

GAHC010185402022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./1060/2022

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
ENVIRONMENT AND FOREST DEPARTMENT, DISPUR, ASSAM.

2: THE DIVISIONAL FOREST OFFICER-CUM-AUTHORIZED OFFICER
NORTH KAMRUP DIVISION

RANGIA IN FOREST OFFENCE NO. NL/17 OF 2021-22

VERSUS

PHILO KUMAR DEORI
SON OF MITHARAM DEORI,
RESIDENT OF VILLAGE BORDUMSA,
P.O.- HOLONG GUTIBARI,
P.S.- TINSUKIA, PIN- 786160,
DIST- TINSUKIA, ASSAM.

For Petitioners	: Mr. D. Gogoi, Standing Counsel, Forest Department Ms S Jahan, Addl. Public Prosecutor
For respondent	: Mr. A. K. Bhuyan, Adv.

Date of hearing : 13.06.2023

Date of judgment : 26.06.2023

JUDGMENT AND ORDER (CAV)

– BEFORE –

HON'BLE MR JUSTICE MRIDUL KUMAR KALITA

1. Heard Mr. D. Gogoi, learned Standing Counsel, Forest Department appearing for the petitioners. Also heard Mr. A. K. Bhuyan, learned counsel for the respondent and Ms. S. Jahan, learned Additional Public Prosecutor, appearing for the State of Assam.

2. This Criminal Petition has been registered on filing of an application under Section 482 of the Code of Criminal Procedure, 1973 by the petitioners namely, the State of Assam represented by the Secretary to the Government of Assam, Environment and Forest Department, Dispur, Assam and the Divisional Forest Officer-Cum-Authorized Officer, North Kamrup Division, Rangia, impugning the order dated 01.08.2022 passed by the learned Sessions Judge, Kamrup, at Amingaon in Criminal Appeal No. 02/2022, whereby learned Sessions Judge allowed the interim custody of the vehicle bearing registration No. AS-23-BC-6214, to the respondent, during the pendency of the Criminal Appeal No. 02/2022.

3. The facts relevant for adjudication of the present criminal petition, in brief, are as follows:

- a) That, on 23.05.2021, at about 7.30 am, on receiving an information through reliable sources, the officials of Nalbari Forest Range Office rushed to Kaplabori area at Mukalmua and detected a vehicle bearing registration no. AS-23-BC-6214 standing at Kaplabori.

- b) When the said vehicle was checked, it was found loaded with non-Sal sawn timber and when the officials of the Nalbari Forest Range Office issued notice to the driver of the said vehicle for producing the necessary documents and asked him to produce the relevant documents/transit pass for the sawn timber, he failed to produce any document. It was also found that no hammer impression was there on the timer which was loaded on the said truck.
- c) Thereafter, the said vehicle along with timber (Total 229 pieces of timber) was brought to the safe custody of the Forest Range Office.
- d) Thereafter, the said timber along with aforesaid vehicle was seized for violation of Section 40 of the Assam Forest Regulation 1891 read with Section 379 of the Indian Penal Code. Thereafter, the seizure was intimated to the learned Chief Judicial Magistrate, Nalbari as well as to the Divisional Forest Officer, North Kamrup Division, Rangia. The driver of the said vehicle namely, Shri Madhab Boruah was arrested and later on after recording his statement he was released on bail.
- e) Thereafter, notices were issued to the owner of the said vehicle (the present respondent no.1). However, no response was made by the respondent no. 1. Therefore, by letter dated 23.06.2021 the investigating officer submitted the preliminary offence report No. NL/17 of 2021-22 dated 15.06.2021 to the Divisional Forest Officer-cum-Authorized Officer, North Kamrup Division, Rangia, who after having satisfied that there is prima facie case against the accused for violation of Section 40 of Assam Forest Regulation, 1891 initiated confiscation proceeding by issuing show cause notice to the driver as well as the owner of the seized truck.

f) The owner of the truck i.e., the present respondent no.1, responded to the said notice by filing a reply on 05.08.2021. However, the authorized officer, after recording the statement of Investigating Officer and other witnesses as well as of the owner and the driver of the seized vehicle, confiscated the vehicle bearing registration No. AS-23-BC-6214 along with 229 pieces of non-Sal sawn timber owned by order dated 19.01.2022.

4. Being aggrieved by the order of confiscation, the present respondent no. 1, namely, Sri Philo Kumar Deori has preferred an appeal under Section 49 (c) of the Assam Forest Regulation, 1891 before learned District and Sessions Judge Kamrup at Amingaon impugning the confiscation order dated 19.01.2022, the said appeal was registered as Criminal Appeal No. 2/2022.

