

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Cr1.R.C.No.1301 of 2014

Oli Mohammed

.. Petitioner

Vs

State, rep., by
The Inspector of Police,
G-3 Kilpauk Police Station,
Chennai 600 010.

.. Respondent

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code, to set aside the order made in G.F.I.R.No.3253 of 2014, in G-3 Cr.No.1368 of 2014, dated 24.11.2014, on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai-8.

For Petitioner : Mr.M.Anandaraj

For Respondent : Mr.P.Govindarajan

Additional Public Prosecutor

O R D E R

Being aggrieved by the order made in G.F.I.R.No.3253 of 2014, in G-3 Cr.No.1368 of 2014, dated 24.11.2014, on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai-8, the present criminal revision case is filed.

2. Case of the petitioner is that he is the owner of the vehicle, Auto, bearing Registration No.TN 01 AW 7079, purchased under an Hire Purchase Agreement, with Syndicate Bank, Aminjikari, Chennai. Original documents are in possession of the Bank. Alleging that about 190 Brandy Bottles were found in the vehicle on 01.10.2014, the vehicle has been seized. The petitioner has filed G.F.I.R.No.3253 of 2014 in G.3.Cr.No.1368 of 2014, under Sections 451 r/w. 457 Cr.P.C., for interim custody of the vehicle. Reliance has been placed on a decision made in G.Chandramohan v. State by Inspector of Police, Prohibition Enforcement Wing, Kumbakonam reported in 2005 (1) LW (Cr1.) 93. Before the lower Court, learned Public Prosecutor has opposed the prayer, on the grounds that

already a notice, under Section 14(4) of the Tamil Nadu Prohibition Act (in short "TNP Act"), has been issued for confiscation of the vehicle. Placing reliance on a decision made in David v. Sakthivel, Inspector of Police reported in 2010 (1) LW (CrL.) 129 = 2010 (1) MLJ (CrL.) 929, vide order, dated 24.11.2014, the learned XIV Metropolitan Magistrate, Chennai, has dismissed the petition.

3. Assailing the correctness of the said order, Mr.M.Anandaraj, learned counsel for the petitioner submitted that notwithstanding the proceedings initiated for confiscation under Section 14(4) of the TNP Act, power of the Court under Sections 451 and 457 Cr.P.C., has not taken away for directing release of the vehicle.

4. By inviting the attention of this Court to Section 14(4) of the Tamil Nadu Prohibition Act, 1937 and placing reliance on the decisions, Mr.P.Govindarajan, learned Additional Public Prosecutor, objected to the relief sought for. He submitted that when confiscation proceedings have already been initiated, the petitioner is not entitled to seek for interim custody, under the Code.

Heard the learned counsel for the parties and perused the materials available on record.

5. Before advertng to the rival contentions, this Court deems it fit to consider the decisions, relied on by both parties.

6. In State of Madhya Pradesh v. Rameshwar Rathod reported in AIR 1990 SC 1849 = 1990 (4) SCC 21, the respondent therein was the owner of a truck, which was seized by the Police, on 10th December, 1974, for the alleged contravention of the provisions of the Essential Commodities Act, 1955. The respondent therein made applications, for return of the vehicle, on furnishing security. When the same was rejected by the Courts below, he made applications under Articles 226 and 227 of the Constitution of India, to the High Court to quash the order of the Courts below and the order of the District Collector from proceeding further, in pursuance of the notice, issued by him, under Section 68 of the Act, for confiscation of the vehicle or in the alternative, to direct the District Judicial Magistrate to dispose of the applications in accordance with law. Section 6A of the Essential Commodities Act, was amended in Act 30 of 1974. Questions addressed by the High Court, were (1) whether Section 6A of the Essential Commodities Act, as amended by the Amendment Act No. 30 of 1974, was prospective or retrospective? (2) whether on the facts and circumstances, the criminal Court had jurisdiction to entertain an application under section 523 read with section 516A of the Criminal Procedure Code for the return of the vehicle seized by the Police, pending final decision of the criminal case? On the aspect, as to whether, the Court has the power to order for return of the vehicle, in view of the amended provisions of Sections 6A and 7 of the Essential Commodities Act, the Supreme Court, held as follows:

"On a consideration of the relevant authorities, the High Court came to the conclusion that the criminal Court had jurisdiction to deal with the matter. Mr. Deshpande sought to argue that in view of the enactment of the provisions of Section 6A as well as section 7 of the Act, it cannot be held that the criminal Court continued to retain jurisdiction. He submitted that in view of the enactment of these provisions, it would be useless to hold that the criminal Court continued to retain jurisdiction, otherwise the very purpose of enacting section 6A read with section 7 would be defeated. We are, however, unable to accept this contention because normally under the Criminal Procedure Code, the Criminal Courts of the country have the jurisdiction and the ouster of the ordinary criminal Court in respect of a crime can only be inferred if that is the irresistible conclusion flowing from necessary implication of the new Act., In view of the language used and in the context in which this language has been used, we are of the opinion that the High Court was right in coming to the conclusion that the Criminal Court retained jurisdiction and was not completely ousted of the jurisdiction. In that view of the matter, the High Court was therefore right in passing the order under consideration and in the facts and circumstances of the case to return the vehicle to the respondent on furnishing the security In the premise the appeal must fail and is dismissed. There win, however, be no order as to costs."

7. In *Sunderbhai Ambalal Desai v. State of Gujarat* reported in AIR 2003 SC 638 = 2002 (10) SCC 283, at Paragraphs 17 to 19, held as follows:

"17. In our view, whatever be the situation, it is of no use to keep such-seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles,

appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

19. For articles such as seized liquor also, prompt action should be taken in disposing it of after preparing necessary panchnama. If sample is required to be taken, sample may kept properly after sending it to the chemical analyser, if required. But in no case, large quantity of liquor should be stored at the police station. No purpose is served by such storing."

8. As regards power of the Court to order for release of the vehicle, pending proposal for confiscation, this Court in *G.Chandramohan v. State by Inspector of Police, Prohibition Enforcement Wing, Kumbakonam* reported in 2005 (1) LW (CrL.) 93, at Paragraph 3, held as follows:

"Even if the vehicle, interim custody will not be a bar. Even if confiscation proceedings are initiated, appropriate orders could be passed, directing the petitioner to produce the vehicle."

9. In *Multani Hanifbhai Kalubhai v. State of Gujarat* reported in air 2013 SC 644 = 2013 (3) SCC 240, the Supreme Court set aside the order of the High Court, refusing to return the vehicle, involved in transportation of the buffalos and ordered the same to be released under Section 451 of the Criminal Procedure Code.

10. In *David v. Sakthivel*, Inspector of Police reported in 2010 (1) LW (CrL.) 129 = 2010 (1) MLJ (CrL.) 929, proceedings under Section 14(4) of the Act, were initiated on 23.07.2009. Notice was ordered to the Investigating Officer, in the petition filed under Section 457 Cr.P.C. On 24.07.2009, the Magistrate was informed that confiscation proceedings have already been initiated and therefore, the vehicle could not be produced before the Court. Even then, the Magistrate directed the vehicle to be produced. As the same was not done, Contempt Petition was filed. Considering a catena of decisions and under Sections 451 and 457 Cr.P.C., at Paragraph 22 to 24, a Hon'ble Division Bench of this Court, held as follows:

"22. As rightly submitted by the learned Advocate General, Section 14(4) of the Act does not take away the jurisdiction of the Court and exercise of power under Sections 451 or 457 Cr.P.C. But discretion of Court has to be exercised judiciously and exercised with due care and caution. Where seizure of vehicle involved in an offence of prohibition reported to the Magistrate, exercise of discretion and ordering of interim custody under Sections 451 or 457 Cr.P.C. is not automatic. Notwithstanding the involvement of the vehicle in the commission of prohibition offence, if there is automatic exercise power by the Court, Section 14(4) of the Act would become a dead letter. In our view, order of confiscation of a vehicle involved in the commission of offence under Section 14(4) of TNP Act is not only punitive but also deterrent. While

so, when the vehicle is involved in the commission of a prohibition offence, exercise of discretion by the Court with care and caution would serve various purposes. While before passing any order in respect of the vehicle involved in the commission of prohibition offence, Court should keep in view the spirit of Section 14(4) of the Act and the benevolent objects of Tamil Nadu Prohibition Act.

