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STATE OF WEST BENGAL

v.

GOPAL SARKAR

NOVEMBER 7, 2001

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[D.P. MOHAPATRA AND P. VENKATARAMA REDDI, JJ.]

Forest Act, 1927 :

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S. 59-A(3)(as amended by West Bengal Amendment 1988)—Forest offence—Confiscation of tools and implements used in committing offence—Logs of timber illegally felled and removed from forest area—Confiscation of along with tools and implements used in committing offence—Order not challenged in appeal as provided in the Act but challenged in a petition under Article 227 of Constitution and under s.482 Cr.P.C.—High Court setting aside the order relying upon its earlier decision wherein it was held that proceedings for confiscation of machineries and/or saw mill, cannot be held valid in terms of s.59A(3) as saw mill cannot be treated as a property of State Government—Held, if tools, machines, vehicles etc. seized were used in commission of forest offence it is open to authorized officer to pass order of confiscation—Authorised Officer clearly recorded a finding that he was satisfied that band saw and implements were used in commission of forest offence—This finding remained undisturbed—High Court erred in relying upon its earlier decision and in setting aside the order of confiscation—Constitution of India—Article 227—Code of Criminal Procedure, 1973—s. 402.

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Divisional Forest Officer and Another v. G.V. Sudhakar Rao and Ors., AIR (1986) SC 328, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1143 of 2001.

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From the Judgment and Order dated 24.4.2000 of the Calcutta High Court in CrI. R. No. 558 of 2000.

Tapesh Ray and Satish Vig for the Appellant.

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P.N. Mishra, D. Bharat Kumar, Anand and Abhijit Sengupta for the Respondent.

The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel for the parties.

The judgment of the learned single judge of Calcutta High Court in C.R. No. 558 of 2000 setting aside the order passed by the Authorised Officer under the Indian Forest Act (as amended in the State of West Bengal), confiscating certain tools and implements, is under challenge in this appeal filed by the State of West Bengal.

In a raid made by the Deputy Ranger of Moraghat Forest Range, on 29.7.1998 the premises of the saw mill of the respondent, 11 pieces of Gammer, Toon, Sisso, logs measuring 1.054 meters alongwith band saw and other implements were seized on the allegation that the forest produce (logs of timber) were illegally felled and removed out of the forest area without valid permission and transit permit and the band saw and other implements were used in commission of the forest offence. After completing the procedure prescribed under the statute the authorised Officer-cum-Division Officer, Jalpaiguri District, by the order dated 11.2.2000 ordered confiscation of the forest produce (logs of timber) together with the band saw and implements. The order was passed in exercise of the power vested in the authority under Sec. 59-A(3) of the Indian Forest Act, 1927 (West Bengal Amendment 1988) (hereinafter referred to as 'the Act'). The Authorised Officer recorded the finding to the effect :

"In view of the facts stated above, I am satisfied that the timber in respect of which the offence has taken place is the property of the State Government and the cutting impements (tools) i.e. Band Saw etc. was used in committing a Forest offence & also to conceal the timber by way of changing the identity of timber in question which is liable to be confiscated to the State as per provision of Section 59-A(3) of the Indian Forest Act, 1927 (West Bengal Amendment, 1988). Further till this date nobody has come forward to claim the timber in question, had it been a genuine timber there must have been some claimant."

Summing up his finding in the proceedings he passed the order on the following terms :

"Whereas I am satisfied that a Forest Offence has been committed in

A respect of forest produce which is the property of the State Govern-
ment and the registered owner of Band Saw which has been used as
cutting tools and used in commission of said forest offence, has failed
to prove to my satisfaction that the same was not used without the
knowledge or connivance of himself, or his agent or person in charge
B of the Band saw and that he failed to prove that each of them had
taken all reasonable and necessary precautions against such use of
Band saw. I Authorised Officer, Jalpaiguri District on the strength of
powers conferred on me vide notification No. 2760-FOR; dated
24.5.1989 hereby order the confiscation of the said seized timber
along with cutting tools (implements) to the State of West Bengal
C under Section 59A(3) of the Indian Forest Act, 1927 (West Bengal
Amendment, 1988).”

The respondent did not prefer any appeal against the confiscation order
before the District Judge as provided under the Act. He filed a petition
purportedly under Article 227 of the Constitution of India and Section 482
D of Criminal Procedure Code. In the said proceeding the order under challenge
was passed.

