



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

Criminal Petition No. 900/2023

1. THE STATE OF ASSAM,
REP. BY THE SPECIAL PUBLIC PROSECUTOR,
WILDLIFE AND FOREST ASSAM.

2. SHRI T.C. RANJITH RAM
S/O PV RAMACHANDRAN
R/O PRESENTLY SERVING AS THE DIVISIONAL FOREST
OFFICER-CUM-AUTHORIZED OFFICER-DIGBOI DIVISION
DIST. TINSUKIA.

.....Petitioners.

-Versus-

DANGMAN JUGLI
S/O SRI LIMTON JUGLI
R/O ANDAMAN COLONY
P.O. AND P.S. JAIRAMPUR
DIST. CHANGLANG
ARUNACHAL PRADESH.

.....Respondent.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

For the Petitioners : Mr. D. Gogoi, Special P.P., Forest Dept.
.....Advocate.

For the Respondent : Mr. P.K. Roy, Sr. Adv.,
Mr. S.K. Chakraborty.

.....Advocates.

Date of Hearing : 01.03.2024

Date of Judgment : ***2nd April, 2024***

JUDGMENT AND ORDER

Heard Mr. D. Gogoi, learned Special Public Prosecutor, for the petitioners. Also heard Mr. P.K. Roy, learned Senior Advocate, assisted by Mr. S.K. Chakraborty, learned counsel for the respondent.

2. In this petition, under Section 482 of the Code of Criminal Procedure, the petitioners have challenged the correctness or otherwise of the order dated 11.04.2023 passed by the learned Judicial Magistrate 1st Class, Margherita, in CR Case No. 26/2022, arising out of Offence Report No. LP/16 of 2022-23.

3. It is to be mentioned here that vide impugned order, dated 11.04.2023, the learned Judicial Magistrate 1st Class, Margherita, in CR Case No. 26/2022, arising out of Offence Report No. LP/16 of 2022-23, had directed the petitioner No.2 to release one JCB 3DX SUPER, bearing Registration No. AR01 M 7927, in the custody of the respondent.

4. Further, it is to be noted here that vide order dated 28.08.2023, this court, at the stage of motion, after hearing the learned counsel for the petitioner, was pleased to grant stay of the impugned order, dated 11.04.2023, passed by the learned Judicial Magistrate 1st Class, Margherita. Thereafter, the respondent has preferred one interlocutory application, being I.A.(Criminal) No.1088/2023 for vacation/modification/alteration of the order of this court dated 28.08.2023.

5. And by this common judgment and order, it is proposed to dispose of both the petitions together.

6. The background facts leading to filing of the present petition is briefly stated as under:-

“On 13.12.2022, the Staffs of Lekhapani Forest Range have apprehended one Robin Rai, inside the Tirap Reserve Forest with one JCB 3DX SUPER, bearing Registration No. AR01M7927, while the same was being used for smuggling timbers. Thereafter investigation was carried out and the accused was arrested and forwarded to jaiol hazoot and seized the JCB with timbers and ultimately the investigation has culminated in submission of Offence Report, being Offence Report No. LP/16 of 2022-23, against the accused Kabir Rai to stand trial in the court under section 24/25/(a)/25(d)/25(e)/25(f)/33/34/35 read with section 40 and 41 of Assam Forest Regulation, which resulted in registration of CR Case No. 26/2022. Then having been satisfied with commission of a forest offence, the Divisional Forest Officer-cum-Authorised Officer, Digboi had passed an order for initiation of confiscation proceeding in respect of seized items. Thereafter, the respondent has preferred an application under section 457 Cr.P.C. before the court of learned Judicial Magistrate 1st Class, Margherita seeking custody of the seized JCB, and then hearing learned Advocates of both sides the learned Judicial Magistrate 1st Class has dismissed the same. Thereafter, the respondent had preferred one Criminal Revision Petition, being Criminal Revision Petition No. 6(1)/2023, before the learned Addl. Sessions Judge, (FTC-I), Margherita and then the learned Addl. Sessions Judge, vide order dated 24.03.2023, directed the respondent to approach the learned

Judicial Magistrate 1st Class, Margherita and further directed the learned Magistrate to dispose of such a petition, in the event of filing of such petition for zimma, in accordance with law. Thereafter, vide impugned order dated 11.04.2023, the learned Judicial Magistrate 1st Class, Margherita, had directed the petitioner No.2 to release one JCB 3DX SUPER, bearing Registration No. AR01 M 7927, in the custody of the respondent on his executing a bond, equivalent to market price of the JCB, with the condition that he shall not sell, transfer or dispose of the vehicle until the conclusion of the trial.”