23. Before proceeding to exercise the jurisdiction under Sections 451 or 457 Cr.P.C. in respect of the vehicle involved in the commission of prohibition offence, Court has to ascertain from the Prosecutor whether any confiscation proceedings has been initiated by the District Collector/Prohibition Officer or authorised Officer as contemplated under Section 14(4) of TNP Act. Only after affording sufficient opportunity, Court could proceed to exercise its jurisdiction and keeping in view the spirit of Section 14(4) of TNP Act, Court to pass appropriate speaking order.

24. It is pertinent to note that as against the order passed under Section 14(4) of TNP Act, appeal lies before the Court of Sessions having jurisdiction. For instance let us assume that order of confiscation has been passed by the District Collector or other Prohibition Officer incharge of the District or any other authorised officer. Under Section 14(5) of TNP Act, any person aggrieved by the order of confiscation under Section 14(4) of the Act within one month may appeal to the Court of Sessions having jurisdiction. In such case, where an order of confiscation has been passed, if Magistrate has to pass an order for interim custody, evidently Magistrate would be transgressing upon the powers of the Executive and Sessions Judge. To avoid such situation, in dealing with the vehicles involved in a prohibition offence, exercise of powers of the Court under Sections 451 or 457 Cr.P.C. should always be with due care and caution."

11. In the above reported case, pursuant to the confiscation order, the vehicle has been sold in public auction. After considering the decisions made in 1993 MLJ (Criminal) 543 [Shajahan and another v. State, through Dy. Superintendent of Police, PEW, Nagapattinam]; 1997 MLJ (Criminal) 705 [G.Natarajan v. State, represented by Superintendent of Police, PEW, Chengalpattu MGR Zone, Madras] and 2005 (1) LW (Cri) 93 [G.Chandramohan v. State by Inspector of Police, PEW, Kumbakonam Taluk], the Hon'ble Division Bench of this Court, at Paragraph 28, has issued the following directions,

"28. We deem it fit to issue the following directions:

"Whenever seizure of properties involved in the commission of offence under Prohibition Act, exercise of power is not automatic. Court should afford sufficient opportunity to the prosecution to inform the Court about

the steps taken by the Investigating Agency. Keeping in view the spirit of Section 14(4) of TNP Act, Court on its own should ascertain whether any confiscation proceedings has been initiated and the stage of confiscation proceedings.

"After affording sufficient opportunity to the prosecution and only after ascertaining about the steps taken for initiation of confiscation proceedings, Court could exercise its discretion under Sections 451 or 457 Cr.P.C. Court could judiciously exercise its discretion with due care and caution keeping in view the spirit of Section 14(4) of TNP Act. Exercise of discretion under Sections 451 and 457 Cr.P.C. is only after affording sufficient opportunity to the prosecution to get instructions. Subordinate Courts are directed to insist the Assistant Public Prosecutor/Public Prosecutor to file written Memo as to the steps taken under Section 14(4) of TNP Act or otherwise could only on receipt of written memo, Court could proceed to exercise its power under Sections 451 or 457 Cr.P.C.

"In case if the Court orders interim custody of vehicle, the order should be speaking order recording reasons to order interim custody of the vehicle. In case if the Court orders interim custody of the vehicle, Court should obtain necessary undertaking from the owner of the vehicle to produce the vehicle as and when directed and send copy of undertaking to the District Collector/Prohibition Officer incharge of the District or other authorised Officer in that behalf by the Government along with copy of the order passed by the Court.

We direct the Registry to place this order before the Hon'ble The Chief Justice for getting approval for being circulated to all the Subordinate Courts in the State of Tamil Nadu."

12. In Sakthi Devi v. State reported in 2011 (4) MLJ (Cr1.) 634, the petitioner therein was the owner of the vehicle. She was not implicated as an accused. However, husband of the revision petitioner therein was implicated as an accused, from whom, the vehicle was seized, for the commission of the offences under the Tamil Nadu Prohibition Act. For confiscation of the vehicle, proceedings were initiated. Learned trial Judge, rejected the petition for return of the vehicle, filed by the owner. Placing reliance on the decisions made in Basavva Kom Dyamangouda Patil v. State of Mysore [(1977) 4 SCC 358: 1977 SCC (Cri) 598], Sunderbhai Ambalal Desai v. State of Gujarat [AIR 2003 SC 638], G.Chandramohan v. State by Inspector of Police, Prohibition Enforcement Wing, Kumbakonam [2005 (1) LW (Cr1.) 93] and David v. Sakthivel, Inspector of Police [2010 (1) LW (Cr1.) 129], a learned Single Judge of this Court, set aside the order, rejecting the petition, holding that pendency of the confiscation case is not a bar for granting interim relief of the petitioner, under Sections 451 Cr.P.C. On the facts

and circumstances of the above case, the learned Judge observed that though the vehicle was seized, as early as on 31.10.2010 and that confiscation proceedings were stated to have been pending, there was no progress and in the abovesaid circumstances, when the vehicle was exposed to sun and rain, resulting in deterioration of the condition day-by-day, ordered return of the vehicle.

13. In *State of Bihar v. Arvind Kumar* reported in 2012 (12) SCC 395, food grains of the Public Distribution System were seized from a storage place. FIR was lodged under Sections 7 and 10 of the Essential Commodities Act, in addition to Sections 421/424 of the Indian Penal Code. Criminal Writ Petition was filed to quash the confiscation proceedings and/or release the confiscated goods. By observing that keeping the seized goods for a long time, may not be justified, the High Court allowed the writ petition, subject to procedural compliance. When the respondent before the Supreme Court, approached the Chief Judicial Magistrate, Patna, for releasing the goods, in pursuance of the order passed by the High Court on 15.3.2011, by moving an application, the learned Chief Judicial Magistrate dismissed the application, on the ground that no document was filed to prove the ownership of the seized material. The respondent again approached the High Court, which directed release. State of Bihar filed an appeal before the Supreme Court. The respondent therein contended that Sections 6-A and 6-E would apply only, where the goods are seized in pursuance of an order issued under Section 3 of the Essential Commodities Act. It was further submitted that no order was passed under Section 3 of the Act. On the above facts and circumstances, at Paragraph 6, the Supreme Court has explained the purpose of the enactment, as follows:

"6. The EC Act was enacted to safeguard the public interest considering it necessary in the interests of the general public to control the production, supply and distribution of, trade and commerce in, certain commodities through the legislation. It was in the light of the aforesaid public policy that Section 3 of the EC Act empowered the Government to issue notifications and once a notification is issued, it enables the competent authority to confiscate the goods under Section 6- A and prosecution leading to punishment provided under Section 7 of the EC Act. The Collector has been empowered under Section 6-A, if it is found to be expedient to sell the seized commodity which is subject to natural decay, at a controlled price or by public auction or dispose of through Public Distribution System to avoid artificial shortages, maintain the price line and secure equitable distribution thereof through fair price shops as it is in the interest of the general public."

