

उपायुक्त का न्यायालय, कोडरमा

मुनेश्वर साव एवं 1 अन्य बनाम राज्य।

कन्फिश्केशन अपील वाद संख्या-09/2017

24.5.18

आदेश

अपीलार्थी मुनेश्वर साव पिता-इन्द्रनाथ साव, साकिन-चौपे, टोला-चारडीहा, रामपुर, पोस्ट-कीरे, धाना-सिमरिया, जिला-चतरा के द्वारा प्राधिकृत पदाधिकारी सह वन प्रमंडल पदाधिकारी, कोडरमा द्वारा कन्फिश्केशन केस नं०-12/2016 राज्य बनाम मुनेश्वर साव वगैरे में दिनांक 24.06.2017 को पारित आदेश के विरुद्ध अपील दायर किया गया है। नवलशाही धाना के द्वारा ट्रक जिसका Registration No. JH-02J/4058 है, और जिसपर 7 फीट (700 चन फीट) स्टोन चिप्स लदा पकड़ा गया। वन प्रमंडल पदाधिकारी, कोडरमा द्वारा उक्त ट्रक को राज्यसात (Confiscate) करने का आदेश दिया गया है।

अपीलार्थी द्वारा वाद को प्रविष्ट कर और पुनः सुनवाई कर प्राधिकृत पदाधिकारी सह वन प्रमंडल पदाधिकारी, कोडरमा द्वारा पारित आदेश को Set-aside करने एवं राज्यसात की कार्रवाई को Dropped (समाप्त) करने का अनुरोध किया गया है।

वन प्रमंडल पदाधिकारी, कोडरमा के आदेश में उल्लेखित है कि-

1. This is a confiscation proceeding U/s.52 of Indian Forest Act (Bihar Amendment 1989) Act 1927 with regard to Truck bearing registration no. JH-02J/4058 (herein after referred to as vehicle in question) and about 7 fit (700cft) of the stone chips loaded on it.
2. This case in brief is that in the night of 11.04.16 police personels of Nawalsahi Thana were on crime-control duty. The police personals saw the said vehicle coming speedily and they made the vicle stop and checked it. They found that 7 fit (700cft) stone chips were loaded on the vehicle, for which there was no any valid paper. The vehicle along with stone chips loaded on it was seized and a case u/s. 33 of IFA was intiated. Statement of S.I. Naresh Kumar, O/c. Nawalsahi Thana was recorded in the Nawalsahi P.S. in his fard Bayan, the SI stated that at 1.00 A.M. in the morning of 12.04.16, the said vehicle was found coming from Bariyardih forest and the police party stopped it. After searching the vehicle, the police persons found that the stone chips were loded on it, for which there was no any valid paper in the vehicle or with the driver of the vehicle. S.I. claimed that the stone chips were being carried from the forest area after digging the stones therefrom & converting it into chips.
3. Authorized Officer, Koderma was requested to confiscate the seized vehicle along with stone chips loaded on it vide Thana Prabhari, Nawalsahi memo no.298/16 dated 24.04.16 and ultimately a confiscation case was intiated against the seized truck bearing registration no. JH-02J/4058 along with stone chips loaded on it. Notices were issued to baoth the parties and the vehicle owner was directed to file a show cause. Bhuneshwar Saw S/o. Indernath Saw, Village-Chaupe, Tola-Rampur, P.S.-Simaria, Distt.-Chatra and Ranjeet Sharma S/o.-Late Lakhn Sharma, Village-Nagwan, P.S.-Fathepur, Distt.- Gaya appeared through his advocate Sri Jagdih Sharma and submitted his show cause, the Bhuneshwar Saw mentioned that he was the registered owner of the vehicle, whereas Ranjeet Sharma was the proposed purchaser of the truck. In their show cause, the opposite party mentioned that the value of the loaded stone chips was very small (i.e. Rs. 10,000/-only) and they were ready to deposit this amount. They also requested to drop the confiscation proceeding.
4. The Range Officer, Domchach conducted an independent enquiry of mining of stone in the forest area and submitted his report vide his letter no.590 dated 27.10.16 in his enquiry, the Range Officer, Domchanch found that the stone was illegally dug out from the forest area of Laxmipur P.F. which is a notified forest land vide notification no. CIP-F/10181/53-4797-R dated 08.12.1953. The Range Officer clearly mentioned in his enquiry report that after illegally digging out stone from Laxmipur forest, it was converted into stone chips, which was transported by the vehicle in question and was seized by the police party.
5. During the course of hearing the learned counsel of the defense claimed that the stone chips was purchased by one Vijay Yadav S/o.-Bareshwar Yadav, Village-Nawada, P.S.-Chauparan, Distt.-Hazaribagh and was not taken from the forest land.
6. The A.C.F. Sri B.B. Sinha pleaded the case on behalf of state and rejected the plea of the learned advocate that one Vijay Yadav of Village-Nawada, P.S.-Chauparan, Distt.-Hazaribagh went to Giridih just to purchase the stone chips, were as hundreds of stone crusher are situated in Hazaribagh & Koderma, which are quit near from Chauparan.

