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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 426 OF 2016

Shri Arjun S/o Bhaurao Patil,
Age: 53 years, Occu: Agriculture,
R/o: Gotane, Tq. and Dist. Dhule

..PETITIONER

VERSUS

1. The State of Maharashtra
 2. The Authorised Officer/
Assistant Conservator of Forest,
Forest Department, Dhule,
District Dhule
 3. Shri. Chhagan Shenphadu Pawar,
Age: Major, Occu: Agriculture,
R/o.: Chougaon, Tq. & Dist. Dhule
- ..RESPONDENTS

Mr Y. B. Bolkar, Advocate for petitioner;
Mr C. V. Dharurkar, Addl. Public Prosecutor for respondent No. 1;
Mr V. V. Bhavthankar, Advocate for respondent No. 2;
Mr N. S. Tekale, Advocate for respondent No. 3

**WITH
CRIMINAL WRIT PETITION NO. 452 OF 2016**

Pramod Ananda Gujar,
Age: 48 years, Occu: Agriculturist,
R/o: At/Post Wadi, Tal. Shirpur,
Dist. Dhule

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through Range Forest Officer,
Shirpur, Tal. Shirpur,
Dist. Dhule
 2. The Authorized Officer
i.e. Assistant Conservator of Forest
(Regional and Wild Life)
Forest Department, Dhule
- ..RESPONDENTS

(2)

Mr S. P. Brahme, Advocate for petitioner;
Mr C. V. Dharurkar, Addl. Public Prosecutor for respondent No. 1;
Mr V. V. Bhavthankar, Advocate for respondent No. 2

CORAM : N.W. SAMBRE, J.

DATE : 24th August, 2016

ORAL ORDER :

Both these petitions can conveniently be decided by this common order as the issue involved therein has the same legal ramifications.

2. The petitioners are booked in a forest offence and their vehicles (JCB machines) were seized under section 52 of the Indian Forest Act, 1927 (for short "Forest Act"). The forest offence as has been alleged against them is committed by them pursuant to the provisions of relevant sub-section of section 26 of the Forest Act, as according to the prosecution agency, section 5 of the Act puts an embargo on clearing the forest land for cultivation in which the petitioner were indulged into.

3. It is subsequent thereto, their vehicles were seized in exercise of powers under section 52 of the Forest Act and proceedings for confiscation under section 61-A of the Act came to be initiated. The order of confiscation as such, was passed by the competent authority, i.e. Assistant Conservator of Forest. Against the said order section 61-D of the Forest Act provides for an appeal which is required to be disposed of by Sessions Judge. It is this order which is question in the present petitions.

(3)

4. It is the foremost contention of the petitioners that Additional Sessions Judge cannot be treated as Sessions Judge, who is empowered to deal with appeal under section 61-D of the Forest Act. According to Mr Brahme, learned Counsel appearing on behalf of the petitioners, there is only one Court, which is assigned with powers to deal with such appeal i.e. Court of Sessions Judge and not Additional Sessions Judge. He would then urge that even if a Court of Additional Sessions Judge is Court of Sessions Judge in a division, still the said issue cannot be interpreted and stretched to the extent of conferring powers of Sessions Judge under section 61-D of the Forest Act in Additional Sessions Judge treating him to be a Sessions Judge of that division. So as to substantiate his contention, Mr Brahme would draw support from the judgment of this Court in the matter of **Pandurang Laxman Naik Vs. State of Goa reported in 2006(1) Bom. C.R.(Cri.) 517.**

5. According to him, the appeal against the order of confiscation passed by the Assistant Conservator of Forest confiscating the vehicles of the petitioners is without any jurisdiction as Sessions Judge is a *persona designata* who is empower to decide the appeal.

6. The above referred legal position is not disputed by Mr Bhavthankar, learned Counsel appearing on behalf of the respondent No. 2. According to him, the matter can be relegated that to the Sessions Judge for deciding it afresh.

(4)

7. Having bestowed my thoughts to the submissions made, it is required to be noted that after the initial order of seizure passed under section 52 of the Forest Act, as the petitioners were booked for an offence punishable under relevant sub-sections of section 26 of the Act, the proceedings were initiated against them under section 61-A of the Act for confiscation of the vehicles. The competent authority, i.e. Assistant Conservator of Forest as such has passed an order confiscating their vehicles (JCB machines), which were used for clearing the forest land for cultivation. It is then to be noted that pursuant to the statutory remedy of appeal as provided under section 61-D of the Forest Act, an appeal came to be preferred before learned Sessions Judge, Dhule. The learned Sessions Judge, Dhule, instead of deciding the said appeal by himself, allotted the said appeal to Additional Sessions Judge, perhaps in ignorance of the provisions of section 61-D, which contemplate the decision in an appeal preferred under the said section by only Sessions Judge and not by any other judicial officer.