14. On the facts and circumstances of *Arvind Kumar's* case (cited supra), at Paragraph 7, the Apex Court, observed as follows:

"7. Admittedly, the High Court has not even taken a

prima facie view that the State Government had not issued twice any order/notification under Section 3 of EC Act though the FIR made reference to clause 6(a) of the Public Distribution System (Control) Order, 2001 issued under Section 3 of the EC Act. Respondent also referred to the said Control Order 2001 in Para 3 of the Crl.W.J.C. No. 215 of 2011 filed by them. More so, the question of ownership of the goods seized is a question of fact which ought not to have been gone into by the High Court in its revisional or extra-ordinary jurisdiction. Further, there is nothing on record on the basis of which the issue of ownership has been decided by the High Court. There was no cogent material on record before the High Court on the basis of which direction to release the goods so seized could be issued."

15. In the above reported judgment, ultimately, while setting aside the order of the High Court, directing release of the goods, remitted the matter back to the High Court, for fresh consideration.

16. In a recent decision in P.Pannerselvam v. State reported in 2013 (2) MLJ (Crl.) 583, confiscation proceedings already initiated, were pending. Before the Court below, application for return of the vehicle, involved in the offences, under the Essential Commodities Act, was made. The Court below dismissed the petition, refusing to release the vehicle. Revision case was filed, challenging the said order. After considering the decision of the Supreme Court in Shambhu Dayal Agarwala v. State of West Bengal reported in 1990 (3) SCC 549, Oma Ram v. State of Rajasthan reported in 2008 (5) SCC 502 and State of Bihar v. Arvind Kumar reported in 2012 (12) SCC 395, this Court, at Paragraphs 10 and 11, held as follows:

"10. Following the decision of the Hon'ble Supreme Court dated 23rd July 2012 passed in Criminal Appeal Nos.1075-76 of 2012 (State of Bihar and another versus Arvind Kumar and another), and also following the decision of the Hon'ble Supreme Court reported in (2008) 5 SCC 502 (Oma Ram v. State of Rajasthan and others), as in this case the confiscation proceedings has already been initiated and the vehicle and the material are now placed in the custody of the Deputy Commissioner (North), Food Supplies Chepauk, Chennai, the petitioner is always at liberty to move the appropriate Authority under Section 6 (C) of the Essential Commodities Act.

11. Further, as per the decision of the Hon'ble Supreme Court reported in (1990) 3 Supreme Court Cases 549 (Shambhu Dayal Agarwala Versus State of West Bengal and Another), the use of the word release is used only to define the seized vehicle to be sold for public consumption and not for return to the owner.

17. Paragraphs 17 and 18 in Oma Ram v. State of Rajasthan reported in 2008 (5) SCC 502, considered by this Court in

P.Pannerselvam's case, are reproduced hereunder:

"17. Certain provisions of the Essential Commodities Act, 1955 have relevance. Section 6-A deals with confiscation of food grains, edible oil seeds and edible oils. Section 6-B deals with issue of show-cause notice before confiscation of food grains, etc. Section 6-E deals with issue of show-cause notice before confiscation of food grains, etc. Section 6-E deals with bar of jurisdiction in certain cases. Section 6-E has been substituted to provide that except the Collector or the State Government, all other authorities, judicial or otherwise, would be debarred from making any order with regard to the possession, delivery, disposal or distribution of any essential commodity, seized in pursuance of an order made under Section 3. Thus a Magistrate has no jurisdiction to grant relief against seizure under Section 457 CrPC.

18. Section 6-A provides for confiscation of essential commodities seized in pursuance of an order made under Section 3. Collector of the district of the Presidency Town, in which such commodity is seized, may order confiscation, if he is satisfied that there has been a contravention of such an order. But, no order of confiscation shall be made under this section, if the seized essential commodity has been produced by the producer, without prejudice to any action, which may be taken under any other provision of this Act. Section 6-B of the Act provides the procedure to be adopted by the Collector before passing an order for confiscation, which provides that after issuing of notice an opportunity has to be given to the aggrieved party for contesting the same. The Collector, after giving him a hearing, has to decide the objection and pass an order either confiscating the property or refusing to confiscate the property."

18. At this juncture, it could be deduced from the reading of the judgment in Oma Ram's case (cited supra), the Hon'ble Supreme Court has also considered the provisions in the Tamil Nadu Excise Act and other similar provisions in other States and held as follows:

"There are similar provisions in the Excise Acts of other States, for example the Tamil Nadu Excise Act, 1971, Karnataka Excise Act, 1965, Uttar Pradesh Excise Act, 1910 and the Andhra Pradesh Excise Act, 1968. The provisions are in Sections 4 and 14A of the Tamil Nadu Act, Sections 43A and 43B of the Karnataka Act, Section 72 of the Uttar Pradesh Act and Sections 46 and 46A of the Andhra Pradesh Excise Act."

19. Though the Apex Court in Oma Ram's case (cited supra), considered the scope and power of the Court to order for release of essential commodities, pending confiscation proceedings, with reference to Essential Commodities Act, 1955, it has also considered

the provisions of the Tamil Nadu Excise Act. When confiscation power of the Collector, under Section 6A of the Essential Commodities Act, 1955, has been upheld by the Supreme Court, then, in the humble opinion of this Court, the power of the competent authority, under the Tamil Nadu Prohibition Act, 1937, to confiscate the goods, vehicles, etc., has to be sustained also and therefore, the decision in Oma Ram's case (cited supra), can be relied on, for the present revision case, which arises, under the Tamil Nadu Prohibition Act, 1937.

20. 'Property', as per the Code, is any property, regarding which an offence appears to have been committed, or appears to have been used for the commission of any offence. It shall also include such property, as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise'.

21. Though the Supreme Court in Rameshwar Rathod's case (cited supra), arising under the Essential Commodities Act, 1955, held that the criminal Court continues to retain jurisdiction, in the subsequent judgment in Oma Ram's case (cited supra), at Paragraph 17, the Supreme Court held that the Magistrate has no jurisdiction to grant relief against seizure, under Section 457 Cr.P.C., insofar as the Essential Commodities Act, 1955, is concerned. Thus, on the aspect, as to whether, the Magistrate has got powers to grant an order for interim custody of the essential commodities, under Section 457 Cr.P.C., vis-a-vis, Section 6-A of the Essential Commodities Act, the Apex Court in Oma Ram's case (cited supra), held that the Criminal Court has no jurisdiction to order for release, under Section 457 Cr.P.C. The decision rendered in Rameshwar Rathod's case (cited supra), is by a Hon'ble Bench, comprising of two Hon'ble Judges.

22. In the decision in Sunderbhai Ambalal Desai's case (cited supra), the Apex Court has dealt with the scope and powers of the Court to Section 451 of Criminal Procedure Code and with great respect, it is not a case, dealing with the powers of the Court in passing appropriate orders, for interim custody, vis-a-vis, the powers of the competent authorities, for initiation of proceedings for confiscation. So also, the case in Multani Hanifbhai Kalubhai's case (cited supra).

23. Though the decision in David's case (cited supra), was rendered on 08.01.2010, attention of the Hon'ble Division Bench has not been invited to Oma Ram's case (cited supra), decided in the year 2008. Sakthi Devi's case (cited supra), has been decided on 07.04.2011. Again in Sakthi Devi's case (cited supra), Oma Ram's case (cited supra) has not been placed for consideration. Whereas, in P.Pannerselvam's case, reported in 2013 (2) MLJ (CrL.) 583, decisions in Shambhu Dayal Agarwala, Oma Ram and Aravind Kumar cases, have been considered. It could also be noticed that the decision in Rameshwar Rathod's case (cited supra) has not been referred.

