

## State Of West Bengal vs Gopal Sarkar on 7 November, 2001

**Equivalent citations: 2002 (1) SCC 495, AIR 2002 SUPREME COURT 221, 2001 AIR SCW 4882, (2002) 1 CRIMES 730, (2001) 9 JT 570 (SC), 2002 CALCRILR 215, 2002 SCC(CRI) 161, 2001 (8) SCALE 242, 2002 CRILR(SC MAH GUJ) 55, (2001) 2 DMC 381, (2002) 1 RECCRIR 124, (2001) 3 ALLCRIR 2853, (2001) 8 SCALE 242, (2001) 2 HINDULR 649, (2002) SC CR R 165, (2002) 1 EASTCRIC 203, (2002) 1 MADLW(CRI) 353, (2002) 1 ORISSA LR 373, (2002) 22 OCR 129, (2002) 1 RAJ CRI C 86, (2002) 2 RECCRIR 497, (2001) 8 SUPREME 300, (2002) 1 UC 139, (2002) 44 ALLCRIC 238, (2002) 1 ALL WC 92, (2002) 1 CAL HN 41, (2002) 1 CHANDCRIC 55, (2001) 4 CURCRIR 319, 2002 (1) ANDHLT(CRI) 185 SC, (2002) 1 ANDHLT(CRI) 185, (2001) 5 BOM CR 898**

**Bench: D.P. Mohapatra, P. Venkatarama Reddi**

CASE NO.:

Appeal (crl.) 1143 of 2001

PETITIONER:

STATE OF WEST BENGAL

RESPONDENT:

GOPAL SARKAR

DATE OF JUDGMENT: 07/11/2001

BENCH:

D.P. MOHAPATRA & P. VENKATARAMA REDDI

JUDGMENT:

JUDGMENT 2001 Supp(5) SCR 212 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 implements (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 respect of forest produce which is the property of the State Government 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 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 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 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 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 Government. 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 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 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.

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.

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."

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 :

"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 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."

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.

The appeal is allowed and the judgment under challenge is set aside. There will, however, be no order as to costs.