5. On 11.05.2022, the present respondent had filed a petition bearing Petition No. 1436/2022, under Section 457 of the Code of Criminal Procedure, 1973 before the Court of learned District and Sessions Judge, Kamrup at Amingaon with a prayer to grant interim custody of the seized vehicle to the present respondent, during the pendency of the appeal and by order dated 01.08.2022, learned Sessions Judge allowed the interim custody of the seized vehicle bearing Registration No. AS-23-BC-6214 to the present respondent namely, Philo Kumar Deori on execution of a bond of Rs. 8,00,000/- (Rupees Eight Lakhs) on condition that he shall produce the said vehicle before any authority as and when required. The said order dated 01.08.2022 passed by the learned Sessions Judge, Kamrup, Amingaon in Criminal Appeal No. 2/2022 is impugned in this criminal petition.

6. Mr. D. Gogoi, learned Standing Counsel, Forest Department, Government of Assam, has submitted that an appeal under the provision of section 49-C of the Assam Forest Regulation, 1891 lies before the District Judge,

however, in the instant case, the impugned order has been passed by the learned Sessions Judge, Kamrup, Amingaon and not by the learned District Judge. Learned counsel for the petitioner has submitted that a Sessions Judge has no jurisdiction to entertain and pass order in an appeal under section 49-C under Assam Forest Regulation, 1891 as the competent authority having jurisdiction to entertain the said appeal would only be the District Judge and not the Sessions Judge though one and the same person may be holding the post of District and Sessions Judge. In support of his submission, learned counsel for the petitioner has cited a ruling of this Court in “**Divisional Forest Officer –Vs- Maya Dolo**”, reported in “**(2005) 1 GLR 133**” wherein this court held that Sessions Judge lacks jurisdiction to entertain the appeal under Section 49-C of Assam Forest Regulation. In the said judgment this court relied upon the judgment of Hon’ble Apex Court in the case of “**Superintendent of Police, Manipur and Ors. –Vs- R. K. Tomalsana Singh (Dead) by LRS**” reported in “**AIR 1984 SC 535**” wherein the Hon’ble Apex Court held that when the power is conferred by statute on the statutory authority and as such the said power can be exercised by that authority alone and the factum that one person is exercising two separate authorities is a irrelevant.

7. Learned counsel for the petitioner has also cited an order of this Court (order dated 14.12.2022) passed in Criminal Revision Petition No. 39/2022 in “**Raju Narah –Vs- State of Assam**” wherein this Court observed that though District and Sessions Judge is a single person but as a Sessions Judge, the Court does not have the jurisdiction to entertain an appeal under Section 49-C of the Assam Forest Regulation, 1891.

8. Learned counsel for the Petitioner has also submitted that interim custody should not be granted in forest offences and in support of his

submissions, he has cited a ruling of Hon'ble Supreme Court of India in "**Section Forestor and Another -Vs- Mansur Ali Khan**" reported in "**(2004) 1 SCC 293**" wherein the Hon'ble Supreme Court of India was observed as follows:-

"6. While in regard to the power of the High Court to release the vehicle in a given set of facts cannot be disputed, this Court as noticed by the High Court itself has laid down that such power can be exercised for good reasons and in exceptional cases only. In the instant case, the only reason given by the High Court for the release of the vehicle is on the ground that the same was in the custody of the officers for more than one year and there was no likelihood of immediate disposal of the pending case. This by itself, in our opinion, would not be a ground for the release of the vehicle because this would be the case in almost all such cases involving forest offence. In exceptional cases, the Act itself has made a provision for interim release of the vehicle on the existence of certain conditions mentioned therein. In the absence of such conditions being fulfilled, we do not think that the High Court as a matter of course could pass mechanical orders releasing such vehicles.

