IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT BHUBANESWAR.

Present:

Dr. D.P. Choudhury,
District Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 05th Dec.'14.

F.A.O. No.157 of 2011.

[Arising out of the order dated 18.02.2011 passed by the learned Authorised Officer-cum-Divisional Forest Officer, Khurda Division, Khurda in O.R. No.25 K of 2009-2010 of Khurda Range.]

Ashok Kumar Mallik, aged about 46 years, S/o. Mana Mallik, At - Dhadual, P.O./P.S./Dist. - Nayagarh.

... **Appellant.**

-V e r s u s-

1. State of Odisha, represented through the Range Officer, Khurda Forest Range.
2. The State of Odisha, represented through Authorised Officer, Khurda Range-cum-Divisional Forest Officer, Khurda.

... **Respondents.**

Counsel :

For Appellant : Shri S.N. Mohanty & Associates.
For Respondents : Shri R.P. Nanda (G.P.).

Date of arguments : 14.11.2014.
Date of judgment : 05.12.2014.

J U D G M E N T

This is an appeal preferred under section 57(2)(d)(e) of the Orissa Forest Act, 1972 (hereinafter called "the Act") challenging the order dated 18.02.2011 passed by the learned Authorised Officer-cum-Divisional Forest Officer, Khurda Division, Khurda in O.R. No.25 K of 2009-2010 of Khurda Range, confiscating a Bolero Van bearing registration No.OR-25-A-2577 along with all its accessories.

2. The factual matrix leading to the case of the appellant is that he is the owner of a Bolero Van bearing registration No.OR-25-A-2577. On 23.07.2009 at about 8 P.M., while police personnel were patrolling, they found his vehicle near Chandi Chua chhak which was coming from Nayagarh side. They stopped the vehicle and, on checking, it was found that the vehicle was carrying some teak wood pieces. On query, the driver of the vehicle and other persons travelling therein could not produce any document in support of such transportation of the forest produce. The police seized the teak wood and the concerned vehicle. The I.I.C. of Khurda Police Station handed over the vehicle, timbers and the accused to the Authorised Officer, Khurda for initiation of a proceeding under section 56 of the Act. It is further alleged,

inter alia, that although at the time of inspection T.T. Permit was shown by the driver of the vehicle, but they did not believe the same. It is the case of the appellant that he being the registered owner of the vehicle had no knowledge about transportation of wood by the driver in his vehicle. On the report of the I.I.C., the Authorised Officer started proceeding under section 56 of the Act against the appellant. After following due procedure, the appellant submitted before the Authorised Officer that he had no knowledge about carrying of logs by the driver of his vehicle and he had no consent for such transportation of the forest produce. But, the plea of the appellant was not taken into account and the learned Authorised Officer passed the impugned order for confiscation of the vehicle in question. Being aggrieved by such order, the appellant approached the Hon'ble High Court of Orissa, but later on he came to know that the matter would lie before this Court for which he filed the present appeal. Hence the appeal.

3. Learned counsel appearing for the appellant submitted that the order of confiscation of the vehicle passed by the learned Authorised Officer is wrong, illegal and against the weight of evidence on record. The learned Authorised Officer has failed to appreciate the legal points as outlined by the appellant. According to him, the learned Authorised Officer

has committed gross error in not rejecting the case of the prosecution, as there is no legal evidence to base his finding. He further submitted that there are lot of infirmities and discrepancies in the evidence of prosecution witnesses, which should be properly scrutinized. It was also submitted by him that when there were T.T. Permit and voucher in respect of the seized teak timber sizes and planks, the transportation of the same should have been disbelieved by the learned Authorised Officer. He further submitted that the learned Authorised Officer ought not to have swayed away with the quantity of prosecution evidence, but should have appreciated the evidence of the appellant in its proper perspective. So, he prayed to set aside the order of the learned Authorised Officer and release the vehicle in his favour.

4. On the contrary, supporting the order of the learned Authorised Officer, learned Government Pleader appearing for the respondents submitted with vehemence that the impugned order being free from infirmities warrants no interference.

5. In this appeal, the main points that emanate for consideration are :

(i) Whether the vehicle of the appellant was used for transportation of forest produce and thereby

offence was committed under the Forest Act ?

(ii) Whether the appellant had the knowledge of illegal transportation of 98 pieces of sized teak timbers and planks in his vehicle by the driver or otherwise ?

(iii) Whether the appellant is entitled to get release of the vehicle ?

