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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WA.No. 1809 of 2015 () IN WP(C).18768/2015

AGAINST THE JUDGMENT IN WP(C) 18768/2015 DATED 21-07-2015

APPELLANT(S)/PETITIONER IN WPC :-

JUBY JOHN, AGED 36 YEARS
S/O. BABY JOHN, RESIDING AT KUMMINIYIL HOUSE, 9/41
UDUMBANNOOR, MOOLAKKAD P.O, UPPUKUNNU
THODUPUZHA.

BY ADV. SRI.P.G.JAYASHANKAR

RESPONDENT(S)/RESPONDENTS IN WPC :-

1. STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY
GOVERNMENT SECRETARIAT, TRIVANDRUM - 695 001.
2. DIVISIONAL FOREST OFFICER,
DIVISIONAL FOREST OFFICE
KOTHAMANGALAM FOREST DIVISION
KOTHAMANGALAM P.O - 686 691.
3. FOREST RANGE OFFICER,
THODUPUZHA RANGE, THODUPUZHA - 685 587.

BY SPL.GOVERNMENT PLEADER SRI.M.P.MADHAVANKUTTY

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

WA.NO.1809 OF 2015

APPENDIX

APPELLANT'S EXHIBITS :-

ANNEXURE A :- TRUE TRANSLATION OF EXHIBIT P1.

ANNEXURE B :- TRUE TRANSLATION OF EXHIBIT P2.

RESPONDENT'S EXHIBITS :- NIL.

//TRUE COPY//

P.A. TO JUDGE

'CR'

**ASHOK BHUSHAN, C.J &
A.M. SHAFFIQUE, J.**

W.A. No.1809 of 2015

Dated this the 13th day of August 2015

J U D G M E N T

Ashok Bhushan, CJ.

Heard the learned counsel for the appellant and the learned Special Government Pleader.

2. This writ appeal has been filed challenging the judgment dated 21.7.2015 in W.P.(C) No.18768 of 2015. The writ petition was filed by the appellant praying for the following reliefs :-

- “i. Call for the records leading to the issuance of Ext.P2, and quash the same by way of issuance of a writ of certiorari or any other appropriate writ, direction or order;
- ii. Direct the respondent not to proceed with Ext.P2, by way of issuance of a writ of mandamus or any other appropriate writ direction or order;
- iii. To issue a writ of mandamus or any other appropriate writ or order directing the respondents to release the vehicles to the petitioner.”

3. The brief facts necessary for deciding the writ appeal are as follows :-

The petitioner's two vehicles bearing registration Nos.KL-38-C-3739 and KL-09-T-1775 were seized by the forest officials under Sec.52 of the Kerala Forest Act, 1961 (for short 'the

Act'). It is stated that the petitioner was not served with any notice for confiscation or any order of confiscation. Ext.P2 notice dated 1.6.2015 was issued by the Divisional Forest Officer asking the petitioner to deposit an amount of ₹6,20,000/- as value of both the vehicles, failing which, the vehicles shall be put to public auction. The learned Single Judge dismissed the writ petition noticing the order of the Division Bench of this Court dated 2.12.2008 in **National Insurance Co. Ltd. v. Anil Kumar and others** [2009 (1) KHC 30]. The learned Single Judge has upheld Ext.P2 order. It is useful to refer to paragraphs 5 and 6 of the judgment, in which, the learned Single Judge has given reasons for dismissing the writ petition, which are to the following effect :-

“5. Further, it is to be noticed that a Division Bench of this Court in M.A.C.A. No.1458/2006 dated 2.12.2008 had specifically taken note of the manner in which the automobiles seized in pursuance of detection of offences are kept idle for long period, which results in virtually rendering them scrap after long period of time. In such circumstance, confiscation also would not be of any benefit to the Government since the vehicles would have been rendered useless by the time proceedings are completed. The alleged offender would also be prejudiced insofar as the owner not being able to enjoy the fruits of the order of acquittal, if so eventually found.

6. In such circumstance, this Court is of the opinion that there is absolutely no infirmity in Ext.P2 order. The authorised officer has only directed the sale of the vehicle with 7 days, in the event of the petitioner not providing sufficient security, in lieu of the value of the vehicle. The sale, if conducted, the proceeds would not be forfeited to the Government and it would definitely depend on the confiscation proceedings. If the proceedings are finalised clearing the alleged offender of the blame, then the amount would have to be re-funded. Hence, the prejudice to the registered owner of the vehicle is avoided as also interest of the Government safeguarded."