7. Taking into consideration the object of the Forest Act and other relevant considerations, this Court in the abovesaid case of State of Karnataka v. K. Krishnan [(2000) 7 SCC 80 : 2000 SCC (Cri) 1289] while allowing the said appeal held: (SCC p. 84, para 7)

"The courts cannot shut their eyes and ignore their obligations indicated in the Act enacted for the purposes of protecting and safeguarding both the forests and their produce. The forests are not only the natural wealth of the country but also protector of human life by providing a clean and unpolluted atmosphere. We are of the considered view that when any

vehicle is seized on the allegation that it was used for committing a forest offence, the same shall not normally be returned to a party till the culmination of all the proceedings in respect of such offence, including confiscatory proceedings, if any. Nonetheless, if for any exceptional reasons a court is inclined to release the vehicle during such pendency, furnishing a bank guarantee should be the minimum condition. No party shall be under the impression that release of vehicle would be possible on easier terms, when such vehicle is alleged to have been involved in commission of a forest offence. Any such easy release would tempt the forest offenders to repeat commission of such offences. Its casualty will be the forests as the same cannot be replenished for years to come."

9. Mr. D. Gogoi, learned Standing Counsel, Forest Department, Government of Assam, has also submitted that criminal prosecution is distinct from confiscation proceedings. The two proceedings are different and parallel, each having a distinct purpose. The object of confiscation proceeding is to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence while the object of the prosecution is to punish the offender. In support of his contention, learned counsel for the petitioners as cited the ruling of Supreme Court of India in "**State of Madhya Pradesh –Vs- Uday Singh**" reported in "**(2020) 12 SCC 733**".

10. Learned counsel for the Petitioner has also submitted that where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provision of law, without deviating from the prescribed procedure. In support of his submission, he cited a ruling of Hon'ble Supreme Court in "**Cherukuri Mani W/o- Narendra – Vs- Chief Secretary, Government of Andhra Pradesh and Ors.**" reported in **(2015)**

13 SCC 722.

11. On the other hand, Mr. A. K. Bhuyan, learned counsel for the respondent has submitted that the present petition under Section 482 of the Code of Criminal Procedure, 1973 is not maintainable in the instant case in as much as the impugned order is only an order for interim custody of the vehicle and hence this Court should take into consideration the bar under Section 397(3) of the Code of Criminal Procedure Code, 1973 before exercising the inherent jurisdiction under section 482 of the Code of Criminal Procedure and in support of his contention he has cited a ruling of Hon'ble Apex Court in "**Rajan Kumar Machananda –Vs- State of Karnataka**" reported in **1990 (Supp) SCC 132**.

12. Learned counsel for the respondent has also submitted that though in the case of "**Sunderbhai Ambalal Desai –Vs- State of Gujrat**" reported in "**(2002) 10 SCC 283**" dealt with the power of Magistrate under Section 451 of the Code of Criminal Procedure. However, in the said case, the basic issue before Hon'ble Supreme Court was to ensure prompt exercise of powers so as to ensure that seized articles including vehicles are not kept for a long time in police station in any case, hence the spirit of observations made in the said case by Hon'ble Supreme court is also applicable in the instant case.

13. The learned counsel for the respondent has also submitted that the petitioner No.2 has suppressed material facts in his application by not disclosing that in spite of issuance of repeated notices by the learned Sessions Judge, Kamrup, the present petitioner No.2 failed to appear before the Court in Criminal Appeal No. 02/2022 and produce the records of the confiscation proceeding in the said appeal. It is also submitted that present petitioner did not comply with the impugned order evenwhen the same was shown. Learned counsel for the petitioner has submitted that by suppressing these facts, the

petitioner has played fraud upon this Court and therefore not entitled to any relief under inherent jurisdiction of this Court. In support of his submission learned counsel for the respondent has cited the ruling of Hon'ble Apex Court in "***Sanatan Nath vs Indian Oil Corporation and others***" reported in '***MANU/GH/0396/2022***'.

14. Mr. A. K. Bhuyan, learned counsel for the respondent has also submitted that in the instant case the Criminal Appeal No. 2/2022 under section 49-C of the Assam Forest Regulation was preferred by the present respondent before the District and Sessions Judge, Kamrup. He has further submitted that the fact that the order-sheets maintained in the case record of the said Criminal Appeal No. 2/2022 has been signed by Sessions Judge, Kamrup, Amingaon is only because of the fact that one and the same person is holding the post of the District Judge as well as of the Sessions Judge. He has also submitted that in the memo of appeal the mention of District Judge is also there, hence it is submitted that the facts of the instant case are distinguishable from the facts of the case of "***Divisional Forest Officer –Vs- Maya Dolo***" (supra) wherein the appeal was filed before the learned Sessions Judge, Sonitpur and not before the District and Sessions Judge, Sonitpur. He has submitted that even if the proceedings of Criminal Appeal No 2/2022 were signed by Sessions Judge instead of District Judge, same is mere irregularity under section 465 of the Code of Criminal Procedure, 1973 and does not vitiate the proceeding Criminal Appeal No 2/2022. In support of his submission learned counsel for the respondent has cited the ruling of Hon'ble Apex Court in "***Pradeep S Wodeyar vs State of Karnataka***" reported in '***2021 0 Supreme SC 853***' wherein it was observed that the objective of section 465 of the code of criminal procedure is to prevent the delay in commencement on completion of trial and it is also applicable to

interlocutory orders.

