

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR**

Reserved on: 06.05.2022

Pronounced on: 18.05.2022

CRM(M) No.384/2021

RANGE OFFICER KANDI RANGE SOPORE ...PETITIONER(S)

Through: Ms. Asifa Padroo, AAG.

Vs.

ALTAH HUSSAIN MALLARESPONDENT(S)

Through: Mr. Hussain Rashid, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged order dated 12.10.2021 passed by learned Principal Sessions Judge, Kupwara, whereby learned Sessions Judge has allowed the revision petition filed against the order dated 29.01.2021 passed by the Authorized Officer (DFO, Kamraj Forest Division Zangli Range Kupwara) and set aside the said order.

2) The record of the case reveals that Range Officer, Kandi Rang Sopore, vide his report dated 20.05.2019, submitted an information before the Authorized Officer informing him that during the intervening night of 19/20th May, 2019, the officials of the Forest Department intercepted vehicle bearing registration No.JK02BA-

3662 for checking and during its search operation, illicit timber of deodar sawn 52 Nos.=49.14 cfts was found loaded in the said vehicle. It was further revealed that the accused had managed to escape from the spot but they were properly identified. The Ranger Officer further reported that seizure memo of the seized vehicle along with the seizure memo of the timber was prepared on spot in presence of the witnesses and the seized articles were brought to Seizure Depot Kandi Sopore and handed over to incharge Seizure Depot for proper custody. A report was also lodged with the police in this regard. The Range Officer further prayed that proceedings for confiscation of the seized property may be initiated. The Chief Judicial Magistrate, Sopore, was also intimated and the notices were issued to the parties for appearance.

3) It appears that the accused persons including the respondent herein appeared before the Authorized Officer who recorded their statements. The Authorized Officer also recorded the statements of the prosecution witnesses. After consideration of the material on record, the Authorized Officer recorded a satisfaction that the seized vehicle has been used in commission of a forest offence and, accordingly, an order of confiscation of the seized articles/property was passed by the Authorized Officer on 29.01.2021.

4) The aforesaid order came to be challenged by the respondent by way of a revision petition before the Court of Sessions Judge, Kupwara. The learned Sessions Judge vide impugned order dated

12.10.2021 allowed the revision petition and observed that the order passed by the Authorized Officer is illegal and perverse and, as such, the same deserves to be reversed.

5) It has been contended by the petitioner that the impugned order has been passed by the Revisional Court in a hot haste manner without proper application of mind; that the Revisional Court has misdirected itself by setting aside the order of confiscation on the ground that the police has filed a closure report in respect of the FIR which was lodged regarding the incident; that the learned Revisional Court has failed to appreciate that the proceedings before the Authorized Officer are independent and separate from the proceedings before the court of law.

6) I have heard learned counsel for the parties and perused the impugned order as also the record of the Authorized Officer.

7) Learned counsel for the petitioner has contended that the confiscation proceedings before the Authorized Officer and the proceedings regarding trial of the accused persons are two independent proceedings and merely because accused are let off either because investigating agency did not find any evidence against them or because the Court has acquitted the accused, cannot nullify the order of confiscation passed by the Authorized Officer. In support of her aforesaid argument, learned counsel for the petitioner has relied upon the judgment of the Supreme Court in the case of

Divisional Forest Officer & Anr vs G.V. Sudhakar Rao & Ors,
AIR 1986 SC 328.