Point No.(i) :

6. It is to be proved by the appellant that the vehicle was carrying the teak sizes and planks without his knowledge or connivance or his agent. It is also incumbent on the prosecution to prove that the vehicle in question has been seized in connection with the commission of forest offence. The prosecution, in order to prove its case, has examined two witnesses and adduced a good number of documents.

7. It is revealed from the evidence of P.W.1, the then Forester, that on 23.07.2009, police stopped the vehicle and handed over the vehicle along with teak sizes and planks and accused to him. On demand, the accused persons could not show any permit for carrying such forest produce. He proved the seizure list vide Ext.1 and his signature vide Ext.1/5. He has also proved the signatures of the accused persons on the seizure list vide Exts.1/2 to 1/3. There is nothing revealed from his cross-examination to disbelieve the seizure of the

vehicle of the appellant. P.W.2, the Forest Range Officer, corroborates the evidence of P.W.1 about seizure of such forest produce. He further stated that there was no T.T. Permit for carrying such teak timbers. No fruitful cross-examination was made to this witness. Thus, P.Ws.1 & 2 have proved by consistent and cogent evidence as to the seizure of the vehicle along with the teak sizes and planks and the accused persons were transporting the same without any T.T. Permit. Ext.1 also shows about the seizure of 98 pieces of logs, one Bolero vehicle, old used battery and step-in. The statements of the accused persons recorded by the forest officials show that at the time of seizure, there was no permit for carrying such logs in the vehicle. Thus, the prosecution has proved prima facie offence under the O.T.T. Rules, 1980. The appellant has not disputed such fact. So, the initial onus on the Forest Department that the vehicle was involved in the commission of the forest offence is proved. Point No.(i) is answered accordingly.

Point No.(ii) :

8. In the case of ***State of West Bengal & Anr.*** Vs. ***Mahua Sarkar*** reported in **AIR 2008 SC 1591**, Their Lordships of the Hon'ble Apex Court have been pleased to observe at para-9 that :

"The requirement is mandatory that the owner has to prove that he had no knowledge or had not connived. It is a matter which is within his knowledge. Mere assertion without anything else will not suffice. There is another requirement that either he or his agent, if any, or the person in-charge thereof had taken all reasonable and necessary precaution against such use. This aspect has to be established by the concerned person by sufficient material. As noted above, mere assertion in that regard could not be sufficient."

With due respect to the above decision, I find that heavy onus lies on the appellant to prove that his vehicle was carrying the teak timbers or other forest produce without his knowledge or connivance or that of his agent.

9. The appellant in order to discharge onus has examined three witnesses, including himself. D.W.1 is the appellant himself; D.W.2 is the owner of the seized timbers; and D.W.3 is the driver of the seized vehicle. It is revealed from the evidence of D.W.1 that D.W.3 is the permanent driver of the vehicle in question and he is the owner of the same. He purchased the vehicle from Magma Finance Company. According to him, he verbally instructed the driver not to carry any contraband articles like forest produce, liquor, etc. The driver loaded the timber in the vehicle without his knowledge. On the next day of seizure, he came to know from newspapers about seizure of his vehicle. When he asked about

such fact to the driver, he told that the owner of the timber had showed him a transit permit for which he was agreed to carry the same. In cross-examination, he stated that on the date of occurrence at 1 P.M., he despatched the vehicle to Bhubaneswar for servicing and the vehicle was kept for servicing on the next day. He further stated that the driver also took the vehicle for hire charges without his knowledge. He further revealed that he has not made any written agreement with the driver at the time of his appointment. So, when he had no written agreement with the driver during his deployment to the effect that he would not carry any contraband or illicit materials in the vehicle, it is hardly to believe that D.W.1 has instructed D.W.3 at the time of his appointment not to take such material in the vehicle in question. Apart from this, when on the date of occurrence at 1 P.M., he despatched the vehicle for servicing, it is not understood how the driver was using the vehicle for hiring charges without his knowledge. If the vehicle was despatched for servicing, it is not understood how the vehicle was kept for servicing on the next day. Moreover, D.W.3 has not stated that he had informed the owner about carrying of the timbers in the vehicle being requested by the timber owner. So, the evidence of D.W.1 about getting information of carrying the

forest produce in his vehicle is hearsay being not corroborated by D.W.3. Thus, the evidence of D.W.1 is not cogent, clear and consistent to prove that he had no knowledge about carrying of timbers in his vehicle.

