

**IN THE COURT OF ADDL. SESSIONS JUDGE:: SONITPUR,
TEZPUR:: ASSAM**

PRESENT:- N. AKHTAR, AJS
Addl. Sessions Judge,
Sonitpur::Tezpur.

Criminal Appeal (S-1) No. 11 of 2018

Musst. Azmina Begum-----Appellant
-Vs-
1. State of Assam and,
2. Sri Pradip Nath-----Respondents

appearance:

FOR THE APPELLANT :- Mr. B.K.Basumatary, Advocate.
FOR THE RESPONDENTS :- Mr. P.K. Sharma, Addl. P.P.
DATE OF HEARING :- 04.05.2019.
DATE OF JUDGMENT :- 09.05.2019.

JUDGMENT

1. This appeal U/s 49 (C) of Assam Forest Regulation, 1891 has been directed against the order of confiscation of a tractor belonging to the appellant which was allegedly found to be involved in commission of an offence under the aforesaid Regulation. The confiscation proceeding was carried out by the authorized forest official and the alleged tractor was finally confiscated vide order dated. 16.10.2017 passed in

Criminal Appeal (S-1) No. 11 of 2018

FSWT/B/OR/2017/3056 Dated. 17.05.2017 which is now, under challenge in this appeal.

- 2.** Brief fact of the case is that on 3.5.2017, in Dikraijan area, a tractor was spotted inside the premises of a banned sawmill. When the forest official entered the area, the people present there started running helter-skelter and no one could be apprehended. Some illegal logs were found inside the tractor. The logs and the tractor were brought to the nearest forest office. As there was no mark embossed on the logs, the same were suspected to be illegally procured. The said tractor and the logs were seized and due information was given to the learned Chief Judicial Magistrate and the concerned Divisional Forest Official.
- 3.** In due course, a confiscation proceeding was drawn by the authorized officer and notice was also given to the appellant who was the Registered Owner of the said tractor. After conclusion of the confiscation proceeding, the said tractor being Regn. No. AS-12-AC-4165 was confiscated by the authorized officer cum Deputy Conservator of forests vide order dated. 16.10.2017 and it is this order which is now impugned in this appeal.
- 4.** Having admitted this appeal, notices were issued to the respondents who have entered appearance. The relevant record was called for from the concerned division of the forest and the same has also been received. I have perused the memo of appeal containing several grounds of challenge. I have also heard learned counsel for the appellant and the respondents. Having perused the materials on record and also the memo of appeal, the relevant laws and all other legal and factual aspects, the following point is formulated for determination:

Criminal Appeal (S-1) No. 11 of 2018

- **Whether the impugned order dated 16.10.2017 passed by the authorized officer whereby the tractor being Regn. No. AS-12-AC-4165, belonging to the appellant was confiscated, is sustainable in law or needs any interference in this appeal?**

:DISCUSSION, DECISION AND REASONS FOR THE**DECISION:**

5. I have carefully perused the memorandum of appeal and also the impugned order of the authorized officer. The relevant record has been gone through. The arguments advanced by the learned counsel for both the sides have also been duly considered.
6. The learned Addl. PP had argued that the order of confiscation passed by the authorized officer is well-reasoned and duly passed by the authorized officer which clearly indicates the reasons and satisfaction of the officer concerned and so, calls for no interference in this appeal.
7. On the other hand, it was vehemently argued by the learned counsel for the appellant that the impugned order confiscating the tractor of the appellant is unsustainable in law as the same was passed by the authorized officer without complying with the statutory requirements of law. It is further submitted that the appellant being the owner of the said tractor was not given due opportunity to present her case before the authorized officer and her plea was also not duly considered by the authorized officer for which, the impugned order cannot be sustainable in law. In support of his argument, the learned counsel for the appellant has placed reliance on the following decisions:

Criminal Appeal (S-1) No. 11 of 2018

1. *G. Raja Vs The Forest Range Officer, Criminal Revision Case No. 891 of 2012 (Madras High Court, Date: 5.12.2012)*

2. *Principal Chief Conservator of Forest and Tulja Bhavan, M.J. Road, Hyderabad and another Vs J.K.Johnson and Others, AIR 2012 SC 61.*

8. I have carefully perused the aforesaid decisions. The relevant provisions of The Assam Forest Regulation, 1891 have also been gone into. It is however, relevant to point out here that every state has different regulations for dealing with the affairs and acts committed in respect to the forest and so, due care should be taken while interpreting the reported cases with regard to the matters relating to forest offences and also any other matter incidental thereto.