24. Reverting to the case on hand, it is the objection of the prosecution that confiscation proceedings had already been initiated by issuing a show cause notice and therefore, the Court should not entrust the custody of the vehicle to the petitioner. Sections 451 and 457 Cr.P.C., dealing with the order for custody and disposal of property pending trial in certain cases and the procedure by Police upon seizure of property, respectively and both the Sections are extracted hereunder:

"451. When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.- For the purposes of this section, "property" includes-

(a) property of any kind or document which is produced before the Court or which is in its custody,

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

457. (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

25. Code of Criminal Procedure, 1973, is a general law. Tamil Nadu Prohibition Act, 1937, is a special enactment, intended for prohibition, except for medicinal, scientific, industrial or such like purposes, of the production, manufacture, possession, export, import, transport, purchase, sale and consumption of intoxicating liquors and drugs in the State of Tamil Nadu and to give effect to the above mentioned policy. Section 13-A deals with liquor, etc., liable to confiscation and the said Section is extracted hereunder:

"Whenever an offence in relation to liquor has been

committed, which is punishable under this Act or the rules made thereunder, the following things shall be liable to confiscation, namely:-

(1) any liquor, material, still, utensil, implement, apparatus in respect or by means, of which such offence has been committed;

(2) any liquor lawfully imported, exported, transported, manufactured, held in possession or sold along with, or in addition to, any liquor liable to confiscation under this Section;

(3) any receptacle, package or covering in which anything liable to confiscation under clause (1) or clause (2), is found, and the other contents, if any, of such receptacle or package or covering and any animal, cart, vessel or other conveyance used for carrying the same.

Provided that, if anything specified in clause (3) is not the property of the offender, it shall not be confiscated if the owner thereof had no reason to believe that such offence was being or was likely to be committed."

26. Section 14(1) and (2) of the TNP Act, empowers the trial Court to order confiscation and they are extracted hereunder:

"(1) When the offender is convicted or when the person charged with an offence against this Act is acquitted, but the court decides that anything is liable to confiscation, such confiscation shall be ordered by the court.

(2) Where, during the trial of a case for an offence against this Act, the court decides that anything is liable to confiscation, the court shall order the confiscation:

Provided that no animal, vessel, cart or other vehicle shall be confiscated under sub-section (1), or sub-section (2), if the Court after hearing the owner of such animal, vessel, cart or other vehicle and any person claiming any right thereto, is satisfied that the owner and such person had exercised due care in the prevention of the omission of such an offence.

27.As per Section 14(4) of the Tamil Nadu Prohibition Act, 1937, notwithstanding anything contained in sub-sections (1) to (3), the Collector or other Prohibition Officer in-charge of the district or any other officer authorised by the State Government in that behalf is satisfied that an offence has been committed against this Act and whether or not a prosecution is instituted for such offence, he may, without prejudice to any other punishment to which the offender is liable under this Act, order confiscation of any animal, vessel, cart or other vehicle used in the commission of such offence.

28. As per Section 452(1) of the Criminal Procedure Code, when an inquiry or trial in any Criminal Court is concluded, the Court

may make order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

29. As per Section 458 of the Code, if no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, the Magistrate may by order direct that such property shall be at the disposal of the State Government and may be sold by that Government and the proceeds of such sale shall be dealt with in such manner as may be prescribed. An appeal shall lie against any such order to the Court to which appeals ordinarily lie from convictions by the Magistrate.

30. Thus, confiscation is one of the modes of disposal of the property, after inquiry or trial. But Section 14(4) of the TNP Act, 1937, a special statute provides for disposal of the property in an offence, even before the inquiry or trial and such provision, in the humble opinion of this Court, would displace the provisions of the Code, which is a general law. At this juncture, it should be noted that in the Code of Criminal Procedure, no procedure is contemplated for confiscation.

31. The Statement of Objects and Reasons, as per the Bills introduced in the Legislative Assembly of the State of Tamil Nadu, on the 3rd May, 1990, are as follows:

"Section 14(4) of the Tamil Nadu Prohibition Act, 1937 (Tamil Nadu Act X of 1937) provides for detention of any animal, vessel, cart or other vehicle used in the commission of an offence against the said Act and restricts the lower Courts from passing any interim order for disposing of such property till the criminal case is disposed of finally. Instead of the above provision, it has been decided to make suitable provision for confiscation of such animal, vessel, cart or other vehicle with adequate safeguards.

2. It has also been decided to amend clause (b) of Section 17 so as to be in consonance with the provisions of Section 6-B of the said Act.

3. It has also been decided to make a provision in the said Act that export, import or transport of any liquor or any article containing liquor shall be made along the route or routes to be specified in the licence or permit issued under the Act.

4. The Bill seeks to give effect to the above decisions."

32. Sub-Sections (4) and (5) of Section 14 of the Act, have been substituted by Section 2 of the Tamil Nadu Prohibition (Second

Amendment) Act, 1990 (Tamil Nadu Act 24 of 1990). Amendment, in Part IV-Section 2 of the Tamil Nadu Government Gazette, Extraordinary, dated 22nd May, 1990, Page 79, is extracted hereunder:

"2. In Section 14 of the Tamil Nadu Prohibition Act, 1937 (hereinafter referred to as the Principal Act), for sub-Section (4), the following sub-sections shall be substituted, namely:-

"(4) Notwithstanding anything contained in sub-sections (1) to (3), if the Collector or other Prohibition Officer in-charge of the district or any other officer authorised by the State Government in that behalf is satisfied that an offence has been committed against this Act and whether or not a prosecution is instituted for such offence, he may, without prejudice to any other punishment to which the offender is liable under this Act, order confiscation of any animal, vessel, cart or other vehicle used in the commission of such offence:

Provided that, before passing an order of confiscation, the owner or the person from whom such animal, vessel, cart or other vehicle is seized, shall be given:-

(i) a notice in writing informing him of the grounds on which it is proposed to confiscate the animal, vessel, cart or other vehicle;

(ii) an opportunity of making a representation in writing within a reasonable time, not exceeding fourteen days, as may be specified in the notice, against the grounds of confiscation; and

(iii) a reasonable opportunity of being heard in the matter:

Provided further that the owner or the person from whom such animal, vessel, cart or other vehicle is seized shall be given an option to pay, in lieu of its confiscation, an amount not exceeding the market price of such animal,

vessel, cart or other vehicle.

(5) Any person aggrieved by an order of confiscation under sub-section (4) may, within one month from the date of the receipt of such order, appeal to the Court of session having jurisdiction."

33. At this juncture, this Court deems it fit to consider some of the decisions of the Hon'ble Supreme Court, on the aspect of confiscation of forest produce and vehicle, involved in the crime, under the Forest Act.

34. In State of Karnataka v. Krishnan reported in AIR 2000 SC

2729, the Supreme Court, at Paragraphs 7 and 8, held that,

"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 Authorised 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, cattles, 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 to pass 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 the 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 approach adopted both by the Authorised Officer and the High Court completely ignores the importance of the forests and the purpose of the object for which the Act was made. As the appellant-State has not prayed for quashing the order of the Authorised Officer we refrain to

deal with that even though we do not approve it. We are, however, satisfied that the High Court had adopted a very casual approach while disposing of the petition under Section 482 of the Code of Criminal Procedure. Besides that the order impugned is contrary to law, we have our reservations with respect to the powers of the High Court under Section 482 Cr.P.C. in the matter which we do not express in this case.

