

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45284 of 2016

Arising Out of Forest Case No. -69 Year- 2016 District- SASARAM (ROHTAS)

=====

Pramod Kumar @ Parmod Kumar Son of Dinanath Singh, Resident of Village- Bali
Pakar, P.S.- Paliganj, District- Patna.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

=====

Appearance :

For the Petitioner/s : Mr. Anuj Kumar, Ansul, Advocate

For the Opposite Party/s : Mr. Tarkeshwar Nath Thakur, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

CAV JUDGMENT

Date: 21-09-2017

Whether the truck bearing Registration No. BR-25G-3355, which has been seized in connection with Forest Case No. 69 of 2016 leading to Confiscation Case No. 152 of 2016 for illegal transportation of stone chips mined from Fazilpur Reserve Forest Area in contravention of the provisions of Indian Forest Act, 1972 (for short 'the Act') can be released by this Court in exercise of power under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') during the pendency of the confiscation proceeding or such power can only be exercised by competent authority of forest, is the question involved in the present case.

2. The short facts of the case are that the petitioner is the



owner of seized truck bearing Registration No.BR-25G-3355. The truck was intercepted near Dehri Gammon Bridge and was seized with allegation that it was carrying 700 cft. illegally mined stone chips of Fazilpur Reserve Forest Area.

3. On the basis of the aforesaid allegations, the prosecution report was filed in the court of Sub-divisional Judicial Magistrate, Civil Court, Dehri-on-Sone (Rohtas) along with a copy of seizure list on 17.05.2016 pursuant to which Forest Case No. 69 of 2016 was registered for contravention of the provisions of Sections 33, 41 and 42 of 'the Act'.

4. Subsequently, a confiscation proceeding was initiated for confiscation of the aforesaid truck by the Divisional Forest Officer, Sasaram, vide Confiscation Case No. 152 of 2016. A notice in writing was issued to the petitioner to appear before the authorized officer and explain as to why the vehicle be not confiscated. The petitioner filed his show-cause in the Confiscation Case No. 152 of 2016 so instituted on 12.07.2016. He made a prayer for interim release of the vehicle in terms of Section 53 of 'the Act'. Though, in the application filed on 17.10.2016 before this Court, a plea has been made that the seized truck has not been released, it is not known what happened in the proceeding before the Authorised Officer, as copy of the order sheet of confiscation case has not been brought on record.



but the same has not been released.

5. Learned counsel for the petitioner submits that the petitioner runs his vehicle on hire. He contends that the stone chips did not belong to any reserve forest area, but was taken from Sonebhadra, Uttar Pradesh for which royalty was also paid. He has submitted that on 16.05.2016, the truck was in-route to Paliganj to deliver stone chips to purchaser Ma Sherawali Enterprises Pvt. Ltd., Naubatpur, Paliganj. On demand, papers were shown to the authorities, but they refused to go through it or even admit the existence of the papers. He submitted that there is no report or material to substantiate the allegation that the stone chips was of the Fazilpur Reserve Forest Area. According to him, the allegation is nothing but mere *ipse dixit* of the persons lodging the prosecution report. He submitted that the petitioner is a petty businessman and the truck is his only source of livelihood. According to him, no useful purpose would be served in detaining the said vehicle. He submitted that the power of confiscation vested in the officers of the Forest Department, who are executive authorities, is wholly improper in view of the principle of separation of executive and judicial power and the law laid down by a Division Bench of this Court, vide order dated 15.12.2016, passed in Letters Patent Appeal No. 2200 of 2016 and Letters Patent Appeal No. 2240 of 2016. He submitted that this



Court in exercise of power under Section 482 of the Cr.P.C. can release the vehicle even during the pendency of the confiscation proceeding.

6. *Per contra*, learned Additional Public Prosecutor for the State submitted that since the vehicle was used in commission of the forest offence, which is liable for forfeiture, should not be released. He submitted that in such matters, the criminal courts would have no jurisdiction to direct for release of a seized vehicle. He submitted that once the vehicle is seized for a reason to believe that it has been used in committing forest offence and the seized vehicle is subjected to confiscation proceeding upon prior intimation to the Magistrate, no court shall have jurisdiction to order for release of such vehicle on furnishing sureties. He submitted that in Letters Patent Appeal No. 2200 of 2016 and Letters Patent Appeal No. 2240 of 2016, the Division Bench has not laid down any law rather it has released the vehicle provisionally pending decision in Letters Patent Appeal No. 1647 of 2015 in which the Division Bench has formulated certain questions and has referred them to be answered by a Larger Bench. He contended that the reference has not been answered till date. He contended that the mere reference does not take away or wipe out the precedentiary value of the law laid down by the Supreme Court in **State of Karnataka vs. K. A. Kunchindammed [(2002) 9 SCC 90]**,



wherein the Supreme Court set aside the order of the High Court whereby a direction for interim release of vehicle seized in connection with forest offence was made. He submitted that the Supreme Court clearly laid down in the said case that the learned Magistrate and the learned Session Judge were right in holding that it is the Authorised Officer under 'the Act', who is vested with power to pass order of interim custody of the vehicle and not the Magistrate and 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 Session Judge on that basis.

