

PETITIONER:
STATE OF M.P.

Vs.

RESPONDENT:
SURESH KUMAR

DATE OF JUDGMENT: 07/02/1997

BENCH:
J.S. VERMA, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P. KURDUKAR, J.

This appeal by Special Leave is filed by the State of Madhya Pradesh challenging the legality and correctness of the judgment and order dated 2nd January, 1996 in writ petition No. 701 of 1994 passed by the Madhya Pradesh High Court at Jabalpur.

2. The facts in brief are as under:-

The respondent herein is the owner of a truck bearing registration No. MPW-4015. It is a common premise that the said truck was used to be given on hire for transporting the goods. It is claimed by the owner that he had engaged a driver to ply the truck.

3. On receipt of a secret information, a direction was given to the forest employees of Maksudangarh, forest region to cordon the area at 2.00 a.m. on 17th January, 1991 to check illegal transportation of the forest produce. At about 2.00 a.m., a truck was spotted near Kalapatha and when it was tried to be stopped by the forest employees, the inmates of the said truck opened fire from the fire arm and fled away. The cleaner of the said truck was however apprehended on the spot. The truck was then brought to the forest depot and it was revealed that it was carrying 120 logs of teak wood covered by tarpoline. The truck and the forest produce were seized and a necessary information was forwarded to the Regional Officer, Maksudangarh on the same day. The Chief Judicial Magistrate, Raghogarh court, was duly informed on 18th January, 1991 by the Competent Authority. On conclusion of the preliminary investigation, confiscation proceedings were initiated by the Competent Authority (SDO), Beenaganj under Section 15(4)(6) of the Madhya Pradesh Van Upaj (Vyapar Viniyamar 1969) Amendment Act, 1986 (for short 'Adhiniyam'). The Competent Authority during the confiscation proceedings recorded statements of various forest employees and called upon the respondent to cross-examine them if he so desired. From the record, it appears that he declined to cross-examine any of these witnesses. In defence, the respondent got recorded his statement and he was cross-examined by the Competent Authority.

4. On conclusion of the confiscation proceedings, the

Competent Authority by its order dated Nil ordered confiscation of the truck in exercise of its powers under sub Section (6) of Section 15 of the Adhiniyam. Being aggrieved by the order passed by the Competent Authority, the respondent preferred an appeal to the Appellate Authority which by its order dated 23rd February, 1993 dismissed the appeal and confirmed the order passed by the Competent Authority. The respondent thereafter challenged these orders before the Sessions Judge. Shivpuri by filing Criminal Revision No. 61 of 1993. The learned Sessions Judge vide his judgment and order dated 22nd March, 1994 allowed the Revision Application and set aside the orders passed by the forest Authorities. The State of M.P. impugned the order passed by the Sessions Judge, Shivpuri by filing writ petition under Article 227 of the Constitution of India before the Madhya Pradesh High Court at Jabalpur. The learned Judge, however, vide his judgment and order dated 2nd January, 1996 dismissed the writ petition. It is against this order passed by the learned Judge of the High Court. the State of Madhya Pradesh has filed this appeal.

5. We heard the learned counsel for the parties and perused the impugned judgment and the relevant material on record. The main thrust of the High Court judgment is breach of Section 15(5) and (6) of the Adhiniyam. While dealing with these provisions, the High Court appears to have affirmed the view of the Revisional Court that the respondent-truck owner was not provided with proper legal assistance. The High Court then observed:-

"Under Section 15 of the Adhiniyam. the criminal liability has to be proved. This proof was missing in this case."

In para 6 of the impugned judgment, the High Court observed:-

"A reading of Section 15(6) of the Adhiniyam makes it apparent that an order of confiscation is not to be made unless and until it is shown that the person making use of the vehicle was doing so with the knowledge or connivance of the owner. In the present case as rightly pointed out by the Court of Sessions, the owner of the truck was not subjected to the cross-examination by the State authorities that the owner had authorised his driver to take part in the illegal transaction. The owner of the truck was also not aware that his truck is going to be used for the purposes not permissible under the Adhiniyam."

To support this reasoning, the learned Judge of the High Court relied upon the decision of this Court in State of Madhya Pradesh Vs. M/s Azad Bharat Finance Co. and another. AIR 1976 SC 276 and in particular paragraph 5 therein. Consistent with the aforesaid conclusions, the High Court held "the owner of the truck was also not subjected to any cross-examination by the State authorities. As such, the order passed by the Court of Sessions calls for no interference under Article 227 of the Constitution of India."