9. Before going further, it is pertinent to point out here that Sec. 49 (4) of The Assam Forest Regulation, 1891 empowers an authorized officer of the forest department to confiscate any forest produce in respect of which, an offence under the aforesaid Regulation has been committed together with all tools, vehicles, cattle, trucks, motorized boats, carts, machineries, rafts, vessels, ropes, chains or any other implements or articles used in committing such offences. But, in order to do so, the authorized officer has to comply with some preconditions which are innumerate in Sub Sec. (5) and (6) of Sec. 49 of The Assam Forest Regulation, 1891. Sec. 49 (5) of the aforesaid Regulation provides as follows:

10. “No order of confiscation of any property shall be made unless the authorized officer:

a) Sends an intimation in the prescribed form about the initiation of the proceeding for confiscation of

Criminal Appeal (S-1) No. 11 of 2018

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 appear to the authorized officer to have some interest in such property and in cases of motorized boats, vessels, vehicles, trucks etc. having a registered number to the registered owner thereof,

c) Affords to the persons referred to in Cl (b) above, reasonable opportunity 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 referred to in Cl (b) or (c) above, a reasonable opportunity of being heard on a date or dates to be fixed for the purpose.”

11. Sec. 49 (6) of The Assam Forest Regulation, 1891 further provides that no order of confiscation shall be made by the authorized officer if the person referred to in Cl (b) proves to the satisfaction of the authorized officer that such articles were used without his knowledge, connivance or abetment or as the case may be, without the knowledge or connivance or abetment of his servant or agent and that all reasonable and due precaution had been taken against the use of the object aforesaid for the commission of the forest offence.

12. The aforesaid provisions are salutary ones as they are in the form of statutory safeguards against the power of confiscation

Criminal Appeal (S-1) No. 11 of 2018

to be exercised by the authorized officer. This is what was observed by the **Hon'ble Gauhati High Court** in the case of **Abu Bakkar Ali (Md) Vs State of Assam and Others**, reported in **(1999) 1 GLT 633** and the relevant observation goes as under:

"The law prescribes the procedure for confiscation. The Statute armed the officer(s) to confiscate the articles mentioned in the Statute and at the same time provided the procedural safeguards. The procedural protection enjoined in the Regulation, 1891 is required to be looked into in the light of the amplitude of the power of summary nature and the grave effect of and consequences of the order. In that context, the procedural safeguards envisioned by the Statute insist for strict observance."

13. In the aforesaid case, the Hon'ble Gauhati High Court, while indicating the significance of the order passed by the authorized officer, had also made the following observations:

"An order of confiscation can be made only when the Authorized Officer is "satisfied that a forest offence is committed in respect thereof." To arrive at the satisfaction, there must be materials before the officer establishing the fact that a forest offence has been committed. The satisfaction of the officer is required to be conveyed in writing. **Apart from satisfaction of the authorized officer and recording reasons therefore, there must be materials to show that the procedure prescribed u/s 49(5) was assiduously complied/followed. Confiscation**

Criminal Appeal (S-1) No. 11 of 2018

u/s 49(4) of the Regulation, 1891 is a penalty imposed on the strength of the powers conferred thereunder. Confiscation is an act as a measure of penalty imposed by the State on contravention of the provisions as laid down in the Regulation, 1891. It is a move by which a private property of a lawful owner is seized by the State without compensation to the owner as a penalty for the offence committed, through its Authorized Officer.”

14. It would thus be clear from the aforesaid observations that the authorized officer while passing an order of confiscation, has to strictly adhere to the statutory provisions prescribed in Sec. 49 (5) of The Assam Forest Regulation, 1891. It would also be seen that since the power of confiscation is in the nature of a penalty under the law, due regards have to be given to the procedural safeguards prescribed in Sec, 49 (5) of the Regulation of 1891.