10. D.W.2 stated to have carried the timber in the vehicle under proper permit after the same was purchased by him under receipt. He showed the papers to the driver and made him convinced, but he had not handed over such papers relating to the timber to the driver of the vehicle at the time of transportation. In cross-examination, he stated that he had not made any T.T. Permit for the purpose of transportation of the forest produce from Ghaduala to Bhubaneswar. On going through Ext.A, it appears that one of the receipts was given by one Ananta Charan Naik towards sale of 60 pieces of wooden planks to D.W.2 on 15.07.2008; but the receipt does not disclose what is the consideration amount for sale of such timbers. So, Ext.A cannot be treated as money receipt towards purchase of the said timbers. Apart from this, Ext.B, which is said to be the transit permit, only discloses that on 12.11.2008, the transit permit was issued in favour of A.C. Naik for carrying the wooden planks but not for transportation of the same on 22.07.2009. Hence, the statement of D.W.2 that with proper permit he carried the logs is nothing but

blatant falsehood. Not only this, but also he admitted that at the time of seizure, he had not shown the papers because straightway he went to Bhubaneswar.

11. D.W.3, who is the driver of the vehicle, revealed that on 23.07.2009, he was carrying the vehicle to Bhubaneswar for servicing. When he started to set out for Bhubaneswar, D.W.2 requested him to carry the wooden planks, to which he denied. But, after D.W.2 showed him the permit of the timbers, he agreed to carry the same. He loaded the split timbers in the vehicle and then went to Bhubaneswar with three other occupants. Near Khurda at Chandichua Chhak, police seized the same. The papers of timbers were not with him. He stated in cross-examination that on the way, he also managed the vehicle without knowledge of the owner. He also admitted in cross-examination to have managed the affairs of the vehicle, but not necessarily carrying the vehicle with illegal timbers. Again in cross-examination, he stated that the timber-owner showed some papers for which he agreed for its transportation. D.W.2 admitted that he has not shown any documents of timbers to D.W.3. It is strange to find out that D.W.3 had seen the documents of timbers and then agreed to carry the same. On the other hand, the evidence of D.W.3 is not cogent, clear and above reproach to prove that under

proper transit permit he was carrying the timbers. At the same time, he stated that he had not told the owner of the vehicle about transportation of the timbers in the vehicle, but D.W.1 revealed that later D.W.3 informed him about carrying of timbers by the vehicle. When his evidence as to carrying of timbers under proper transit permit is not credible, his evidence as to not informing about carrying of wooden planks to his owner is not probable one. On the other hand, the evidence of D.W.3 is not cogent and clear to prove that he has not informed the appellant about carrying of timbers in the vehicle in question.

12. In view of the above discussions, I find that D.Ws. have failed to prove in cogent, clear, consistent and trustworthy evidence that D.W.1 had no knowledge of carrying the wooden planks in his vehicle by D.W.3. No evidence has also been led by the appellant that he had no connivance or nexus with D.W.3 for carrying such timbers in his vehicle. Apart from this, under the principles of vicarious liability, the knowledge of D.W.1, the owner of the vehicle, cannot be discarded when D.W.3, the driver of D.W.1, has committed forest offence by transporting forest produce in the vehicle without permit. So, the appellant has utterly failed to discharge the heavy onus to show that he had no knowledge or

he had no connivance with the driver of his vehicle in transporting the forest produce. When the onus is not discharged by the appellant, it is needless to examine the evidence of the respondents. Thus, point No.(ii) is answered against the appellant.

Point No.(iii) :

13. As per the discussions made above, I find that the vehicle was indulged in the commission of forest offence and the appellant has utterly failed to prove by concrete material that he had no knowledge or connivance with the driver of the vehicle for carrying the teak sizes and planks without permit. On the other hand, the order of the learned Authorised Officer is very clear and positive to show that D.W.1 is not entitled to get the vehicle, which is liable for confiscation. The learned Authorised Officer has passed a reasoned order and, as such, there is no point to interfere with the same for which the appeal is liable to be dismissed. Hence ordered :

O R D E R

The appeal is dismissed on contest against the respondents without cost. The order dated 18.02.2011 passed by the learned Authorised Officer-cum-Divisional Forest Officer, Khurda Division, Khurda in O.R. No.25 K of 2009-

2010 of Khurda Range is hereby confirmed.

District Judge, Khurda
at Bhubaneswar.
05.12.2014.

Dictated, corrected by me and pronounced in the open Court this day the 05th December, 2014.

District Judge, Khurda
at Bhubaneswar.
05.12.2014.