6. We are however unable to uphold the reasons given by the Sessions Judge and affirmed by the learned Judge of the

Madhya Pradesh High Court at Jabalpur for the following reasons.

7. It is needless to reproduce entire Section 15 since the High Court has mainly relied upon sub Section (6) which reads as under:-

"(6)-No order of confiscation under sub Section (4) of any tools, Vehicles, boats, ropes, chains or any other articles (Other than specified forest produce seized) shall be made if any person referred to in clause (b) of sub section (5) proves to the satisfaction of authorised officer that any such tools, vehicles, boats, ropes, chains or other articles 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 use of objects aforesaid for commission of an offence under this Act."
(reproduced from the judgment of the High Court)

A bare reading of sub Section (6) of Section 15 of the Adhiniyam quoted hereinabove shows that the burden is on the owner to prove to the satisfaction of the authorised officer that his vehicle was used without his knowledge or connivance and that all reasonable and necessary precautions were taken by him against use of his truck for the commission of an offence under this Adhiniyam. During confiscation proceedings, the Competent Authority recorded the statements of various forest employees including the officers and permitted the respondent to cross-examine them but he failed to avail of the said opportunity. The forest employees when tried to stop the truck, one of the inmates of the truck tried to scare these forest employees by firing a shot from the fire arm and thereafter escaped from the truck to avoid being caught. This would unmistakably show that the truck driver and other inmates were involved in illegal activities forbidden by Adhiniyam. It also cannot be overlooked that the concealment of 120 longs of teak wood was arranged perfectly by putting tarpoline over the longs to avoid its detection. These facts were held proved by the forest authorities and on these proved facts, the forest Authorities concluded that the driver of the truck in connivance with the other inmates of the truck was carrying the wooden longs illegally. Under sub Section (6) burden is cast upon PDS of the truck to prove that his truck was used for illegal activities without his knowledge and not with his connivance. The statement of the owner of the truck was recorded by the Competent Authority and the explanation sought to be given by him did not find favour with the said authority. The respondent owner did not produce any other material on record to discharge the burden under sub Section (6). If this be so, it cannot be said that the Competent Authority and the Appellate Authority committed any error in coming to the conclusion that the respondent owner has failed to satisfy the authorised officer that the illegal activity committed by the driver of the truck was without his knowledge or connivance. Mere ipse dixit of the respondent owner cannot be said to be sufficient evidence to

discharge burden under 15(6) of the Adhiniyam. In our opinion, the High Court has totally misread and misinterpreted provisions of Section 15(6). We, therefore, cannot sustain the reasoning of the High Court and the Sessions Court as regards interpretation of Section 15(6).

9. Coming to the reported decision of this Court in State of Madhya Pradesh Vs. Azad Bharat Finance Co. & anr. (supra), it was a case where offence was alleged to have been committed under Sections 9(a) and 9(b) of the Opium Act as modified by the Opium Madhya Bharat Amendment Act, 1955. This Court was called upon to decide as to whether the use of the word "shall" in Section 11 of Madhya Bharat Act gave no option but to confiscate the truck. While construing those provisions, this Court held:-

".....the use of the word "shall" does not always mean that the enactment is obligatory or mandatory; it depends upon the context in which the word "shall" occurs and the other circumstances."

This decision, in our opinion, would not make any difference having regard to the facts and circumstances of this case. Since the respondent owner failed to satisfy the Competent Authority and the Appellate Authority as required under Section 15(6), we do not think that the said authorities have committed any breach of the said provision. In view of the proved facts of this case, the order of confiscation of the truck cannot be said to be arbitrary.

10. It was contended on behalf of the respondent that he was not provided with proper assistance and therefore, he was deprived of benefit of Article 39(a) of the Constitution of India. We see no substance in this contention because it was not the case of the respondent before the forest officers or the courts below that he applied for grant of more time to seek legal advice and assistance but the same was denied. The High Court and the Sessions Court erroneously assumed that there was denial of an opportunity to the respondent. The finding of the Sessions Court and affirmed by the High Court in this behalf, therefore, cannot be sustained.

11. For the foregoing conclusions, we allow the appeal and set aside the judgment of the High Court dated 2nd January, 1996 affirming the judgment and order dated 22nd March, 1994 passed by the Sessions Judge, Shivpuri and restore the order passed by the Appellate Authority on 23rd February, 1993. The respondent is directed to pay the cost of this appeal to the appellant.