7. I have heard learned counsel for the parties at length and carefully perused the record.

8. The arguments advanced on behalf of the parties need examination of the relevant provisions of 'the Act'. Chapter IX of 'the Act' prescribes punishment and procedure in respect of offences under the Forest Act. Section 52 of the 'the Act' empowers forest officers or the police officers to seize forest-produce together with all tools, arms, boats, vehicles, ropes, chains or any other article used in committing any such offence if they have reason to believe that a forest offence has been committed of any forest-produce.

9. Section 53 of the 'the Act' empowers the forest officer of a rank not inferior to that of a Ranger to release the property seized



on the execution of a bond by the owner for the production of the property before the Magistrate having jurisdiction to try offences as and when the same is required.

10. Section 54 of 'the Act' provides that after receipt of the report, the Magistrate is empowered to take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

11. Section 55 of 'the Act' provides that 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.

12. Clause (2) of Section 55 of 'the Act' provides that such confiscation may be in addition to any other punishment prescribed for such offence.

13. The State Legislature having noticed the merciless abuse of the forest produce by unscrupulous persons in Bihar has amended 'the Act' by the Bihar Amendment Act 9 of 1989 (Bihar Act 9 of 1990) whereby, in place of Section 52, Sections 52 to 52-D have been inserted in the Act. The amended provisions provide stringent punishment under various Sections and also incorporate the provisions for confiscation of the forest-produce, tools, vehicles, etc. used in



commission of the forest offence by the Authorized Officer. The amended provisions, as contained in Section 52, 52-A, 52-B, 52-C and 52-D, are extracted hereinbelow:-

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

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, either produce the property seized before an officer not below the rank of the Divisional Forest Officer authorised by the State Government in this behalf by notification (hereinafter referred to as the authorised Officer) or where it is, having regard to quantity of bulk or other genuine difficulty, not practicable to produce the property seized before the authorised officer, or where it is intended to launch criminal proceedings against the offender immediately, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that when the forest produce with



respect to which such offence is believed to have been committed is the property of Government and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his immediate superior.

(3) Subject to sub-section (5), where the authorised officer upon production before him of property seized or upon receipt of report about seizure, as the case may be, is satisfied that a forest-offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded, confiscate forest-produce so seized together with all tools, arms, boats, vehicles, ropes, chains or any other article used in committing such offence. The Magistrate having jurisdiction to try the offence concerned may, on the basis of the report of the authorised confiscating officer, cancel the registration of a vehicle used in committing the offence, the licence of the vehicle-driver and the licence of the arms. A copy of order on confiscation shall be forwarded without undue delay to the Conservators of Forests of the forest-circle in which the forest-produce, as the case may be, has been seized.

(4) No order confiscating any property shall be made under sub-section (3) unless the authorised officer-

(a) sends an intimation about initiation of proceedings for confiscation of property to the



Magistrate having jurisdiction to try the offence on account of which the seizure has been made;

(b) issues a notice in writing to the person from whom the property is seized, and to any other person who may appear to the authorised officer to have some interest in such property ;

(c) affords an opportunity to the persons referred to in clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation, and

(d) gives to the officer effecting the seizure and the persons or persons to whom notice has been issued under clause (b), a hearing on date to be fixed for such purposes.

(5) No order of confiscation under sub-section (3) of any tools, arms, boats, vehicles, ropes, chains or any other [article \(other than the forest-produce seized\)](#) shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorised officer that any such tools, arms, boats, vehicles, ropes, chains or other articles were used without his knowledge or connivance or, as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission of forest-offence.

52-A. Appeal against the order of confiscation.-



Any person aggrieved by an order of confiscation may, within thirty days of the order, or if the fact is of such order has not been communicated to him within thirty days of date of knowledge of such order, prefer an appeal in writing, accompanied by such fee payable in such form as may be prescribed, along with the certified copy of order of confiscation to the District Magistrate (hereinafter referred to as Appellate Authority) of the District in which the forest-produce has been seized.

Explanation.- (1) The time required for obtaining certified copy of order of confiscation shall be excluded while computing period of thirty days referred to in this sub-section.

