

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL WRIT PETITION NO. 1130 OF 2015

Brahma s/o Mallusing Pawar,
Age: 45 years, Occu.: Agri.,
R/o : Rampurwadi, Tq: Kannad,
Dist: Aurangabad.

... **PETITIONER**

VERSUS

01. The State of Maharashtra,
(Copy to be served on Govt. Pleader,
High Court of Judicature of Bombay,
Bench at Aurangabad.)

02. The Deputy Conservator of Forests (Wildlife),
Plot No.102, Tilak Nagar, Wasantik Niwas,
Aurangabad.

03. the Range Forest Officer, (Wildlife),
Nagad Tq: Kannad, Dist: Aurangabad.

... **RESPONDENTS**

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Mr. V. C. Patil, Advocate for the Petitioner.

Mr. A. S. Shinde, APP for Respondent No.1.

Mr. U. K. Patil, Advocate for Respondent Nos.2 and 3.

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CORAM : **A. B. CHAUDHARI &
INDIRA K. JAIN, JJ.**

DATE : 15th October, 2015.

ORAL JUDGMENT: (Per A. B. Chaudhari, J.)

. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally.

2 Mr. V. C. Patil, learned counsel for the Petitioner has tendered an affidavit of the Petitioner giving therein certain undertakings. We take the said affidavit on record, which shall be the part and parcel of the record. He has also filed a receipt of payment of amount of Rs.2,000/- to the Respondents. The same is for the compounding charges. The learned counsel for the Department submits that the tractor which was found ploughing some area of the forest about 4 Gunthas stands forfeited to the Government and cannot be released. According to him, because of the ploughing of the area in the forest, there is disturbance to the wild life. We find from the affidavit filed by the Petitioner that Petitioner's land is abutting the boundaries of forest and there is likelihood of mistake of ploughing 4 Gunthas of land near the boundaries of forest. At any rate, affidavit in the form of undertaking that the Petitioner would take full care hereinafter not to make any such mistake. The learned counsel for Respondent submits that the provisions of the Act do no

permit release of the vehicle namely tractor in this case. The learned counsel for the Petitioner has relied on the judgment of the Apex Court in the case of **Princl. Chief Conservator of Forests and anr Vs. J. K. Johnson and ors**, reported in, **AIR 2012 Supreme Court 61**. We quote paragraph No.37 of the said judgment, which reads thus:

“37. Section 54(2) of the 1972 Act, prior to the amendment by Act 16 of 2003, authorized the empowered officer, on payment of value of the property liable to be forfeited, to release the seized property, other than the government property. The provision underwent changes w.e.f. April, 2003 and the provision for release of the seized property has been deleted. Does the provision in new Section 54(2) authorize the empowered officer to order forfeiture of the seized property to the State Government? We think not. In the first place, by deletion of such expression, it cannot be said that the Parliament intended to confer power on the specified officer to order forfeiture of the seized property which is nothing but one form of penalty in the context of the 1972 Act. Had the Parliament intended to do so, it would have made an express provision in that regard. Such conferment of power of penalty upon the specified officer cannot be read by implication in Section 54(2). Secondly, any power of forfeiture conferred upon

Executive authority merely on suspicion or accusation may amount to depriving a person of his property without authority of law. Such power cannot be readily read by relying on the Statement of Objects and Reasons (Act 16 of 2003) without any express provision in the statute.”

3 In our opinion, the Petitioner cannot be punished over and again as he has given undertaking and also paid amount of Rs.2,000/- to the Respondent. In that view of the matter, we make the following order:

ORDER

- I. Rule made absolute in terms of prayer clause (B).
- II. The vehicle shall be released to the Applicant within 48 hours.

[INDIRA K. JAIN, J.]

[A. B. CHAUDHARI, J.]

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