Learned counsel for the petitioner has submitted that at the time when the JCB machine was seized by the respondent it was not being used for commission of any offence and was simply parked on the road. It is further submitted that otherwise also the petitioner was not aware that the driver Guddu was driving his vehicle at that time on the said road in the jungle and as such he had no knowledge about the commission of the forest offence. It is further submitted that no soil was found to be excavated by the aforesaid JCB machine and as such it cannot be said that any forest offence was committed in respect of forest produce.

6. On the other hand, counsel for the respondents has opposed the petition and has submitted that the order of confiscation is just and proper and does not call for any

interference as the petitioner's vehicle was found to be involved in excavating the forest soil which is an offence. It is further submitted that there is a concurrent finding of facts by all the authorities concerned which does not call for interference.

7. Heard learned counsel for the parties and perused the record.

8. Before this Court embark upon to appreciate the evidence, it would be apt to go through Section 52 of the Forest Act, the relevant excerpt of the same reads as under :

"52 Seizure of property liable to confiscation and procedure therefor.--(1)
When there is reason to believe a forest offence has been committed in respect of any forest produce, such produce, together with all tools, boats, vehicles, ropes, chains or any other article used in committing any such offence may be seized by any Forest-officer or Police Officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, either produce the property seized before an officer not below the rank of an Extra Assistant Conservator of Forest authorised by the State Government in this behalf by notification (hereinafter referred to as the authorised officer) or where it is, having regard to quantity of bulk or other genuine difficulty, not practicable to produce the property seized

before the authorised officer, make a report about the seizure to the authorised officer or where it is intended to launch criminal proceedings against the offender immediately, make a report of such seizure to the magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that when the forest produce with respect to which offence is believed to have been committed is the property of Government and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

(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, is 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, vehicles, boats, ropes, chains or any other article used in committing such offence.** A copy of order on confiscation shall be forwarded without any undue delay to the Conservator of Forests of the forest circle in which the timber or forest produce, as the case may be, has been seized.

(4) No order confiscating any property shall be made under sub-section (3) unless the authorised officer--

(a) sends an intimation in form prescribed about initiation of proceedings for confiscation of property to the magistrate having jurisdiction to try the offence on account of which the seizure has been made;

(b) issues a notice in writing to the person

from whom the property is seizure, and to any other person who may appear to the authorised officer to have some interest in such property;

(c) affords an opportunity to the persons referred to in clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation, and

(d) gives to the officer effecting the seizure and the person or persons to whom notice has been issued under clause (b), a hearing on date to be fixed for such purpose.

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

(6) The seized property shall continue to be under custody until confirmation of the order of the authorised officer by the Appellate Authority or until expiry of the period for initiating 'suo motu' action by him whichever is earlier, as prescribed under section 52-A.

(7) Where the authorised officer having jurisdiction over the case is himself involved in the seizure or investigation, the next higher authority may transfer the case to any other officer of the same rank for conducting proceedings under this section."

(emphasis supplied)

A bare perusal of the same reveals that to bring home an offence under Section 52 of the Act, the seizure of forest produce is a sine-qua-non together with the seizure of the vehicle involved in forest offences. Thus, a bare perusal of the said section clearly reveals that first of all there has to be a forest produce in respect of which a forest offence has been committed. It is further provided that such forest produce, together with all tools, boats, vehicles, ropes, chains or any other article used in committing any such offence may be seized by any Forest-officer or Police Officer. It is further provided in sub-section (2) that it is not practicable to produce the property seized before the authorised officer, the seizing officer shall make a report about the seizure to the authorised officer. Further, in sub s.(3) it is further provided that if the authorised officer is satisfied that a forest offence has been committed in respect of a forest produce, he may by order in writing and for reasons to be recorded confiscate forest produce so seized together with all tools, vehicles, boats, ropes, chains or any other article used in committing such offence. Suffice it to say

that the confiscation of a forest produce is a sine qua non for confiscating a vehicle, utensil, tools etc.

9. From the record, it is apparent that according to the seizure memo filed as Annexure P/4, the place of seizure is shown to be 'on the culvert'. Thus so far as the case of the prosecution that the vehicle was found off the road in the forest area cannot be accepted. It is also not disputed that the petitioner was given a contract for construction of road for which the JCB machine was purchased by him. In the statements of witnesses which are also reproduced in the order Annexure P/3 dated 8.1.2015, the statement of Purushottam Singh Maravi, Beat Guard Majhgaon and his cross-examination are relevant, hence reproduced as under :-

“श्री पुरुषोत्तम सिंह मरावी, पिता श्री हरनाम सिंह मरावी, बीटगार्ड मझगांव - दिनांक 12.08.2014 को श्री पुरुषोत्तम सिंह मरावी वनरक्षक ने दिये गये अपने बयान में बताया कि घटना दिनांक 01.06.2014 को वो स्वयं अपने सुरक्षा श्रमिक मुन्ना लाल उइके के साथ रात्रि लगभग 8:30 बजे आरक्षित वन कक्ष क्रमांक 143 से 142 की तरफ गस्ती करते हुये आ रहे थे। अपने दिये बयान में उन्होने बताया कि आरक्षित वन कक्ष क्रमांक आर.एफ.- 142 में प्रधानमंत्री सड़क बनार से मलधा में सड़क के किनारे लगभग चार मीटर दूरी पर जेसीबी मशीन के द्वारा मिट्टी खुदाई का काम किया जा रहा था, और निकाली गई मिट्टी को सड़क को सड़क किनारे पटरी पर डाला जा