15. The same view has been taken by the **Hon'ble Gauhati High Court** in the case of **Rajen Choudhury Vs Arjun Narzary and Others**, reported in **(2008) 3 GLR 86**, wherein it was observed as follows:

“A cumulative reading of the various subregulations of Regulation 49, therefore, demonstrates that an objective inquiry has to be undertaken by the authorized officer, wherein, all reasonable opportunities have to be extended to the person from whom the property has been seized and to any other person who may appear to him to have some interest therein or in case of

Criminal Appeal (S-1) No. 11 of 2018

vehicles, having a registration a number to the registered owner thereof. **It is also obligatory for the authorized officer to send an intimation in the prescribed form about the initiation of the proceeding of confiscation to the Magistrate having jurisdiction to try the offence on account of which the seizure had been made.**

16. It would again be seen from the aforesaid observations that the safeguards prescribed under Sec. 49 (5) of the Regulation cannot be lightly construed by the authorized officer while passing an order of confiscation. An objective inquiry has to be undertaken by the authorized officer in strict adherence to the procedures prescribed under the law.

17. Keeping the aforesaid position of law in mind, when I look into the impugned order passed in the confiscation proceeding initiated by the authorized officer, what initially attracts my attention is that the appellant being the Registered owner of the tractor was issued notice by the authorized officer to appear in the confiscation proceeding and she did so and filed her representation. She took the plea that her tractor carried the illegal logs on the alleged day of the incident without her knowledge and connivance. The statement of the driver of the tractor clearly goes to show that the owner of the tractor was unaware of the fact that the tractor was being booked for carrying any log. His statement further goes to show that the appellant was even not informed about seizure of the tractor out of fear. It thus goes to clearly show that the appellant was unaware of the carrying of any illegal log in her tractor and she was not informed anything about the alleged act by the driver of the tractor. But the impugned order has not shown any reason as to why such materials which supported the plea of

Criminal Appeal (S-1) No. 11 of 2018

the appellant was not considered by the authorized officer while passing the order of confiscation of the tractor. It is true that the authorized officer is free to arrive at his own independent conclusion during a confiscation proceeding but the conclusion arrived at by him has to be based on sound legal principles and the same has to be just and fair on the face of it. After considering the materials on record, I am of the view that the impugned order is devoid of any justifiable reason for confiscating the tractor of the appellant for the materials available on record had prima facie, supported the plea of the appellant.

18. This apart, there is another reason for which the impugned order of confiscation cannot be sustainable in law. It is already indicated above that the authorized officer has to strictly comply with the procedural safeguards prescribed in Sec. 49 (5) of the Regulation of 1891. Sec. 49 (5) (a) of the Regulation provides that the authorized officer has to send an intimation in the prescribed form about the initiation of the proceeding for confiscation of property to the Magistrate having jurisdiction to try the offence on account of which, the seizure has been made. This is a mandatory procedural safeguard which has to be complied with by the authorized officer as has been observed in the case of **Rajen Choudhury (Supra)**. But, in the instant case, I have very carefully scanned the entire materials available before me including the record received from the concerned department. There is not even an iota of material on record to show that the aforesaid statutory provision was complied with by the authorized officer before initiation of the confiscation proceeding. This apart, the impugned order itself does not stipulate anywhere that the authorized officer had complied with this mandatory requirement of law before initiation of the confiscation

Criminal Appeal (S-1) No. 11 of 2018

proceeding. Thus, apparently the confiscation proceeding was initiated by the authorized officer in glaring violation of this prerequisite which itself renders the impugned order invalid in law. **The point formulated for determination is accordingly answered.**

19. For what has been discussed and pointed out hereinabove, the appeal stands allowed on contest and the impugned order dated 16.10.2017 confiscating the tractor of the appellant, stands set aside.

20. Let the case record received from the authorized officer be sent back with a copy of this judgment.

Given under my hand and seal of this court on the 9th day of May/2019.

Typed and corrected by me:

Addl. Sessions Judge,
Sonitpur:: Tezpur.