35. In *State of Karnataka v. K.A.Kunchindammed* reported in [2002] 9 SCC 90, a lorry bearing registration No.KL-10-J-1728, was seized by the officials, on the allegation of illegal transportation of the forest produce. FIR was registered on the same day. On the next day, a report about the seizure was submitted to the Authorized Officer and Deputy Conservator of Forests, Kundapur, under section 71A of the Act. By order of the Authorised Officer, custody of the seized material and the vehicle was entrusted to the Range Forest Officer, as whereabouts of the driver of the vehicle and its owner were not known to the Authorised Officer. Publication was effected in the newspaper and nobody came forward to claim either the property and the vehicle. Thereafter, the authorized officer has ordered confiscation of the seized vehicle and the property. The said order was published in the official gazette. The order was not challenged in appeal under section 71-D of the Act or in any other proceeding. The order of confiscation stood confirmed under Section 71-F of the Act and published in the official gazette. Thereafter, the owner of the vehicle, who is the respondent therein, filed an application before the Judicial Magistrate, for interim custody of the vehicle. The learned Magistrate dismissed the said application, holding that in the circumstances of the case the power to grant interim release custody of the vehicle is vested in the Authorised Officer. The said order was challenged and upheld by the Sessions Judge. The respondent challenged the order of the Sessions Judge by filing a petition under section 482 of the Criminal Procedure Code. The High Court, while allowing the petition, took the view that in the circumstances of the case, it is the jurisdictional magistrate by virtue of the relevant provisions of Cr.P.C. read with clause (b) of sub-section 3 of section 62 of the Act who has the jurisdiction to consider the request for custody of the vehicle allegedly used in transportation of sandalwood oil, whether interim or otherwise. Aggrieved by the same, appeal before the Supreme Court. Considering the facts and circumstances of the case, the Apex Court held as follows:

"The Karnataka Forest Act is a special statute enacted for the purpose of preserving the forests and the forest produce in the State. The Scheme of the Act, as expressed in the Sections, is to vest power in the authorised officers of the Forest Department for proper implementation/enforcement of the statutory provisions and for enabling them to take effective steps for preserving the forests and forest produce. For this purpose certain powers including the power of seizure, confiscation and

forfeiture of the forest produce illegally removed from the forests have been vested exclusively in them. 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 authorised 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 the 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 authorised officer under the Act and if he finds that such power is vested in the authorised 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.

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 authorised 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."

36. In State of West Bengal v. Sujit Kumar Rana reported in AIR 2004 SC 1851, a truck of the respondent, which carried forest-produce and said to be without transit permit was detained and seized. Upon a report of the said seizure, a show cause notice was issued to the respondent therein, by the authorized officer, as to why, the vehicle should not be confiscated. The owner of the truck replied to the said notice, praying for release of the same. A writ petition was filed by the respondent therein under Article 226 of the Constitution of India before the High Court of Calcutta, which was disposed of on 15.09.1995, directing the Divisional Forest Officer to complete the confiscation proceedings expeditiously. In the mean while, the High Court of Calcutta passed an ex parte order, dated 5.1.1996, directing that custody of the truck be given to the owner on his executing a bond to the satisfaction of the Divisional Forest Officer. It was further directed that the same would not be

taken out of the territorial limit of the State of West Bengal. The Divisional Forest Officer filed an application for vacating the said order, which was rejected by the High Court. Hence, State of West Bengal has preferred SLP, questioning the applicability of Section 482 of the Code of Criminal Procedure, 1973, for quashing a proceeding for confiscation of forest-produce etc., under the provisions of Indian Forest Act, 1927, as amended by State of West Bengal.

37. Section 55 of the Forest Act, deals with Forest-produce, tools, etc., when liable to confiscation, reads as follows:

"(1) All timber or forest-produce which is not the property of Government and in respect of which a forest-offence has been committed, and all tools, boats, carts and cattle used in committing any forest-offence, shall be liable to confiscation.

(2) Such confiscation may be in addition to any other punishment prescribed for such offence."

38. Sections 59-A to 59-G inserted in the Principal Act by the State of West Bengal, extracted in Sujit Kumar Rana's case, are reproduced hereunder:

"59-A. Confiscation by Forest Officer of forest produce in the case of forest offence believed to have been committed:- (1) Notwithstanding anything contained in the foregoing provisions of this Chapter or in any other law for the time being in force, where a forest offence is believed to have been committed in respect of the timber or other forest produce which is the property of the State Government, the Forest Officer or the Police Officer seizing the timber or other forest produce under sub-section (I) of Section 52, shall, without any unreasonable delay, produce the same, together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence, before an officer of a rank not inferior to that of an Assistant Conservator of Forests, authorized by the State Government in this behalf by notification in the official Gazette (hereinafter referred to as the authorized officer)."

Sub-section (3) of Section 59-A provides that if the authorized officer is satisfied that a forest offence has been committed irrespective of the fact whether a prosecution has been instituted for the commission of such offence or not, he may direct confiscation of the property together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence. Sub-section 4 (a) of Section 59-A empowers the authorized officer to sell such confiscated property or any part thereof by public auction. Clause (b) of sub-section (4) of Section 59-A, however, provides for refund of the amount fixed in the auction in the event, the order of confiscation of such property or tools etc. is set aside or annulled under Section 59-C or Section 59-

D thereof.

Section 59-B postulates issue of notice to the owner of the property which is sought to be confiscated. The proviso appended thereto provides that no order of confiscation shall be made except after giving a notice in writing to the registered owner thereof, if in the opinion of the authorized officer, it is practicable to do so and considering his objections, if any. Sub-section (2) of Section 59-B provides that in the event a person against whom an order of confiscation has been initiated proves to the satisfaction of the authorized officer that tool, rope or vehicle etc. was used in carrying the timber or other forest-produce without the knowledge or connivance of the owner himself or his agent, if any, or the person in charge thereof and that each of them had taken all reasonable and necessary precautions against such use, no order confiscating the same shall be made. Section 59-C provides for a revision. Section 59-D provides for an appeal against such order to the District Judge having jurisdiction over the area in which the property and the tools etc. have been seized against an order of confiscation. The District Judge after giving the appellant and the officer who passed the order an opportunity of being heard, may pass an order confirming, modifying or annulling the order appeal against. Sub-section (2) of Section 59-D attaches finality to the order passed by the District Judge and further provides that the same shall not be called in question in any court. Section 59-F provides that the confiscated property and proceeds of sale shall vest in the Government. Section 59-G of the Act creates a bar on the jurisdiction of court in certain cases, which is in the following terms:

"59-G. Bar of jurisdiction in certain cases. - Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, the officer authorized under Section 59-A or the Forest officer specially empowered under Section 59-C or the District Judge to whom an appeal may be preferred under Section 59-D shall have and any other officer or Forest Officer or court, tribunal or authority shall not have jurisdiction to make orders with regard to the custody, possession, delivery, disposal or distribution of any property or tools, ropes, chains, boats, vehicles or cattle seized under Section 52"

39. On the challenge in Sujit Kumar Rana's case, the Supreme Court considered the decisions made in Indian Handicrafts Emporium and Ors., v. Union of India reported in [2003] 7 SCC 589], Balram Kumawat v. Union of India reported in [2003] 7 SCC 628 and The State of Bihar and Anr., v. Kedar Sao and Another reported in [2003] 6 SCALE 639], wherein, the Apex Court has observed that the

provision of seizure and its procedure for the property, liable for confiscation, as contained in Section 52 of the Indian Forest Act as amended by Bihar Amendment Act No.9 of 1990 have been made, having regard to the fact, that not only the commission of forest offences are on the increase, but rampant acts involving large scale pilferage and depletion of forest wealth not only causing serious onslaught on the nature and environment causing ecological imbalance and irreparable loss and damage to public property, were taking place and the States, therefore, had to take such drastic legislative measures with a view to prevent commission of such offences.

40. As regards the powers of the High Court for release of the vehicle, under Section 482 of the Criminal Procedure Code and with reference to the provisions introduced by the State of West Bengal, the Supreme Court, at Paragraphs 29 to 33, held as follows:

"29. Authorized officers under the Act have been granted a wide discretion as regard choosing any of the three courses of action but exercise thereof would have a direct bearing to the nature of offence. The provisions of the Indian Forest Act and the amendments carried out in the provisions thereof by the State of West Bengal, as noticed hereinbefore, point out to the said discretionary power conferred upon the concerned authorities in this behalf. Only in a case where the forest authorities intend to proceed against an offender both for confiscation of the property as also for his prosecution; except in the cases which are covered by the proviso appended to sub-section (2) of Section 52 of the Act, report of seizure is required to be made both to the Magistrate as also to the authorised officer.