7. Being aggrieved, the petitioners have approached this court challenging the correctness of the impugned order on the ground that the learned court below has failed to consider the fact that the Divisional Forest Officer-cum- Authorised Officer has already initiated the confiscation proceeding of the seized JCB and once the confiscation proceeding started the court has no jurisdiction to exercise the power u/s 457 Cr.P.C. and release the seized JCB in the interim custody of the respondent and that the learned Addl. Sessions Judge, (FTC-I) had wrongly interpreted the provision of law and directed the learned Magistrate to consider the zimma petition in accordance with law.

8. Mr. D. Gogoi, the learned counsel for the petitioners submits that the JCB 3DX SUPER, bearing Registration No. AR01M7927, was seized by the Staffs of Lekhapani Forest Range have apprehended one Kabir Rai, inside the Tirap Reserve Forest, while the same was being used for smuggling timbers, on 13.12.2022. Thereafter, investigation was carried out and the same had culminated in submission of Offence Report, being Offence Report No. LP/16 of 2022-23, against the accused Kabir Rai to stand trial in the court under section

24/25/(a)/25(d)/25(e)/25(f)/33/34/35 read with section 40 and 41 of Assam Forest Regulation, which resulted in registration of CR Case No. 26/2022. Thereafter, having been satisfied with the commission of a forest offence, the Divisional Forest Officer-cum-Authorised Officer, Digboi had passed an order for initiation of confiscation proceeding in respect of seized items. And once the confiscation proceeding started the courts have no jurisdiction to release the seized vehicle in the interim custody of the respondent and on such count the impugned order dated 11.04.2023, is not sustainable in law and therefore contended to set aside the same. Mr. Gogoi has produced one Notice before the court in support of his contention of initiation of confiscation proceeding. Mr. Gogoi has also referred one case law in **Md. Offijol Hoque vs. State of Assam reported in 2022 SCC OnLine Gau 1002** to contend that once the confiscation proceeding initiated in respect of seized vehicle, criminal courts have no jurisdiction to entertain zimma petition under section 457 Cr.P.C.

9. On the other hand, Mr. P.K. Roy, the learned Senior Counsel for the respondent, submits that the respondent is the registered owner of the seized JCB and that he had purchased the same by taking bank loan and the same is under bank hypothecation and is the only source of his livelihood, and that he had handed over the JCB to one Robin Rai for construction of a village road for 2/3 days on hire charge basis on 09.12.2022. Thereafter, on 13.12.2022, he came to know about the arrest of accused Robin Rai and seizure of the JCB for allegedly using the vehicle inside the Tirap Reserve Forest, by the forest officials of Lekhapani Range, and it was not in his knowledge about use of the same in commission of Forest Offence. Mr. Roy further submits that initially the learned Magistrate had rejected the zimma petition filed by the

respondent against which the respondent had preferred one revision petition, wherein the learned Additional Sessions Judge, having found that nothing has been mentioned in the Offence Report about initiation of confiscation proceeding, directed the respondent to approach the learned Magistrate again and directed the learned Magistrate to consider such petition, in the event of filing of such petition for zimma, in accordance with law. And thereafter, the learned Magistrate had released the JCB in the custody of the respondent. Mr. Roy further submits that in fact the petitioners have not started the confiscation proceeding and the learned Addl. Sessions Judge, had rightly observed the same. Therefore, Mr. Roy submits that the criminal petition has no merit and therefore, it is contended to dismiss the same.

10. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the copy of Notice, initiating confiscation proceeding against the seized JCB. Also, I have gone through the relevant provision of law.

11. It appears that Sub-Section 5 to Section 49 of the Assam Forest Regulation, deals with confiscation proceeding. The provision read as under:-

“(5) No order confiscating any property shall be made under the preceding provisions unless the authorized officer-

- (a) sends 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;
- (b) issue 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 Clause (b) above a 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 Clause (b) or (c) above, a reasonable opportunity of being heard on a date or dates to be fixed for the purpose."

12. It is well settled by a catena of judicial pronouncements, over the period of time, that once confiscation proceeding has started the criminal courts have no jurisdiction to release the seized vehicle.

13. Reference in this context can be made to a decision of the Hon'ble Supreme Court in the case of **State of Karnataka Vs. K. Krishnan**, reported in **(2000) 7 SCC 80**, wherein, it has been held that any forest produce and the tools, boats, vehicles, cattle, etc. used in commission of the offence, which are liable to be forfeiture, should not be released, and the provision of law are to be strictly complied with and followed for the purpose of achieving the object for which the Act was enacted and liberal approach is uncalled for.

14. Thereafter, in the case of **State of West Bengal & Ors. Sujit Kumar Rana, (AIR) (2004) SC 1851**, Hon'ble Supreme Court has held that:-

"Vehicle seized for committing forest offence was not normally to be released to the party till culmination of all proceedings in respect of the

forest offence as the particular approach in the matter would perpetuate commission of more offence with respect to the forest and its produce which, if not prevented is bound to affect the mother earth and the atmosphere surrounding it".

15. In the case of **State of Madhya Pradesh & Ors. Vs. Kallo Bai, (2017) 14 SCC 502**, Hon'ble Supreme Court has held that:-

"Section 15 gives independent power to the authority concerned, but confiscation of the article as mentioned there under, even before the guilt is completely established. This power can be exercised by the officer concerned if he is satisfied that the said object was utilized during the commission of a forest offence, and protection is provided for the owners of the vehicle/articles if they are able to prove that they took reasonable care and precaution as envisaged under Section 5 of Section 15 of the 'Adhiniyam' and said offence was committed without their knowledge and connivance."

15.1 It is also held that:-

"Criminal prosecution is distinct from confiscation proceeding. 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. The scheme of 'Adhiniyam' prescribed an independent procedure for confiscation. The intention of separate proceeding is to provide a deterrent mechanism and to stop further misuse of the vehicle."

16. In the case of **State of Karnataka vs. K. A. Kunchindammed**, reported in **(2002) 9 SCC 90**, Hon'ble Supreme Court, while dealing with somewhat similar provisions under the Karnataka Forest Act held as follows:-

"23.....The position is made clear by the non obstante clause in the relevant provisions giving overriding effect to the provisions in the Act over other statutes and laws. The necessary corollary of such provisions is that in a case where the Authorized Officer is empowered to confiscate the

seized forest produce on being satisfied that an offence under the Act has been committed thereof the general power vested in the Magistrate for dealing with interim custody/release of the seized materials under Cr.P.C. has to give way. The Magistrate while dealing with a case of any seizure of forest produce under the Act should examine whether the power to confiscate the seized forest produce is vested in the Authorized Officer under the Act and if he finds that such power is vested in the Authorized Officer then he has no power to pass an order dealing with interim custody/release of the seized material. This, in our view, will help in proper implementation of provisions of the special Act and will help in advancing the purpose and object of the statute. If in such cases power to grant interim custody/release of the seized forest produce is vested in the Magistrate then it will be defeating the very scheme of the Act. Such a consequence is to be avoided.

24. From the statutory provisions and the analysis made in the foregoing paragraphs the position that emerges is that the learned Magistrate and the learned Sessions Judge were right in holding that on facts and in the circumstances of the case, it is the Authorized Officer who is vested with the power to pass order of interim custody of the vehicle and not the Magistrate. The High Court was in error in taking a view to the contrary and in setting aside the orders passed by the Magistrate and the Sessions Judge on that basis."