15. I have considered the rival submissions made by learned counsel for both the sides and have gone through the cited rulings. In the instant case, the impugned order of interim custody has been passed in an appeal under Section 49 (c) of the Assam Forest Regulation, 1891. Even a cursory perusal of the said provision would reveal without any ambiguity that any person aggrieved by an order under section 49(4) or 49-B of the Assam Forest Regulation, 1891 may within 30 days from the date of communication to him of such order prefer an appeal to the District Judge having jurisdiction over the area in which the property has been seized . It also appears, that it is the District Judge, who after giving reasonable opportunity of being heard to the parties may pass such order either varying, confirming, modifying, annulling or setting aside the order appealed against and the order of the court so passed shall be final. Thus, Section 49 (c) of the Assam Forest Regulation, 1891 in unambiguous terms gives appellate jurisdiction, against an order of confiscation, passed under section 49(4) of the Assam Forest Regulation, 1891 by the authorised officer, only to the District Judge and none else. As observed by hon'ble Supreme Court of India in “***Superintendent of Police, Manipur and Ors. –Vs- R. K. Tomalsana Singh (Dead) by ”(Supra)*** when the power is conferred by statute on the statutory authority and as such the said power can be exercised by that authority alone and the factum that one person is exercising two separate authorities is a irrelevant.

16. In the instant case also, though the appeal under Section 49 (c) of the Assam Forest Regulation, 1891 was filed by the present respondent in the court of learned District and Sessions Judge, Kamrup, Amingaon, however, on perusal of the record of Criminal Appeal No. 02/2022 would reveal that all the orders

passed in the said appeal were by learned Sessions Judge Kamrup, Amingaon. This, in the considered opinion of this court may not be regarded as a mere irregularity, which may be cured by Section 465 of the Code of Criminal Procedure, 1973 as both the courts, that is, the court of District Judge and the court of Sessions Judge are created by two different statutes and they exercise different jurisdictions. Moreover, in an appeal before District Judge, the provisions of Chapter 14 of the Civil Courts Rules and Orders of Gauhati High Court would be applicable, whereas, in an appeal before Sessions Judge the provisions of the Chapter 2 of Gauhati High Court Criminal Rules and Orders would be applicable. It is also not clear as to why the appeal preferred under Section 49 (c) of the Assam Forest Regulation, 1891 was registered as a Criminal Appeal, whereas, considering the fact that the appeal lies before the District Judge, it ought to have been registered as a Miscellaneous Appeal.

17. Though, criminal prosecution is distinct from confiscation proceedings and each have a distinct purpose and the confiscated property vest in state after confiscation, however, as held by this Court in "***Binod Kabra vs State of Assam & others***" (Order dated 08/10/2013 passed in WP(C)-5537/2008) under the scheme of Assam Forest Regulation, 1891 confiscation made under Section 49 of the Assam Forest Regulation, 1891 is really a seizure or retention of the seized property in the conclusion of criminal proceedings where after section 51 of Assam Forest Regulation, 1891 comes into play in case the prosecution ends in conviction and confiscation is ordered by the convicting court.

18. In the instant case, as discussed hereinbefore, the confiscation order, in respect of seized vehicle bearing registration number AS 23 BC 6214, made under section 49(4) of the Assam Forest Regulation, 1891, by the authorised

officer, has being challenged in appeal under Section 49 (c) of the Assam Forest Regulation, 1891 by the respondent. However, as all the orders in the said appeal, including the impugned order, has been passed by the learned Sessions Judge, Kamrup, Amingaon, which is apparently without jurisdiction, hence, this court is of the considered opinion that the impugned order is liable to be set aside and accordingly same is set aside.

19. The District Judge, Kamrup, Amingaon is hereby directed to re number the Criminal Appeal No 2/2022 as Miscellaneous Appeal and dispose it of as expeditiously as possible, preferably, within three weeks of the receipt of copy of this judgment .

20. Send a copy of this judgment to the District Judge Kamrup, Amingaon.

21. This Criminal Petition is accordingly disposed of.

JUDGE

Comparing Assistant