30. The said authority before passing a final order in terms of Section 59- A (3) of the Act is required to issue notice and give opportunity of hearing to the parties concerned. Unless such a notice is issued, the confiscation proceeding cannot be said to have started. Once, however, a confiscation proceeding is initiated; in terms of Section 59-G of the Act, the jurisdiction of the criminal court in this behalf stands excluded. The criminal court although indisputably has the jurisdiction to deal with the property which is the subject-matter of offence in terms of the provisions of the Code of Criminal Procedure but once a confiscation proceeding is initiated, the said power cannot be exercised by the Magistrate.

31. The High Court cannot, thus, in such a situation exercise its jurisdiction under Section 482 of the Code of Criminal Procedure. The said provisions reads thus :

"482. Saving of inherent power of High Court. - Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such

orders as may be necessary to give effect to any order this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

32. From a bare perusal of the aforementioned provision, it would be evident that the inherent power of the High Court is saved only in a case where an order has been passed by the criminal court which is required to be set aside to secure the ends of justice or where the proceeding pending before a court amounts to abuse of the process of court. It is, therefore, evident that power under Section 482 of the Code can be exercised by the High Court in relation to a matter pending before a court; which in the context of Code of Criminal Procedure would mean 'a criminal court' or whence a power is exercised by the court under the Code of Criminal procedure. Once it is held that the criminal court had no power to deal with the property seized under the Act, the question of the High Court's exercising its jurisdiction under Section 482 of the Code of Criminal Procedure would not arise.

33. The amendments carried out by the State of West Bengal by reason of Sections 59-A to 59-G in the Indian Forests Act provide for a complete Code. The validity or otherwise of the said provisions is not in question before us. An order of confiscation in respect of a property must be distinguished from an order of forfeiture thereof. Although the effect of both confiscation and forfeiture of a property may be the same, namely that the property would vest in the State but the nature of such order having regard to the statutory scheme must be held to be different. A proceeding for confiscation can be initiated irrespective of the fact that as to whether prosecution for commission of a forest offence has been lodged or not. A confiscation proceeding, therefore, is independent of a criminal proceeding. We may also notice that the State has been made liable to refund the amount which has been deposited pursuant to an auction held in respect of the confiscated property only in the event the order of confiscation is set aside or annulled under Section 59-A(4)(b) thereof. No provision has been made in the statute unlike Section 6-C of the Essential Commodities Act, 1955 to the effect that the confiscated property or the amount deposited in the treasury pursuant to the auction of the confiscated goods would be returned to the owner thereof in the event, the criminal trial ends in an acquittal."

41. While doing so, the Supreme Court in Sujit Kumar Rana's (cited supra), has considered a decision made in Mohd. Yaseen v. Forest Range Officer, Flying Squad, Rayachoti, (1980) I ALT 8, wherein, a Hon'ble Division Bench of Andhra Pradesh High Court, held as follows:

"14. We find that a later Division Bench consisting of Kondaiah, C.J. and Punnayya, J. in Mohd. Yaseen v. Forest Range Officer, Flying Squad, Rayachoti, (1980) 1 Andh LT 8 approved of the view expressed by Jeewan Reddy, J. in P.K. Mohammad's case, (supra), and held that the Act contemplates two procedures, one for confiscation of goods forming the subject-matter of the offence by the Authorized Officer under sub-s. (2A) of S. 44 of the Act, and the other for trial of the person accused of the offence so committed under S. 20 or 29 of the Act. The learned Judges held that the Act provides for a special machinery for confiscation of illicitly felled timber or forest produce by the Authorized Officer under sub-s. (2A) of S. 44 enacted in the general public interest to suppress the mischief of ruthless exploitation of Government forests by illicit felling and removal of teak and other valuable forest produce. They further held that merely because there was an acquittal of the accused in the trial before the Magistrate due to paucity of evidence or otherwise did not necessarily entail in nullifying the order of confiscation of the seized timber or forest produce by the Authorized Officer under sub-s. (2A) of S. 44 of the Act based on his satisfaction that a forest offence had been committed in respect thereof. We affirm the view expressed by Jeewan Reddy, J. in P.K. Mohammad's case and by Kondaiah, C.J. and Punnayya, J. in Mohd. Yaseen's case."

42. The Apex Court in Sujit Kumar Rana's case (cited supra), has also taken note of a decision made in State of West Bengal v. Gopal Sarkar reported in 2002(1) SCC 495, wherein, it has been held as follows:

"On a fair reading of the provision it is clear that in a case where any timber or other forest produce which is the property of the State Government is produced under sub-section (1) and an Authorised Officer is satisfied that a forest offence has been committed in respect of such property he may pass order of confiscation of the said property (forest produce) together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence. The power of confiscation is independent of any proceeding of prosecution for the forest offence committed....."

43. On the aspect, as to how, the Karnataka Forest Act, 1963, a special enactment, for the purpose of preserving the forests and forest produce in the State, has an overriding effect to the provisions in the Act, over other statutes, and laws, and the general powers vested in the Magistrate, dealing with interim custody/release of the seized materials under the Cr.P.C., the Supreme Court in Sujit Kumar Rana's case (cited supra), considered

an earlier judgments of the Apex Court in State of Karnataka v. K.A.Kunchindammed reported in [2002] 9 SCC 90, Section Forester and Anr., v. Mansur Ali Khan, JT(2003) 10 SC 390 and State of Karnataka v. K.Krishnan, JT (2000) 9 SC 356. Ultimately, the Apex Court in Sujit Kumar Rana's case (cited supra), at Paragraph 46, held as follows:

"The upshot of our aforementioned discussion is that once a confiscation proceeding is initiated the jurisdiction of the criminal court in terms of Section 59-G of the Act being barred, the High Court also cannot exercise its jurisdiction under Section 482 of the Code of Criminal Procedure for interim release of the property. The High Court can exercise such a power only in exercise of its power of judicial review."

44. In The Secretary to Government v. M/s.Subam Auto Finance Co., reported in AIR 2008 (NOC) 1052 (Mad.), while testing the correctness of an order, relating to confiscation of the vehicle, involved in a forest offence and after considering Sections 49-A and 49-B of the Forest Act, this Court held as follows:

"20. As per Section 49A of the Act, where a forest offence is believed to have been committed in respect of any schedule timber, which is the property of the Government, the Officer seizing the property under Sub-Section (1) of Section 41, shall, without any unreasonable delay, produce it together with all tools, vehicles, etc., used in committing such offence, before an officer and where the Authorised Officer siezes any schedule timber, which is the property of the Government and if he is satisfied with the Forest offence has been committed in respect of such property, such authorised officer, may, whether or not a prosecution is instituted for committing such forest offence can order confiscation of the property so seized together with all tools, ropes, vehicles etc., used in committing such offence.

.....
22. The said Section envisages both the criminal prosecution as well as initiation of confiscation proceedings. Prosecution launched for the purpose of punishing the offenders, whereas, the object of confiscation is to declare that the property, used in the commission of an offence, as the Government property and the two proceedings are entirely different. Authorised officer can initiate criminal proceedings, if there are sufficient information and evidence available on record. If the facts and evidence unearthed by him, during the course of investigation are not sufficient to bring home the culpability of the owner, then trying the owner before the criminal Court would be futile exercise and harassment. Criminal proceedings is for the offence committed by the driver or owner or any person in charge

of the owner, provided there is mens rea. Whereas the object of confiscation is to adjudicate with regard to confiscation of the forest produce and means used in the commission of offence. Confiscation proceedings initiated under the Act is a quasi-judicial proceedings initiated on the basis of the satisfaction of the Authorised Officer."

45. Sub-Sections 41 and 42 of Section 6 of the Indian Penal Code, 1860, defines Special Law and Local Law and the same are extracted hereunder:

"41. "Special law".-A "special law" is a law applicable to a particular subject.

42. "Local law".-A "local law" is a law applicable only to a particular part."

