

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

Criminal Writ Petition No. 1415 Of 2014.

DR. ZAKIR NASEER SHAIKH

Versus.

THE STATE Of MAHARASHTRA AND ANOTHER.

Appearance =>

Mr. Rahul Karpe, Advocate for the Petitioner.

Mr. V.D. Godbharle, Additional Public Prosecutor for the State of Maharashtra.

Mr. Umakant Patil, Advocate for Respondent No.2.

CORAM : V.M. DESHPANDE, J.

DATE : 11th FEBRUARY, 2015.

Per Court :-

Rule. Rule made returnable forthwith. Heard finally with consent of both the sides.

[2] Heard Mr. Rahul Karpe, learned counsel for the Petitioner, Mr. V.D. Godbharle, learned Additional Public Prosecutor for the State and Mr. Umakant Patil, standing counsel for Forest Department.

[3] Present petition arises out of the order dated 14th October, 2014 passed by the learned Judicial Magistrate, F.C., Rahuri, Dist. Ahmednagar whereby, the learned Magistrate rejected the application bearing Criminal M.A.No.139 Of 2014, which was filed on behalf of

the petitioner under Section 457 of the Code of Criminal Procedure for returning of the Articles.

Crime No.21/2014 was registered against the present petitioner, since the petitioner has made encroachment on the forest land. The encroachment was removed. While removing the encroachment, the following articles were taken into custody by the Forest Department. Those are as under :-

<u>Description of Article</u>	<u>Number</u>
(1)Single Cot	: 4.
(2)Table	: 1.
(3)Bench	: 2.
(4)Folding cot	: 2.
(5)Fiber Chair	: 1.
(6)Rolling Chair	: 1.
(7)Wooden Table	: 1.
(8)Small bags of medicine	: 2.

[4] The petitioner from whose possession aforesaid articles were seized moved an application under Section 457 of the Code of Criminal Procedure. The said application was rejected by the learned Magistrate on the ground that, the Magistrate has no jurisdiction, in as much as, according to him, there is specific bar in view of provisions of Section 61(A) of the Indian Forest Act, 1927.

[5] The reasoning recorded by the learned Court below are totally perverse, in as much as, the Articles which are claimed to be returned in favour of the petitioner are not forest produce. They are

Table, Bench, Folding cot, Fiber Chair, Rolling Chair, some medicines etc.

[6] In that view of the matter, order passed by the learned Judicial Magistrate, First Class, Rahuri, Dist. Ahmednagar cannot stand to the scrutiny of the law. Hence, it is liable to be set aside.

[7] The matter could have been remanded back however, remanding the matter will be futile exercise; since it is consumption of judicial time. Hence, application filed under Section 457 of the Code of Criminal Procedure is hereby allowed. The learned judicial Magistrate, F.C., Rahuri, Dist. Ahmednagar is hereby directed to pass appropriate order for returning the said property in favour of the petitioner, on his executing bond to the tune of Rs.1 Lakh. With this, present Writ Petition is disposed of.

(V.M. DESHPANDE, J.)