8) There can be no quarrel with the proposition propounded by learned counsel for the petitioner which is supported by the ratio laid down by the Supreme Court in the judgment relied upon by the learned counsel, but the question which begs the answer is as to whether the Authorized Officer, while passing the order of confiscation of the vehicle in question, has followed the procedure prescribed under law. In order to answer this question, the provisions contained in Indian Forest Act, 1927, as adopted in the Union Territory of Jammu and Kashmir in terms of the Jammu and Kashmir Reorganization (Adaptation of Central Laws) Order, 2020 are required to be considered. Section 52 of the said Act relates to seizure of property liable to confiscation and procedure thereof. It reads as under:

“52. Seizure of property liable to confiscation and procedure thereof.— (1) When there is reason to believe that a forest offence has been committed in respect of any reserved forest, protected forest, village forest or forest produce, the forest produce, together with all tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other article used in committing any such offence, may be seized by a 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, make a report of such seizure before an officer not below the rank of the Divisional Forest Officer (hereinafter referred to as the ‘authorised officer’):

Provided that when the forest produce with respect to which such offence is believed to have been committed is the property of the 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 receipt of report about seizure, 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, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other article used in committing such offence and a copy of the order of confiscation shall be forwarded without any undue delay to the person from whom the property is seized and to the Conservator of Forest Circle in which the forest produce, tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other article 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 writing about initiation of proceedings for confiscation of the 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 seized and to any other person who may, in the opinion of 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, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other article (other than 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, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other article 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 the use of objects aforesaid for commission of forest offence.

(6) Where the cattle are involved in the commission of a forest offence, the same after seizure by any officer, shall be entrusted to any responsible person under a proper receipt on an undertaking to produce the same when required in case there is no cattle pound within a radius of five kilometers from the place of such offence:

Provided that notwithstanding anything contained in section 57, in case of unclaimed cattle a Forest Officer not below the rank of Range Officer, after giving sufficient publicity in the vicinity of the place of offence for the owner to come forward to claim the cattle within seven days from the date when such publicity has been given, may dispose them of by public auction.

(7) The provisions of the Cattle Trespass Act, 1871 (1 of 1871), shall apply in respect of the charges to be levied for the upkeep and fee of the cattle.”

9) A perusal of the provisions contained in sub-section (4) quoted above, reveals that an order of confiscation of any property cannot be made unless the Authorized Officer intimates the concerned Magistrate about the initiation of proceedings, issues a notice in writing to the person from whom the property is seized and to any other person who may, in the opinion of the Authorized Officer, have some interest in the property, afford an opportunity to the aforesaid person of making a representation within a reasonable time against the proposed confiscation and further gives an opportunity of hearing to the officer effecting the seizure and the person to whom notice has been issued. Sub-section (5) further provides that if the

person proves to the satisfaction of the Authorized Officer that vehicle etc. was used without his knowledge or connivance, the order of confiscation of such vehicle cannot be made.

10) Thus, prior to passing of an order of confiscation, a duty has been cast upon the Authorized Officer to not only issue notice to the person from whom the property has been seized or the person who is interested in such property but also to afford such person an opportunity of making a representation against the proposed confiscation and to give him a right of hearing. In the case of confiscation proceedings relating to a vehicle, confiscation cannot be made if such person establishes before the Authorized Officer that the vehicle was used in commission of offence without his knowledge or connivance.

11) In the backdrop of aforesaid legal position, let us now advert to the facts of the instant case. The record shows that the Authorized Officer has issued notice to the respondent who happens to be the owner of the seized vehicle. The record further establishes that the respondent has made an application before the Authorized Officer seeking release of the vehicle in which he has claimed that the vehicle in question is not involved in any offence. The record also reveals that the Authorized Officer has recorded the statements of all the accused including the respondent herein and he has also recorded the statements of prosecution witnesses. However, it is revealed from the record that the Authorized Officer has only recorded the

examination-in-chief of all the witnesses i.e. statements of the accused and the statements of prosecution witnesses. None of these witnesses has been subjected to any cross-examination. The Authorized Officer has reproduced the statements of the witnesses produced by the parties in his order of confiscation and then come to a conclusion that statements of accused are not reliable whereas those of prosecution witnesses are reliable, without assigning any reason whatsoever.