46. Sections 4 and 5 of the Criminal Procedure Code, deals with trial of offences, under the Indian Code and other laws and saving clause, respectively and the same are extracted hereunder:

"4. Trial of offences, under the Indian Code and other laws:- (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. Saving:- Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

47. It is well settled that where a enactment provides a special power or procedure, only for some matters, such procedure must be followed, as regards, those matters only, and in regard to other matters, on which, the enactment is silent, the provisions of the Code, must be applied.

48. Law is well settled that when there is something specific to the contrary, no provision in the Code will affect any special or local law or any special form of procedure, prescribed by any law, which is for the time being in force. Needless to state that Special Law prevails over the General Law. Reference can be made to the decision in State of U.P., v. Karan Singh reported in 1988 Cr1.L.J. 1434 (All).

49. The Supreme Court in Major G.S.Sodhi v. Union of India reported in 1991 Cr1.L.J. 1947 SC, held that when there is a special

enactment in force, relating to the manner of investigation, enquiry or otherwise dealing with the offence, the general power under the Code is subject to such special enactment and in interpreting the scope of such statute, the dominate purpose of enacting the statute has to be borne in mind.

50. In Directorate of Enforcement v. Deepak Mahajan reported in AIR 1994 SC 1775, the Supreme Court, at Paragraph 32, while dealing with the scope and object of a special enactment, held as follows:

"32. True, normally courts should be slow to pronounce the legislature to have been mistaken in its constantly manifested opinion upon a matter resting wholly within its will and take its plain ordinary grammatical meaning of the words of the enactment as affording the best guide, but to winch up the legislative intent, it is permissible for courts to take into account of the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislature inane..... Authorities, a few of which we have referred to above, show that in given circumstances, it is permissible for courts to have functional approaches and look into the legislative intention and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile."

51. It is also worthwhile to extract few decisions, considered in Deepak Mahajan's case (cited supra),

"26. In Seaford Court Estates Ltd. v. Asher [1949-2 All ER 155], Denning, L.J. Said:

"When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament ... and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

29. It will be befitting, in this context, to recall the view expressed by Judge Frank in Guiseppi v. Walling [144F (2d) 608 pp.620, 622 (CCA 2d, 1994), which is quoted in 60 Harvard Law Review 370, p.372 reading thus,

"The necessary generality in the wordings of many statutes, and ineptness of drafting in others frequently compels the court, as best as they can, to fill in the gaps, an activity which no matter how one may label it, is in part legislative. Thus the courts in their way, as administrators perform the task of supplementing statutes. In the case of courts, we call it 'interpretation' or 'filling in the gaps'; in the case of administrators we call it 'delegation' or authority to supply the details."

52. On the aspect of applicability of Sections 4 and 5 of the Code, in Deepak Mahajan's case, (cited supra), the Supreme Court, held as follows:

"128. To sum up, Section 4 is comprehensive and that Section 5 is not in derogation of Section 4(2) and it only relates to the extent of application of the Code in the matter of territorial and other jurisdiction but does not nullify the effect of Section 4(2). In short, the provisions of this Code would be applicable to the extent in the absence of any contrary provision in the special Act or any special provision excluding the jurisdiction or applicability of the Code. In fact, the second limb of Section 4(2) itself limits the application of the provisions of the Code reading..... but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

53. Section 14(4) of the Tamil Nadu Prohibition Act, 1937, completely covers the field of operation, as regards the powers of the competent authorities to order for confiscation. The saving provision in Section 5 of the Code, will not affect (i) any special law, (ii) any local law, (iii) any special jurisdiction or power, and (iv) any special form of procedure, prescribed in any other law, for the time being in force and in the case on hand, as regards the power of the competent authorities to order for confiscation, it is provided under the Tamil Nadu Prohibition Act, 1937.

54. Comparative reading of the provisions in the Code and the Tamil Nadu Prohibition Act, 1937, regarding the disposal of the property, which includes confiscation, makes it clear that the Code of Criminal Procedure, is not exhaustive, but recognises the special enactments, and in the case on hand, the Tamil Nadu Prohibition Act, 1937. The term "Special Jurisdiction" is not defined in the Code, but the words "Special Laws" are defined in the Indian Penal Code to mean "a law applicable to a particular subject". Indisputably, the Tamil Nadu Prohibition Act, 1937, is a special enactment and Section 14(4) of the Act, confers special powers and jurisdiction on the Collector or other Prohibition Officer in-charge of the district or any other officer authorised by the State Government in that behalf, without prejudice to any other punishment to which the offender is

liable under this Act, order confiscation of any animal, vessel, cart or other vehicle used in the commission of such offence, if he is satisfied that an offence has been committed against the Act and whether or not a prosecution is instituted for such offence.

55. In the case on hand, before the lower Court, prosecution has objected to the prayer, for releasing the vehicle, on the grounds that confiscation proceedings has already been initiated by issuing a show cause notice. If the Court below is empowered to order release of the vehicle, pending inquiry or trial, under Sections 451 and 457 Cr.P.C., as the case may be, then, in the humble opinion of this Court, the power conferred on the competent authority, under Section 14(4) of the Tamil Nadu Prohibition Act, 1937, cannot be exercised and in such circumstances, provision under Section 14(4) of the Act, would become otiose, for the reason that notwithstanding the provisions, under Section 14(1) to (3) of the Act, the District Collector or the Competent Authority, under Section 14(4) of the TNP Act, is empowered to initiate proceedings for confiscation. Sub-Sections 1 and 2 of Section 14 of the Tamil Nadu Prohibition Act, 1937, confers powers on the Court to order for confiscation. Section 14(4) of the Act, starts with an opening sentence, notwithstanding anything contained in sub-Sections 1 and 3 of Section 14 of the Act, which confers power on the Court to order for confiscation. It is to be noted that though power is conferred on the Court, to order confiscation, pending trial, the said power is not normally invoked by the Courts. At this juncture, this Court deems it fit to consider some of the decisions of the Hon'ble Apex Court, on the aspect, as to how, the word, "notwithstanding" used in the enactment, has to be considered and interpreted.

56. In *Aswini Kumar Ghose v. Arabinda Bose* reported in AIR 1952 SC 369, a Full Bench of the Supreme Court held that,

"It should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning, and the non obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment."

It was further held that:

"Nor can we read the non obstante clause as specifically repealing only the particular provisions which the learned Judges below have been at pains to pick out from the Bar Councils Act and the Original Side Rules of the Calcutta, and Bombay High Courts. If, as we have pointed out, the enacting part of section 2 covers all Advocates of the Supreme Court, the non obstante clause can reasonably be read as overriding "anything contained" in any relevant existing law which is inconsistent with the new enactment, although the draftsman appears to have

had primarily in his mind a particular type of law as conflicting with the new Act. The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously; for, even apart from such clause, a later law abrogates earlier laws clearly inconsistent with it. Posteriors leges priores contrarias abrogant (Brooms Legal Maxims, 10th Edn., p.347)."

57. In *The Dominion of India v. Shrinbai* reported in AIR 1954 SC 596, at Paragraph 10, the Supreme Court, held as follows:

"While recognising the force of this argument it is however necessary to observe that although ordinarily there should be a close approximation between the non obstante clause and the operative part of the section, the non obstante clause need not necessarily and always be co-extensive with the operative part, so as to have the effect of cutting down the clear terms of an enactment. If the words of the enactment are clear and are capable of only one interpretation on a plain and grammatical construction of the words thereof, a non obstante clause cannot out down that construction and restrict the scope of its operation. In such cases the non obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the Legislature by way of abundant 'caution and not by way of limiting the ambit and scope of the operative part of the enactment."

58. Further, the influence of a non-obstante clause has to be considered on the basis of the context also in which it is used. In *State of West Bengal v. Union of India* [1964] 1 SCR 371, it is observed as under:

"The Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law and the setting in which the clause to be interpreted occurs."