4. Learned counsel for the appellant, challenging the judgment, contended that Chapter VIII of the Act provides for 'offences, penalties and procedure'. Sec.52 empowers 'seizure of property including confiscation'. Sec.61A provides for 'confiscation by Forest Officers in certain cases'. It is useful to quote Secs.52 and 61A, which are to the following effect :-

"52. Seizure of property liable to confiscation.- (1) When there is reason to believe that a forest offence has been committed in respect of any timber or other forest produce, such timber or produce, together with all tools, ropes, chains, boats, vehicles and cattle used in committing any such offence may be seized by any Forest Officer or Police Officer.

Explanation.- The terms 'boats' and 'vehicles' in this section, [Section 53, Section 55, Section 61A and

Section 61B] shall include all the articles and machinery kept in it whether fixed to the same or not.

(2) Every officer seizing any property under sub-section (1) shall place on such property or the receptacle, if any, in which, it is contained a mark indicating that the same has been so seized and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made :

Provided that, when the timber or forest produce with respect to which such offence is believed to have been committed is the property of the Government and the offender is unknown, it shall be sufficient if the Forest Officer makes, as soon as may be, a report of the circumstances to his official superior.

61A. Confiscation by Forest Officers in certain cases.- Notwithstanding anything contained in the foregoing provisions of this chapter, where a forest offence is believed to have been committed in respect of timber, charcoal, firewood or ivory which is the property of the Government, the officer seizing the property under sub-section (1) of Section 52 shall, without any unreasonable delay, produce it, together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence, before an officer authorised by the Government in this behalf by notification in the Gazette, not being below the rank of an Assistant Conservator of Forests (hereinafter referred to as the authorised officer).

(2) Where an authorised officer seizes under sub-section (1) of Section 52 any timber, charcoal,

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firewood or ivory which is the property of the Government, or where any such property is produced before an authorised officer under sub-section (1) of this section and he is satisfied that a forest offence has been committed in respect of such property, such authorised officer may, whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of the property so seized together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence."

Sec.61F provides for 'property confiscated when to vest in Government', which is to the following effect :-

"61F. Property confiscated when to vest in Government.- When an order for confiscation of any property has been passed under Section 61A or Section 61C and such order has become final in respect of the whole or any portion of such property, such property or portion thereof, as the case may be, shall vest in the Government free from all encumbrances."

The submission is that without confiscation of the vehicle, the forest authorities have no jurisdiction to put the vehicle for sale.

5. Sri.M.P.Madhavankutty, the learned Special Government Pleader appearing for the respondents submits that the vehicles, if not sold, become scrap by passage of time and noticing the aforesaid order of the Division Bench in **National Insurance Co. Ltd.'s case (supra)**, it is submitted that the

vehicles can be sold in any event, if the value of the vehicle has not been deposited by the owner. He has referred to paragraphs 3 and 4 of the order, which are to the following effect :-

“3. Automobiles are essentially made of steel which get rusted and destroyed when exposed to sun and rain for long period. Vehicles are mainly seized by various Government agencies like State Excise, Forest Department, Motor Vehicles Department etc. for offences arising under various statutes and for non payment of Motor Vehicles Tax. Confiscation proceedings are protracted in nature and it will take several years for final disposal of the matter at various stages before the statutory authorities and at last in the Court. In the meantime, seized vehicles will become complete scrap in the custody of the Department. In many cases, the vehicles seized are allowed to be used by the offender during pendency of confiscation proceedings. Ultimately he surrenders the vehicle in scrap condition and gets release of the security furnished during the pendency of the proceedings. In other words, seizure of vehicle invariably does not achieve any useful purpose. The main object of confiscation of offending vehicle is to prevent the offender from repeating the offence. This object cannot be achieved so long as the offender has the capacity to acquire another vehicle. Since confiscation proceedings take time, the vehicle liable to be confiscated should be released only on deposit of its value so that its value could be recovered treating confiscation as notional or otherwise the offender will surrender the vehicle in