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He also raised question that why the vehicle owner/driver of the vehicle could not produce any valid challan, when the vehicle was stopped for cheking in the dead of the night. Sri Sinha argued that the smuggling of stones & stone chips is quite rampant from the forest land and the smugglers were taking advantage of the shortage of the filed staff and indulged in such naferious activities. The ACP, Sri Sinha strongly pointed out towards the independent enquiry of the case done by the Range Officer, Domchanch K.K. Ojha, who after investigation found that the stones were quarried from the forest of Laxmipur P.F. After investigation, the Range officer very clearly mentioned that the stones were illegally quarried from the Laxmipur P.F. and were converted it to chips, which was being transported by the vehicle in question. ACF Sri Sinha made it clear an offence u/s.33 of the Indian Forest Act was committed as the stone illegally quarried from the notified forest land. I.e. Laxmipur P.F. and he prayed to confiscate the vehicle along with stones chips loaded on it.

7. After perusal of all the records and available materials and after considering all of the facts and circumstances. I come to the conclusion that the vehicle in question (Truck No. JH-02J/4058) was used in transportation of stone chips, which was obtained from illegally quarried stones from the notified forest land of Laxmipur P.F., which is a serious forest offences u/s. 33 of the Indian Forest Act.
8. After making a through enquiry of the matter, the Range Officer, Domchanch had also found that the seized stone chips which being transported by the vehicle in question was illegally converted from illegally queried stone form the forest land of Laxmipur P.F.
9. From the above mentioned facts, it is very clear that the vehicle in question (Truck bearing registration no. JH-02J/4058) has been fully involved in the illegal quarrying and transportation of illegally qurried stones from forest land, which is a serious offence u/s.33 of the Indian Forest Act. Hence, the vehicle in question (Truck no. JH-02J/4058) along with 7 fit (700 cft) of stones chips loaded on it is being confiscated in the favour of State.

अपीलार्थी के विद्वान अधिवक्ता के द्वारा वन प्रमंडल पदाधिकारी-सह-प्राधिकृत पदाधिकारी द्वारा पारित आदेश को न्याय विरुद्ध बताते हुए उक्त आदेश को निरस्त करने का अनुरोध किया गया है, जो निम्नवत् है:-

