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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 29of 2021
Reserved on: 28.1.2021.
Date of Decision: 4th Feb 2021.

Ashish Kaushal ...Petitioner.

Versus

State of H.P. ...Respondent.

Coram:
The Hon'ble Mr. Justice Anoop Chitkara, Judge.

Whether approved for reporting?¹ YES

For the petitioner: Mr. M.A. Safee and Mr. Onkar Jairath, Advocates.

For the respondent: Mr. Sudhir Bhatnagar, Addl. Advocate General with Ms. Seema Sharma, Narinder Singh Thakur, Dy.A.Gs and Mr. Manoj Bagga, Asstt. A.G

Amicus Curiae: Mr. Abhimanyu Rathore, Advocate

THROUGH VIDEO CONFERENCE

FIR No.	Dated	Police Station	Sections
244/2019	26.12.2019	Dhalli Shimla	447, 120(B), IPC & 32, 33 of Indian Forest Act

Criminal Case No.	Cr.M.A No.1555/2020 decided by Ld.ACJM-1, Shimla on 24.7.2020 and thereafter by DFO exercising the powrs of authorised officer under the Indian Forest (H.P 2 nd Amendment) Act, 1991
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Anoop Chitkara, Judge.

Expressing the inability to pay the bank guarantees imposed by the Divisional Forest Officer as a term for releasing his JCB, the petitioner has come up before this Court.

¹ Whether reporters of Local Papers may be allowed to see the judgment?

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2. The Divisional Forest Officer, by the impugned order dated 20.09.2020, has ordered the release of the petitioner's confiscated vehicle. However, the Ld. Officer has directed to furnish Sapurdari Bond of Rs, 5,00,000/- along with one surety in the like amount and the FDR or Bank guarantee of Rs. 15,00,000/- drawn on any Nationalised Bank at Shimla pledged to DFO Shimla.

3. The Learned Counsel for the Petitioner has submitted that the petitioner has been facing extreme financial difficulties due to the COVID-19 pandemic. Further, he has also been financially overburdened due to his hospitalization and his entire family for COVID-19.

4. The legislative intent while enacting the Indian Forest Act, 1927 was to protect and conserve the forest, strengthen the existing forest laws and increase forest productivity. Forests are a national wealth which is required to be preserved. When a forest is harmed or forest produced is obtained illegally by any person's actions, the primary objective is to restore the forest and not just punish the offender.

5. Keeping in mind the purpose of the Act and the depleting condition of the environment, this Court believes that the only imposition of the hefty financial penalty alone would not be appropriate.

6. This Court believes that the said conditions imposed while ordering the confiscated vehicle's release are too harsh and stringent. Further, they also do not cover the forest restoration aspect.

7. Hence, this Court, in the interests of the environment, directs the petitioner to restore and enlarge the forest cover by planting 200 tree saplings by 15th Aug 2021. The Forest Department will provide the saplings to the petitioner. The discretion of the Forest Department will be the discretion of what tree saplings will be given to the petitioner and whether the same will be charged or provided free of cost. The concerned DFO will interact with the petitioner and facilitate him. DFO may consider planting Horse Chestnut, Hazel Nut, Walnut, Cherry, Plum, Pear, Apricot, etc. It is the Forest Experts to take the final call and decide the variety and time of plantation.

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8. The plantation shall be done on the same patch or around it, from where the illicit felling took place. In case any person, whom so ever, puts obstructions in plantation, then SHO of the concerned Police station shall provide adequate security and take appropriate legal action against such violators.

9. The Court further directs the petitioner to look after the saplings for one year after plantation personally. After one year, the Forest Department shall take care of the saplings. The petitioner shall also contact the Forest Department every month to report on the saplings' status and health and any assistance he may require. He will provide his contact details to the Forest Department personnel. This order is being passed to make the petitioner understand and realize his civic responsibility towards the environment.

10. Further, about the statutory requirement of furnishing a bond while releasing the confiscated vehicle, the Court directs the petitioner to furnish a personal bond undertaking to pay a sum of Rs 20,00,000/- or less, that the concerned court orders finally. Any Advocate for the petitioner may draft this bond and it shall be accepted by the concerned Forest Official(s)/Court(s).

11. Given above, this is a fit case where the inherent jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure is invoked. Thus, the conditions that the Ld. Divisional Forest Officer had imposed, vide order dated 20.09.2020 are hereby modified, in terms mentioned above. All pending application(s), if any, stand closed.

12. I express my gratitude to **Mr. Abhimanyu Rathore**, Ld. *Amicus Curiae*, as well as to my interns **Ms. Sakshi Attri**, **Ms. Apoorva Maheshwari**, and **Mr. Shivam Sharma** for the excellent input.

Petition allowed.

Anoop Chitkara,
Vacation Judge.

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Feb 4, 2021 (*mamta/ps/ks/R.Atal*).

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