रहा था। घटना स्थल पर पहुंचकर जेसीबी वाहन चालक से नाम, वल्लियत, साकिन व खोदी गई मिट्टी का परमीशन पूछे जाने पर उसने अपना नाम गुड्डू, पिता अब्दुल अंसारी ग्राम हनुमना, जिला रीवा बताया तथा उसके पास मिट्टी खोदने का परमीशन नहीं था। उसके पश्चात् जेसीबी मशीन की जप्ती कार्यवाही की गई तथा जेसीबी मशीन का चेचिस नंबर, इंजन नंबर, जप्तीनामा में लेख किया जाकर जप्तीनामा में मुन्ना वल्द मोती एवं अलवन वल्द सत्तू के हस्ताक्षर कराये गये। इसके साथ ही मौके पर पंचनामा सुपुर्दनामा सभी कार्यवाही पूर्ण किया गया। दिनांक 02.06.2014 को वन अपराध प्रकरण क्रमांक 216/17 के द्वारा वन अपराध पंजीबद्ध कर वरिष्ठ अधिकारी को सूचना दिया। दिनांक 12.08.2014 को उनके द्वारा जारी पी.ओ.आर. प्रकरण क्रमांक 216/17, जप्ती नामा सुपुर्दनामा, बयान दिखाया गया जिसके प्रादर्श पी 1 से प्रादर्श पी 4 के “ए से ए” भाग में उनके हस्ताक्षर हैं जिसको उन्होने तस्दीक किया है।

प्रतिपरीक्षण द्वारा वाहन मालिक - श्री पुरुषोत्तम सिंह मरावी पिता हरनाम सिंह मरावी बीटगार्ड मझगांव ने दिनांक 12.08.2014 को वाहन मालिक द्वारा किये गये प्रतिपरीक्षण में बताया कि जप्त वाहन सड़क किनारे लगभग 4 मीटर की दूरी पर जंगल की ओर था। मौके पर कितनी लंबाई चौड़ाई पर खुदाई की गई, याद नहीं है। यह कहना गलत है कि जप्त वाहन का डीजल खत्म हो गया था। जप्ती के बाद वाहन को उन्होने अपने निवास स्थान पर खड़ा किया था। यह कहना सही है कि वे चौकीदार के घर पर निवास करते हैं।”

Apparently, the aforesaid statement is in contradiction to the seizure memo Ex.P/4 wherein it is stated that the vehicle was seized at the culvert.

10. Similar are the statements of other witnesses. It is surprising that the forest officers have performed their duties in

a perfunctory manner and have not made any Panchanama of the place from which it is alleged that the petitioner's JCB machine was excavating the soil and the same soil was being spread on the road side. It was also the duty of the forest officers to take the samples of the soil which according to them was excavated as also the samples of the soil which was laid on the road side by the petitioner's JCB machine to corroborate the forest offence regarding the soil but they have miserably failed to bring home the offence as stipulated under Section 52 of the Forest Act. The road side soil in the present case could have become the forest produce, its Panchanama was also not prepared by the forest officer and was not placed before the authorized officer during the confiscation proceedings and in the absence of any forest produce being also seized in accordance with Section 52 of the Forest Act which provides that when it is not convenient for the forest officer to seize the forest produce a Panchanama of the same may be prepared.

11. In the impugned order dated 08.01.2015, the authorized officer has held that the petitioner has not been able to prove his case that he had no knowledge about the driver's movement

with the vehicle as the other driver Anil Yadav has not even been produced by him for cross-examination. In the considered opinion of this Court when the Dumper Driver Guddu Ansari himself was present on the spot and his statement is already recorded, non-examination of Anil Yadav is no material impact on the case. Otherwise also no such question has been put to Guddu Ansari that he was plying the vehicle without the permission of the petitioner/owner of the J.C.B.

12. In the circumstances, in the absence of seizure of any forest produce the entire confiscation proceeding initiated in respect of the petitioner's vehicle is liable to be quashed and cannot be allowed to sustain. So far as the plea of the petitioner that he was not aware that his vehicle was being used by his driver for the purpose of commission of forest offence is concerned, the same is not tenable as the owner ought to have satisfied the concerned officer that all due care was taken by him for the custody of the said JCB.

13. In these circumstances, the impugned order dated 21.09.2016 (Annexure P/1) as also order dated 31.8.2015 (Annexure P/2) and order dated 8.1.2015 (Annexure P/3)

cannot be sustained, hence the same are hereby quashed. The respondents are directed to handover the JCB machine to the petitioner expeditiously within a period of two weeks from the date of receipt of certified copy of this order.

14. With the above directions, the writ petition stands **allowed.** No costs.

(Subodh Abhyankar)
Judge
11/01/2018

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