12) The question that arises for consideration is whether requirement of law is simply to record the statements of the witnesses or is it the requirement of law that parties should be afforded an opportunity to cross-examine each other's witnesses. The learned Revisional Court, while relying upon the judgment of the Supreme Court in the case of **New India Assurance Co. Ltd. vs. Nusli Neville Wadia & Anr, (2008)3 5CC 279**, has held that the Authorized Officer was obliged to afford an opportunity to the parties to cross-examine the witnesses. In the aforesaid judgment, the Supreme Court has held that right to cross-examine a witness though may not be provided under any statute but it is the part of the principle of natural justice. The Supreme Court in the said case has relied upon the ratio laid down by it in the case of **Bareilly Electricity Supply Co. Ltd. vs. the Workmen, 1972 (1) SCR 241**, in which it was observed that the application of the principle of natural justice does not imply that what is not evidence can be acted

upon. It was further observed that natural justice means that no material can be relied upon to establish contested facts which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used.

13) In **State of Madhya Pradesh Vs. Chintaman Sadashiva Waishampayan, AIR 1961 SC 1623**, a Constitution Bench of the Supreme Court held that rules of natural justice require that a party must be given the opportunity to adduce all relevant evidence upon which he relies, and further that, the evidence of the opposite party should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party. It was further observed that not providing the said opportunity to cross-examine witnesses, would violate the principles of natural justice. This statement of law was followed by the Supreme Court in the case of **Ayaaubkhan Noorkhan Pathan vs State Of Maharashtra & Ors , (2013) 4 SCC 465**.

14) In the instant case, as is clear from the record of the Authorized Officer, none of the parties has been given an opportunity to cross-examine each other's witnesses. By not affording such an opportunity to the parties, the Authorized Officer has not adhered to the principles of natural justice which are intrinsic in the provisions contained in Section 52 of the Forest Act, as quoted hereinabove. As already noted, this provision provides for issuance

of notice in writing to the affected persons. An opportunity to such person to make a representation against the proposed confiscation as also a right of hearing. In the case of seizure of vehicles, Section 52(5) of the Forest Act provides that the owner has a right to prove before the Authorized Officer that the vehicle was used without his knowledge or connivance. In case an affected person, against whom order of confiscation is proposed to be made, is not given a right to cross-examine the witnesses of the opposite party, the very spirit of the provisions contained in Section 52 of the Forest Act would get defeated and decimated. On this ground alone, the order of Authorized Officer becomes unsustainable in law.

15) Apart from the above, the Authorized Officer, while passing order dated 29.01.2021, has not assigned any reason for discarding the statements of the accused and accepting the version given by the prosecution witnesses. Simply narrating the facts of case and reproducing the evidence led by parties without giving any reasoning in support of the conclusion, does not meet the requirements of a reasoned order. The reasoning assigned in an order forms its heart and soul, without which the same becomes arbitrary in nature. A quasi-judicial authority like an Authorized Officer under the Forest Act, is obliged to pass a well-reasoned order while directing confiscation of the seized property/vehicle. An order of confiscation deprives the owner of his property, as such, reasoning is a *sine qua non* of such a harsh order. The order of the Authorized Officer in the

instant case is devoid of any reason and, as such, the same become unsustainable in law on this ground also.

16) For the foregoing reasons, I do not find any illegality or impropriety committed by the learned Revisional Court while passing the impugned order. However, the learned Revisional Court, instead of remanding the case back to the Authorized Officer, has simply set aside the order of the Authorized Officer. To that extent the order of the Revisional Court deserves to be modified.

17) Accordingly, while upholding the order of the Revisional Court to the extent it has set aside the order of the Authorized Officer, the case is remanded back to the Authorized Officer with the direction to the parties to appear before the said Officer. The Authorized Officer shall, after issuing notice to the parties, afford them an opportunity to cross-examine each other's witnesses, whereafter he shall decide the matter afresh in accordance with law, by passing a reasoned order.

18) The record along with a copy of this order be sent back to the Authorized Officer.

(Sanjay Dhar)
Judge

Srinagar,
18.05.2022
"Bhat Altaf, PS"

<i>Whether the order is speaking:</i>	Yes/No
<i>Whether the order is reportable:</i>	Yes/No