

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.227 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 23391 of 2013
Along with
Interlocutory Application No.1010 of 2015

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1. The State of Bihar
 2. The Distt Magistrate, Rohtas at Sasaram.
 3. The Authorized Officer - cum - the Divisional Forest Office, Rohtas at Sasaram
 4. The Forester, Tilauthu - Cum - Darigaon Forest Range, Distt. - Rohtas
- Appellants

Versus

Rajendra Sah, Son of Late Rajbali Sah, Resident of Village - Sahuar, P.S. - Karagahar, District – Rohtas.

.... Respondent

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Appearance :

For the Appellant : Mr. Ashok Kumar Choudhary, A.A.G.-13
Mr. Shailendra Kumar Jha, A.C. to A.A.G.-13

For the Respondent : None

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 26-04-2016

Re.: Interlocutory Application No.1010 of 2015

The application is for condonation of delay of 129 days in filing of the appeal.

For the reasons mentioned in the application and explained by the learned counsel for the appellants, we find that sufficient cause is made out for condonation of delay. Consequently, the delay of 129 days in filing of the appeal is condoned.

Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.227 of 2015

The challenge is to an order passed by the learned Single Bench of this Court on 17th of January, 2014 whereby the Vehicle bearing Registration No.JH-03B/4207 was ordered to be released forthwith on furnishing sufficient surety to be determined by the appropriate confiscating authority subject to the final order to be passed in confiscation proceedings.

Learned counsel for the appellants refers to two judgments of the Hon'ble Supreme Court in the cases of State of Karnataka Versus K.A. Kunchindammed, (2002) 9 SCC 90; and State of M.P. Versus S. P. Sales Agencies and others, (2004) 4 SCC 448, to contend that the Indian Forest Act, 1927 (for short, 'the Act') does not provide for interim release of the vehicle and goods therein, therefore, the order of interim release passed by the learned Single Bench is not tenable in law.

We have heard learned counsel for the appellants and find no merit in the present Letters Patent Appeal.

Section 4 of the Code of Criminal Procedure, 1973 reads as under:-

“4. Trial of offences under the Indian Penal 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.”

A perusal of the aforesaid provisions show that all offences under any other law, which includes Indian Forest Act, 1927, 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.

Since, admittedly, there is no provision in the Act prohibiting interim release of the seized goods and the vehicle, therefore, the release of the seized goods would be governed by the Code of Criminal Procedure, 1973. Therefore, a Criminal Court would be a competent Court to order for release of the seized goods and the vehicle. Apart from the said fact, we find that the order has not been passed by the Criminal Court, but by the High Court in exercise of jurisdiction under Article 226 of the Constitution of India which jurisdiction is equitable and to advance the interest of justice. Therefore, the invocation of jurisdiction of this Court cannot be said to be barred under any provision of law.

The judgments referred to by the learned counsel for the appellants are distinguishable and not applicable to the facts of the



present case. In K.A. Kunchindammed case (supra), the question examined was whether the Authorized Officer under the Act or the Magistrate under the Code of Criminal Procedure would be appropriate authority for interim release of the forest produce. In the present case, such is not the situation where the jurisdiction has been exercised by the High Court under Article 226 of the Constitution of India.

In S. P. Sales Agencies case (supra), the question examined was whether the confiscation proceedings can be initiated under Section 52 of the Forest Act only after launching of criminal prosecution or it is open to the Forest Authorities upon seizure of forest produce to initiate both or either. The question was not for release of the goods and vehicle or applicability of the Criminal Procedure Code and the procedure laid down for release of the seized goods as applicable to the proceedings pending confiscation.

In fact, we find that the learned counsel for the appellants was remiss in not referring to Section 61 of the Act which authorizes an officer empowered under the Act for directing an immediate release of any property seized under Section 52 of the Act.

In view of the fact that even the empowered officer is authorized to release the property seized in terms of the statutory power, therefore, there cannot be any illegality in the order passed by

the learned Single Bench when it ordered release of the seized goods.

The matter has been examined by this Court in the case of Maqbool Ansari Vs. The State of Bihar & Ors., 1995(2) PLJR 696 wherein it has been held that the authorized officer has ample power for disposal of the goods not only at the conclusion of the trial, but even when the matter is pending. Therefore, there is no prohibition in law in not releasing the seized property even during the pendency of the trial.

In view thereof, we do not find any error in the order passed by the learned Single Bench which may warrant interference in the present intra court appeal. The Letters Patent Appeal, thus, stands dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

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CAV DATE	N.A.
Uploading Date	
Transmission Date	