1. For that o the basis of fard beyan of S.I. Naresh Kumar o/c. Nawalsahi P.S. Distt. Koderma recorded on 12.4.16 and registered a case of Nawalsahi P.S. case no. 19/2016 against the driver of Truck no. JH 02J-4058 namely Suraj Kumar Yadav and owner Ranjeet Sharma u/s. 414 I.P.C. and r/w section 54 J.M.M Rule 2004 and also under section 33 Indian Forest Act.
2. For that on the basis of fard beyan of o/c Nawalsahi and after register the case the Police seized the above noted truck bearing registration no. JH 02 J-4058 and stone chips loaded on the said Truck on 12.04.2016.
3. For that institution the case the driver of the said seized truck and owner of the truck has been remanded in the Jail custody and they have granted bail.
4. For that in the above noted case the owner of seized truck has been appear and show cause was filed on 11.08.16 thereafter a report has been call for from o/c Nawalsahi in connection with the seized truck and stone chips, after investigation the Nawalsahi police of found that the said stone chips has been purchased by one Vijay Yadav s/o. Baleshwar Yadav R/o. village Nawada, P.S. Chaupran, Distt. Hazaribag from M/s. Laxmi Stone crusher at Jharkhand distt. Giridih. This facts also came in case diary in para 36.
5. That after investigation by the police. It found that seized chips is not loaded in forest area and clear mention in case diary para 37. Hence there is no case made out U/s. 33 Indian Forest Act.
6. For that the seized truck is a commercial on and paying the several taxes to the Government for playing the truck.
7. For that seized truck is valuable property of the owner and only scope of the livelihood and seized truck kept in the open space in the premises of Nawalsahi P.S. as such due to rain and sun is likely to be damaged in future than value of the truck will be sisturated in future.
8. For that truck in question is commercial on as such same be release in favour of petitioners/owner for which the petitioners/owner are ready to provide the proper bond.
9. For that after investigation police officer found that seized chips is not taken in the forest area hence police officer submitted charge sheet u/s. 414 I.P.C. and r/w section 54 J.M.M Rule 2004 and police officer not found the prima facie case u/s. 33 Indian Forest Act. Therafter Forest Officer submitted charge sheet before learned Sri Kamlesh Behra J.M.1st class, Koderma take cognisance u/s. 414 I.P.C. and r/w section 54 J.M.M Rule 2004.

10. For that if learned Judicial Magistrate not taken to cognisance u/s. 33 Indian Forest Act then proceeding of the confiscation is not maintainable. Hence the order passed by the learned DFO Koderma is not fit and to be set aside.
11. For that after perusing the order passed by the learned D.F.O. Koderma it has been mentioned in para 4 that Range Officer Domchanch conducted indepondet enquiry that seized chips is illegally digging from Laxmipur forest and it was converted into stone chips but regarding this there are no any case registered by Forest Officer till today. Not only this the report of the range officer is not evidenciary value to eye of law because Range Officer not define forest land Khata and Plot no. and area.
12. For that the order which has been passed by the learned D.F.O. Koderma is not maintainable either in law or infact therefore the order which has been passed by learned D.F.O. Koderma is fit to be set aside.

उभय पक्षों के विद्वान अधिवक्ताओं को सुना एवं निम्न न्यायालय के अभिलेख तथा Indian Forest Act का अवलोकन किया गया। सरकारी अधिवक्ता, कोडरमा द्वारा निम्न न्यायालय द्वारा पारित आदेश को न्यायोचित और विधि सम्मत बताया है। विद्वान वन प्रमंडल पदाधिकारी, कोडरमा के द्वारा उपलब्ध साक्ष्य के आलोक में उक्त आदेश पारित किया गया है। अपीलार्थी के द्वारा कोई नया तथ्य संज्ञान में नहीं लाया गया है। उक्त आदेश को निरस्त करने का कोई ठोस आधार नहीं है।

अतः अपीलार्थी के अपील आवेदन को अस्वीकृत करते हुए निम्न न्यायालय द्वारा वाद संख्या-12/2016 में पारित आदेश को यथावत रखा जाता है। पारित आदेश की प्रति के साथ निम्न न्यायालय का अभिलेख वन प्रमंडल पदाधिकारी, कोडरमा वन प्रमंडल, कोडरमा को अग्रतर कार्रवाई हेतु भेजे।

लेखापित एवं संशोधित

उपायुक्त, कोडरमा।



उपायुक्त
कोडरमा।