59. In *Union of India v. G.M.Kokil* reported in AIR 1984 SC 1022, the Supreme Court, at Paragraph 10, held as follows:

"It is well-known that a non-obstante clause is a legislative device which is usually employed to give over-riding effect to certain provision over some contrary provision that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions."

60. In *Chandavarkar Sita Ratna Rao v. Ashalata*

S.Guram reported in 1986 (4) SCC 447, at Paragraph 67, the Supreme Court held as follows:

"67. A clause beginning with the expression "notwithstanding any thing contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract" is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment. See in this connection the observations of this Court in The South India Corporation (P) Ltd., v. The Secretary, Board of Revenue, Trivandrum & Anr., AIR 1964 SC 207 at 215-[1964] 4 SCR 280."

61. In Narcotics Control Bureau v. Kishan Lal reported in AIR 1991 SC 558, the Supreme Court, at Paragraph 6, held as follows:

"The NDPS Act is a special enactment as already noted it was enacted with a view to make stringent provision for the control and regulation of operations relating to narcotic drugs and psychotropic substances. The being the underlying object and particularly when the provisions of Section 37 of NDPS Act are in negative terms limiting the scope of the applicability of the provisions of Cr. P.C. regarding bail, in our view, it cannot be held that the High Court's powers to grant bail under Section 439 Cr. P.C. are not subject to the limitation mentioned under Section 37 of NDPS Act. The non-obstante clause with which the Section starts should be given its due meaning and clearly it is intended to restrict the powers to grant bail."

62. In R.S.Raghunath v. State of Karnataka reported in 1992 (1) SCC 335, the Supreme held as follows:

"In Maxwell on the Interpretation or Signites, Eleventh Edition at page 168, this principle of law is stated as under:

"A general later law does not abrogate an earlier special one by mere implication. Generalia specialibus non derogant, or, in other words," where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of

such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act."

It is also well-settled that the Court should examine every word of a statute in its context and to use context in its widest sense. In Reserve Bank of India etc. v. Peerless General Finance and Investment Co. Ltd. & Ors.. [1987] 1 SCC 424, it is observed that "That interpretation is best which makes the textual interpretation match the contextual". In this case, Chinnapa Reddy, J. noting the importance of the context in which every word is used in the matter of interpretation of statutes held thus:

Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statuemaker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place".

63. In Vishin N.Kanchandani v. Vidya Lachmandas Khanchandani reported in AIR 2000 SC 2747, at Paragraph 11, held that,

"There is no doubt that by non-obstante clause the Legislature devices means which are usually applied to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other statute. In other words such a clause is used to avoid the operation and effect of all contrary provisions. The phrase is equivalent to showing that the Act shall be no impediment to measure intended. To attract the applicability of the phrase, the whole of the section, the scheme of the Act and the objects and reasons for which such an enactment is made has to be kept in mind."

64. Powers conferred on the District Collector/Prohibition Officer or authorised Officer, under Section 14(4) of TNP Act, is notwithstanding the powers conferred on the Court, under sub-Sections (1) to (3) of Section 14 and in exercise of the powers, under Section 14(4) of the Act, if anyone of the competent authority is satisfied that an offence has been committed against this Act and whether or not a prosecution is instituted for such offence, he may, without prejudice to any other punishment to which the offender is liable under this Act, order confiscation of any animal, vessel, cart or other vehicle used in the commission of such offence. However, the competent authority has to follow the definite procedure, contemplated under the Tamil nadu Prohibition Act.

65. Thus, in the humble opinion of this Court, powers conferred under Section 14(4) of the Act, is independent of the powers conferred on the Courts, under Section 451 and 457 of the Code of Criminal Procedure. Needless to state that the maxim, *generalalia specialibus non derogant* can also be made applicable to the facts of this case. Few decisions, on the abovesaid aspect, are considered.

66. In *Fitzgerald v. Champneys* (1861) 30 L.J. Ch. 777 at p. 782, quoted with approval in *Re Smith's Estate*, *Clemens v. Ward*, 35 Ch.D. 389, Wood V.C., said as follows:

"In passing the special Act the Legislature had their attention directed to the special case which the Act was meant to meet, and considered and provided for all the circumstances of that special case, and having done so, they are not to be considered, by a general enactment passed subsequently, and making no mention of any such intention, to have intended to derogate from that which, by their own special Act, they had thus carefully supervised and regulated."

67. Lord Hobhouse in *Baker v. Edgar* reported in [1898] AC 748, held that when the legislature has given its attention to a separate subject, and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms.

68. Wood V.C., in *London and Black Wall Rly v. Limehouse District Board of Works* reported in (1856) 26 LJ 164, said thus,

"The Legislature, in passing a special Act, has entirely in its consideration some special power which is to be delegated to the body applying for the Act on public grounds; and the preamble of every statute of this kind contains a recital of its being for the public convenience that the particular powers should be granted. When a general Act is subsequently passed, it seems to be a

necessary inference that the Legislature does not intend thereby to regulate all cases not specially brought before it; but, looking to the general advantage of the community, without reference to particular cases, it gives large and general powers, which in their generality might, except for this very wholesome rule of interpreting statutes, override the powers which, upon consideration of the particular case, the Legislature had before conferred by the special Act for the benefit of the public."

69. In *Siha Singh v. Sundan Singh* reported in AIR 1921 Lah. 280, the Court held that, "A general statute is presumed to have only general cases in view, and not particular cases, which have been already otherwise provided for by special or local Act.

70. While considering the applicability of the maxim, "Generalia specialibus non derogant" in relation to the operation of two statutes passed in the year, Section 115 of the Indian Evidence Act (Act 1 of 1982) and Section 11 of the Indian Contract Act, in *Khan Gul v. Lakha Singh* reported in ILR 9 Lahore 701 (FB), the Court opined as follows:

"This brings us to the remaining but really substantial point, viz., whether the specific provision of the substantive law (S 11 of the Contract Act) which declares a minor's contract to be void, can be rendered nugatory by a general provision embodying the rule of estoppel found in a procedural Code like the Evidence Act. In order to find a satisfactory answer to this question two fundamental principles must be borne in mind. The first is embodied in the great maxim generalia specialibus non derogant which has frequently been applied to resolve the apparent conflict between provisions of the same statute or of different statutes. In such cases, the rule is that wherever there is a particular enactment and a general enactment and the latter, taken at its most comprehensive sense, would overrule the former, the particular statute must be operative, and its provisions must be read as excepted out of the general."

71. In *Maharaja Pratap Singh Bahadur v. Man Mohan Dev.*, reported in AIR 1966 SC 1931, the Supreme Court approved the following quotation from "Maxwell on Interpretation of Statute",

"A general later law does not abrogate an earlier special one by mere implication. Generalia specialibus non derogant, or, in other words, "where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force

of such general words, without any indication of a particular intention to do so." In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act"

72. In the light of the decisions relating to interpretation of statutes and considering the undisputed fact that in the case on hand, confiscation proceedings have already been initiated by the competent authority, under Section 14(4) of the Act, by issuance of a show cause and in the light of the guidelines issued in David's case (cited supra), this Court is of the view that the impugned order of the Court below, in dismissing the petition, for return of the vehicle, alleged to have been involved in G.3.Cr.No.1368 of 2014, for the offences under the TNP Act, cannot be said to be manifestly illegal, warranting interference.

73. For the reasons, stated supra, this Court is not inclined to interfere with the impugned order. Hence, this Criminal Revision Case is dismissed. No costs.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

skm

To

1. The Inspector of Police,
G-3 Kilpauk Police Station,
Chennai 600 010.

2. The Additional Public Prosecutor,
High Court, Madras

MP (CO)
kk 17/4

CrI.R.C.No.1301 of 2014