scrap condition and take back the security furnished by him. This could be achieved by making the offender deposit the cost as on the date of seizure for release of vehicle. If seized vehicles are not released, such vehicles should not be allowed to be left to be destroyed in the campus of Government offices. A reasonable time, say two weeks, should be granted to the registered owner to get the vehicle released on deposit of its value, failing which such vehicles should be sold in public auction and its value only should be the subject matter of litigation. The position should not be different for vehicles attached for recovery of arrears of tax or for recovery of loan due to institutions etc. It is also worthwhile to mention about the abandoned and unused vehicles lying undisposed in various Government offices. Delay in the sale of such vehicles will only lead to loss to the State. We, therefore, feel that all such unused and abandoned vehicles also should be sold without delay.

4. We direct the Chief Secretary to Government to convene a meeting of the heads of the departments, namely, Revenue, Excise, Forest Police, Motor Vehicles etc. and take steps for making provision for disposal of all vehicles as above without allowing such vehicles to be left in Government custody for more than a month at the maximum. The Chief Secretary will file a report to this Court about the steps taken and the implementation of the same. Pending amendment of the statute and rules, the Chief Secretary will give instruction to the heads of the department to finalise all departmental cases and dispose of all seized/recovered vehicles lying in the custody of the Government within a

period of three months from today. We make it clear that it shall be the duty of the Chief Secretary to inform the heads of the departments of this direction who will in turn communicate the direction to the lower authorities for compliance, failing which contempt action will be initiated against the officer concerned."

A perusal of the above order would indicate that the Division Bench was not interpreting any provisions of the Act nor has laid down any such proposition for confiscation. In paragraph 4 of the above said order, there was a direction to the Chief Secretary to Government to convene a meeting of the Heads of the Departments and issue some instructions regarding disposal of all seized vehicles lying in the custody of the Government within a period of three months from the date of the above order. The above said order does not lay down any ratio as contended by the learned counsel for the appellant.

6. In paragraph 7 of the judgment of the Supreme Court in **State of Karnataka v. K. Krishnan** [(2000) 7 SCC 80] emphasis also was given to the effect that the release of the vehicle should be made only after safeguarding the interest of the State. It was observed by the Apex Court that the release of vehicle on easy conditions would tempt the forest offenders to repeat commission of such offences. It was stated that the vehicle should be released

atleast after taking bank guarantee to the value of the seized vehicle. It is useful to quote paragraph 7 of the above said judgment, which is to the following effect :-

“Learned counsel appearing for the appellant State has submitted and we agree that the provisions of the Act are required to be strictly complied with and followed for the purposes of achieving the object for which the Act was enacted. Liberal approach in the matter with respect to the property seized, which is liable to confiscation, is uncalled for as the same is likely to frustrate the provisions of the Act. Before passing an order for releasing the forest produce or the property used in the commission of the forest offence, the authorized officer or the appellate authority has to specify the reasons which justify such release, apparently, prima facie excluding the possibility of such forest produce or the property being confiscated ultimately. Generally, therefore, any forest produce and the tools, boats, vehicles, cattle, etc., used in the commission of the forest offence, which are liable to forfeiture, should not be released. This, however, does not debar the officers and the authorities under the Act including the appellate authority from passing appropriate orders under the circumstances of each case but only after assigning valid reasons. The liberal approach in the matter would perpetuate the commission of more offences with respect to the forest and its produce which, if not protected, is surely to affect mother earth and the atmosphere surrounding it. 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.”

The above judgment of the Apex Court does not support the submission that the vehicle can be sold by public auction without confiscation. On a perusal of the relevant provisions of the Act, we are of the view that the Statute indicates that before confiscation, the vehicle cannot be sold. The vehicle vest in the State Government only after its confiscation as per Sec.61F of the Act. Thus, that part of the notice, Ext.P2, which directs, in any event

the petitioner does not deposit the amount, the vehicle shall be put on public auction deserves to be set aside and is hereby set aside. We further observe that it shall be open for the appellant to approach the Divisional Forest Officer for releasing the vehicle on such terms and conditions as may be imposed by the Divisional Forest Officer.

In the result, this appeal is allowed. The judgment of the learned Single Judge is set aside.

**Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE**

**Sd/-
A.M. SHAFFIQUE
JUDGE**