

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

CRIMINAL WRIT PETITION NO. 87 OF 2015

Musa S/o. Gaffar Shaikh,
Age : 40 years, Occ : Business,
R/o. Bazar Tal Parisar, Gangapur,
Tal. Gangapur, Dist. Aurangabad.

...Petitioner

Versus

1. The State of Maharashtra.
2. The Police Inspector, Gangapur Police Station,
Gangapur, Tal. Gangapur, Dist. Aurangabad.
3. The Forest Officer, Forest Department,
Vaijapur, Dist. Aurangabad.

...Respondents

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Mr Mobin H. Shaikh, Advocate for the petitioner
Mr U. S. Mote, APP for respondent/State
Mr A. N. Gaddime, Standing Counsel for respondent No. 3
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**CORAM : SMT. SADHANA S. JADHAV, J.
DATED : MARCH 25TH, 2015.**

ORAL JUDGMENT: -

. Heard. Rule. Rule made returnable forthwith with
the consent of the parties.

2. The petitioner herein is an accused in RCC No. 408
of 2014. The petitioner herein questions the correctness

and validity of the order passed by learned Additional Sessions Judge, Vaijapur, on 7th January, 2015, whereby the challenge to the order dated 3rd November, 2014, passed by learned Judicial Magistrate First Class, Gangapur, below Exh. 18 in RCC No. 408 of 2014, was dismissed.

3. The petitioner claims to be the owner of vehicle TATA Tempo bearing No. MH-20/A-6914. The said vehicle was seized on 17th July, 2014 in a forest offence. The petitioner herein had filed an application under Section 451 of Code of Criminal Procedure, seeking return of the said vehicle. The said application was rejected. The petitioner had then approached this Hon'ble Court by filing W.P. No. 1299 of 2014. This Court (Coram: T. V. Nalawade, J.) vide order dated 17th November, 2014, was pleased to allow the petition to be withdrawn with liberty to file revision in Sessions Court. Pursuant to the said order, the petitioner herein had filed revision petition before the Sessions Court at Vaijapur. The learned Sessions Judge, Vaijapur, vide order dated 7th January, 2015, has been pleased to dismiss the revision petition.

4. The learned Sessions Court has rightly observed that, there are sufficient reasons to believe that the vehicle has been used by the petitioner for transporting forest produce. The Officer, who seized the said vehicle, had reported to the Magistrate having jurisdiction. The report was sent under Section 61 of the Act. The Magistrate had rightly rejected the said application under Section 451 of Code of Criminal Procedure as there was a bar to consider the same as contemplated under Section 59 of the Indian Forest Act, 1927 (in short “the Forest Act”). In fact, Section 59 of the Forest Act provides for an appeal from orders under Section 55, 56 and 57 of the Forest Act. The learned Counsel for the petitioner submits that, according to him, the applicant has not received any notice under Section 55 and 56 of the Forest Act. The learned Counsel submits that, since there is no order passed under Section 55 and 56 of the Forest Act, he could not file an appeal as contemplated under Section 59 of the Forest Act.

5. The learned Sessions Court has observed that, the observations of the Hon'ble Apex Court in the case of **Sunderbhai Ambalal Desai Versus State of Gujarat**

reported in 2002 STPL(LE) 31719 SC, would not be applicable to the present case. The learned Sessions Court has rightly observed that, the Magistrate had no jurisdiction to entertain the said matter in respect of return of the property. The learned Sessions Court has assigned sound and justifiable reasons for rejecting the revision application in view of the bar of jurisdiction to the Magistrate for returning the property. In view of this, the writ petition being *sans* merit, stands rejected. Rule is discharged.

(SMT. SADHANA S. JADHAV, J.)

sgp