From the discussions in the judgment, it appears that the learned single
judge passed the order mainly relying on the decision of the High Court in
E the case of *Subhash Rai v. State of West Bengal*, WP 1591(W) of 1997 dt.
3-2-1997, in which it was held that the confiscation proceeding of the
machineries and/or saw mill cannot be held to be valid in terms of Section
59A(3) of the Forest Act as amended by the State of West Bengal on the
grounds that saw mill cannot be treated to be a property of the State Govern-
F ment. Relying on the said decision, the learned single judge held that the
confiscation order passed by the Authorised Officer was unsustainable. That
decision, in our view, has no application to the case in hand. In that case a
saw mill and its machinery was sought to be confiscated. The reasons for such
confiscation are not clear from the judgment. The High Court observed that
G the saw-mill is neither timber nor forest produce nor can it be treated as
property of the State Government and therefore the confiscation was wholly
illegal. In the earlier sentence, it was observed that Section 59A(3) was
attracted only when any timber or forest produce which are the properties of
the State Government are produced before a Forest Officer and such Officer
is satisfied that a forest offence has been committed in respect of such
H property. The ratio of that decision seems to be that saw-mill or its machinery

cannot be confiscated independently without reference to the forest produce belonging to the State Government and without recording a finding that the forest offence has been committed in respect of such property of the State produced before the authorised Officer. Such is not the fact situation in the present case. The case is clearly distinguishable. A

It is relevant to note here that the findings recorded by the Authorised Officer, quoted above, were not disturbed by the learned single judge in the judgment. B

Section 59A(3) of the Act reads as follows :

“Where any timber or other forest produce which is the property of the State Government is produced before an Authorised Officer under sub-section 1 and Authorised Officer is satisfied that a forest offence has been committed in respect of such property, he may, whether or not a prosecution is instituted for the commission of such offence, order confiscation of the property together with all tools, ropes, chains, boats, vehicles and cattle used in committed the offence.” C D

On a fair reading of the provision it is clear that in a case where any timber or other forest produce which is the property of the State Government is produced under sub-section (1) and an Authorised Officer is satisfied that a forest offence has been committed in respect of such property he may pass order of confiscation of the said property (forest produce) together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence. The power of confiscation is independent of any proceeding of prosecution for the forest offence committed. This position is manifest from the Statute and has also been held by this Court in *Divisional Forest Officer and Anr. v. G.V. Sudhakar Rao and Ors.*, AIR (1986) SC 328. Therein this Court elucidating the provision held as follows : E F

“The conferral of power of confiscation of seized timber or forest produce and the implements, etc., on the Authorised Officer under sub-s.(2A) of S.44 of the Act on his being satisfied that a forest offence had been committed in respect thereof, is not dependent upon whether a criminal prosecution for commission of a forest offence has been launched against the offender or not. It is a separate and distinct proceeding from that of a trial before the Court for commission of an offence. Under sub-s.(2A) of S. 44 of the Act, where a Forest Officer H

- A makes report of seizure of any timber or forest produce and produces the seized timber before the Authorised Officer along with a report under Section 44(2), the Authorised Officer can direct confiscation to Government of such timber or forest produce and the implements, etc., if he is satisfied that a forest offence has been committed, irrespective of the fact whether the accused is facing a trial before a Magistrate for the commission of a forest offence under section 20 or 29 of the Act.”
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- As noted earlier, on the facts of the present case, the finding of fact recorded by the Authorised Officer which remained undisturbed was that he was satisfied that the band saw and the implements in question were used in commission of the forest offence in illicit removal and use of the timber from the forest area. It is relevant to note the validity of confiscation of timber was conceded before the High Court. It follows that the finding recorded by the Authorised Officer that the Band Saw and implements in question were used in commission of the forest offence relating to the illicit felling and removal of the timber remained undisturbed. The High Court, therefore, clearly erred in interfering with the confiscation order of the Band Saw and the implements. The position of law that is manifest on a reading of the provision of the Statute is that if tools, implements, vehicles etc. seized were used in commission of the forest offence alleged, it is open to Authorised Officer to pass order of confiscation under Section 59A(3). In that view of the matter the judgment under challenge is clearly unsustainable and has to be set aside.
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The appeal is allowed and the judgment under challenge is set aside. There will, however, be no order as to costs.

R.P.

Appeal allowed.