17. The legal proposition, which can be crystallized from the ratios laid down in the cases discussed herein above, is that pending confiscation proceeding, a vehicle seized under forest laws, cannot be released in the interim custody of the owner. And the jurisdiction under section 457 of the Code of Criminal procedure is not available to the courts, when confiscation proceeding is initiated.

18. Now, advertent to the factual background of the case in hand I find from the petition as well as from the submission of Mr. Gogoi the learned Special P.P. that the JCB 3DX SUPER, bearing Registration No. AR01 M 7927 was seized by the staffs of Lekhapani Forest Range, from one Robin Rai (Kabir Rai), inside the Tirap Reserve Forest, while the same was being used for smuggling timbers, on 13.12.2022. Thereafter,

investigation was carried out and the same culminated in submission of Offence Report, being Offence Report No. LP/16 of 2022-23, against the accused Robin Rai to stand trial in the court under section 24/25/(a)/25(d)/25(e)/25(f)/33/34/35 read with section 40 and 41 of Assam Forest Regulation, upon which the learned court below had registered CR Case No. 26/2022. These are undisputed facts.

19. Further, it appears that thereafter, having been satisfied with the commission of forest offence, the Divisional Forest Officer-cum-Authorised Officer, Digboi had passed an order for initiation of confiscation proceeding in respect of seized vehicle and issued notice dated 20.01.2023, to the respondent. This fact is, however, disputed by the respondent side. Notwithstanding, the copy of Notice, dated 20.01.2023, allegedly issued by the Seizing Officer, under section 49 of the AFR (Amendment) Act, 1995 and the Rules, made under section 40 of the Transit Rules of AFR (VII), and produced before this court, indicates that the respondent is being asked to show cause as to why the seized JCB, bearing No.AR-01 M 7927 should not be confiscated to the state. This notice has in fact supported the contention being made by Mr. Gogoi, learned counsel for the petitioners. Thus, I find that confiscation proceeding has already been initiated by issuing notice to the respondent under the relevant provision of law.

20. In the given factual position, if the proposition of law, as discussed herein above, is applied, then it goes a long way to support the contention being made by Mr. D. Gogoi, the learned Special P.P. for the Forest Department. Since the authorized officer has already initiated the confiscation proceeding in respect of the seized JCB, the learned Magistrate, Margherita is not empowered to release the same in the custody of the petitioner during pendency of the said proceeding;

otherwise, it will frustrate the object of enacting the relevant provision. In that view of the matter, it cannot be said that the impugned order, dated 11.04.2023, passed by the learned Judicial Magistrate 1st Class, Margherita, in CR Case No. 26/2022, directing to release the seized JCB 3DX SUPER, bearing Registration No. AR01 M 7927, in the custody of the respondent, has failed to withstand the legal scrutiny. Accordingly, the same stands set aside and quashed.

21. Though, a contention is being made by the learned counsel for the respondent, that the learned Addl. Sessions Judge has rightly observed that nothing has been mentioned in the Offence Report about initiation of confiscation proceeding, and directed the respondent to approach the learned trial court, yet, what eschewed from the consideration of the learned Addl. Sessions Judge, is that the confiscation proceeding is altogether a different proceeding from that criminal prosecution and the same is exclusively in the domain of the Authorised Officer. Besides, no report was called for from the petitioner No.2 about the confiscation proceeding. Be that as it may, this court is not inclined to discuss about the merit of the order dated 24.03.2023, as the same has not been impugned in this petition. And in respect of the other contention of the learned counsel for the respondent that vehicle in question was taken on hire by Robin Rai for construction of village road and it was not in his knowledge about use of the same in committing the forest offence, yet such a plea has to be adjudged only after taking evidence either in the criminal proceeding before the learned trial court or before the Authorised Officer during confiscation proceeding.

22. In the result, I find sufficient merit in the present Criminal Petition and the same stands allowed. However, I find no merit in the

Interlocutory Application (Criminal) No. 1008 of 2023, and accordingly, the same stands dismissed.

23. The parties have to bear their own costs.

Sd/- Robin Phukan
JUDGE

Comparing Assistant