8. In my opinion, Mr Brahme was right in pointing out the law laid down by the Division Bench of this Court in the matter of Pandurang Laxman Naik (supra). Paragraphs 16, 17, 19 and 20 of the said judgment are worth referring to, which read thus:

“16. Section 61(D) provides for appeal. Sub-section (1) thereof provides that any person aggrieved by any order passed under Section 41, section 61(A) or Section 61(C) may within 45 days from the date of communication to him of such order, appeal to the

(5)

Sessions Judge having jurisdiction over the area in which the property to which the order relates has been seized and the Sessions Judge shall, after giving an opportunity of being heard to the appellant and the authorised officer or the officer specially empowered under Section 61(C), as the case may be, pass such order, as he may think fit, confirming, modifying or annulling the order appealed against. Sub-section(2) of Section 61(D) provides that an order of the Sessions Judge under sub-section (1) shall be final and shall not be questioned in any Court of law.

17. It is a settled proposition of law that an authority can be styled to be persona designata if powers are conferred on a named person or authority and such powers cannot be exercised by anyone else. As per Black's Law Dictionary a persona designata is a person pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character. It would be useful to refer to a decision of the Supreme Court in the case of **Central Talkies Ltd., Kanpur v. Dwarka Prasad (AIR 1961 SC 606)** to find out whether the Sessions Judge in the case at hand was a designated Officer or a Court. The Supreme Court has stated that:

".....A persona designata is "a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class or as filling a particular character". (See Osborn's Concise Law Dictionary, 4th Edition, page 253). In the words of Schwabe, C.J. in (**Parthasaradhi Naidu v. Koteswara Rao**), **ILR 47 Mad. 369:(AIR 1924 Mad. 561 (FB)**, personae designata are "persons selected to act in their private capacity and not in their capacity as Judges."

19. We have already referred to the relevant and necessary provisions of the Act namely Sections 61(A) to Section 61(D) as applicable to the State of Goa which in my view form a complete code as regards confiscation of forest produce, vehicles, etc. The said provisions indicate the manner of initiation of proceedings, the procedure to be followed both by the Authorised Officer and in appeal by the Sessions Judge, making the Order of the latter, final.

20. In the case of ***State of West Bengal and others v. Sujit Kumar Rana*** (supra) it has been held that an order of confiscation in respect of a property must be distinguished from an order of forfeiture thereof and although the effect of both confiscation and forfeiture of a property may be the same, namely, that the property would vest in the State yet 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 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. A confiscation envisages a civil liability whereas an order of forfeiture of the forest produce must be preceded by a Judgment of conviction. If the order of confiscation passed by the authorised officer involves civil liability on the part of the petitioner it does not sound to reason that the Legislature would have provided an appeal to be filed against such order to the Court of Session presided over by the Sessions Judge which is a Criminal Court as distinguished from the Sessions Judge in person. The very fact that Section 61(D) of the Act provides the procedure to be followed by the Sessions Judge, that is to say the procedure which enjoins him to give an opportunity to be heard to an appellant as well as the authorised officer and thereafter to confirm, modify or annul the order passed by the authorised officer also shows that the appellate powers were conferred on the Sessions Judge as a designated Officer and not as a Judge presiding over the Court of Sessions. In other words powers of appeal were conferred on him not as a Court but as a *persona designata*. In my view, in case the Legislature intended to confer the appellate powers against the orders passed by authorised officers then the Legislature would have specifically provided that an appeal against an order made under Section 61(C) would lie to the Sessions Court. To repeat, since confiscation of property involves civil liability and as the very procedure to be followed by the Sessions Judge is specifically indicated in Section 61(D) of the Act, in my view, the appellate powers against the order of the authorised officer were conferred on the Sessions Judge as a *persona designata* and not as a Judge presiding

(7)

over the Court of Session. Only in the event the appellate powers were conferred on the Sessions Judge as a Court of Sessions then only the Sessions Judge would have been in a position to follow the provisions of the Code and allot the case to the Additional Sessions Judge to be decided by him. In my view, therefore, the learned Sessions Judge as a persona designata ought to have disposed of the appeal by himself and should not have allotted the same either under Section 10 as contended, or under the powers given to the Sessions Judge under Section 194 of the Code. The impugned Order dated 6-1-2005 is clearly without jurisdiction.”

9. In that view of the matter, in my opinion, both the writ petitions deserve to be partly allowed. I, therefore, pass following order :

The judgments and orders dated 1st March, 2016 passed by Additional Sessions Judge, Dhule in Criminal Appeal Nos. 89 of 2015 and 92 of 2015 are quashed and set aside.

The matters are remitted back to the learned Sessions Judge, Dhule, who is directed to decide the same by himself, without assigning the same to any other Additional Sessions Judge.

The parties hereto including the concerned Forest Officer agree that they shall appear before the learned Sessions Judge, Dhule on 1st September, 2016.

Till the final decision of the appeals, respondent No. 2 and/or his subordinates are restrained from auctioning JCB machines belonging to

(8)

the petitioners, which are confiscated and already in their possession.

Both writ petitions stand partly allowed in above terms.

(N.W. SAMBRE, J.)

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