(2) The Appellate Authority referred to in [Section 52-A](#), may, where no appeal has been preferred before him "*suo motu*" within thirty days of date of receipt of copy of order of confiscation by him, and shall on presentation of memorandum of appeal issue a notice for hearing of appeal or, as the case may be, of "*suo motu*" action to the officer effecting seizure and to any other person (including appellant, if any) who in the opinion of the Appellate Authority, is likely to be adversely affected by the order of confiscation, and may send for the record of the case:

Provided that no formal notice of appeal need be issued to such amongst the appellant, officer



effecting seizure and any other person likely to be adversely affected as aforesaid as may waive the notice or as may be informed in any other manner of date of hearing of appeal by the appellate authority.

(3) The Appellate Authority shall send intimation in writing of lodging of appeal or about "*suo motu*" action to the authorised officer.

(4) The Appellate Authority may pass such order of "Interim" nature for custody, preservation or disposal (if necessary) of the subject-matter of confiscation, as may appear to be just or proper in the circumstances of the case.

(5) The Appellate Authority, having regard to the nature of the case of the complexities involved, may permit parties to the appeal to be represented by their respective legal practitioners.

(6) On the date fixed for hearing of the appeal or "*suo motu*" action, or on such date to which the hearing may be adjourned, the Appellate Authority shall peruse the record and hear the parties to the appeal if present in person, or through any agent duly authorised in writing or through a legal practitioner, and shall thereafter proceed to pass an order of confirmation, reversal or modifications of order of confiscation:

Provided that before passing any final order the Appellate Authority may if it is considered necessary



for proper decision of appeal or for proper disposal of “*suo motu*” action, make further inquiry itself or cause it to be made by the authorised officer, and may also allow parties to file affidavits for asserting or refuting any fact that may arise for consideration and may allow proof of facts by affidavits.

(7) The Appellate Authority may also pass such orders of consequential nature as it may deem necessary.

(8) Copy of final order of order of consequential nature, shall be sent to the authorised officer for compliance or for passing any order appropriate in conformity with the order of Appellate Authority.

52-B. Petition for revision before Secretary, Forest and Environment Department, Government of Bihar against the order of the Appellate Authority.-(1) Any party to the appeal, aggrieved by final order or by order of consequential nature passed by the Appellate Authority, may within thirty days of the order sought to be impugned, submit a petition for revision to the Secretary, Forest and Environment Department, Government of Bihar.

Explanation.- In computing the period of thirty days under this sub-section, the time requisite for obtaining certified copy of Appellate Authority shall be excluded.



(2) The Secretary, Forest and Environment Department, Government of Bihar may confirm, reverse or modify any final order of consequential nature passed by the Appellate Authority.

(3) Copies of the order passed in revision shall be sent to the Appellate Authority and in the Authorised Officer for compliance or for passing such further order on for taking such further action as may be directed by such Court.

(4) For entertaining, hearing and deciding a revision under this section, the Secretary, Forest and Environment Department, Government of Bihar shall as far as may be, exercise the powers and follow the same procedure as exercised and followed while entertaining, hearing and deciding a revision under [the Code](#) of Criminal Procedure, 1973.

(5) Notwithstanding anything to the contrary contained in [the Code](#) of Criminal Procedure, 1973 the order passed under this Section shall be final and shall not be called in question before the Court.

52-C. Bar of jurisdiction of Courts etc. in certain circumstances.- (1) On receipt intimation under sub-section (4) of [Section 52](#) about initiation of proceedings for confiscation of property by the Magistrate having jurisdiction to try the offence on account of which the seizure of property which is subject- matter of confiscation, has been made, no Court, or Tribunal or Authority (other than the



authorised officer, Appellate Authority and Revision Authority referred to in [Sections 52, 52-A and 52-B](#)) shall have jurisdiction to make orders with regard to possession, delivery, disposal or distribution of the property in regard to which proceedings for confiscation or any other law for the time being in force.

Explanation.- Where under any law for the time being in force, two or more Courts have jurisdiction to try forest-produce, then on receipt of intimation under sub-section(4) of Section 52 by one of the Courts of Magistrate having such jurisdiction shall be construed to be receipt of intimation under that provision by all the Courts and the bar to exercise jurisdiction shall operate on all such Courts.

(2) Nothing in sub-section (1) shall affect the power saved under section 61.

52-D. Power of entry, inspection, search and seizure ; -Notwithstanding anything contained in any other law for the time being in force any Forest Officer not below the rank of a Range Officer of Forests or any Police Officer not below the rank of a Sub-Inspector, may, if he has reasonable grounds to believe that any forest-offence has been committed in contravention of this Act entry upon, inspect and search any place, premises, appurtenances thereto, land vehicle or boat and seize any illegal forest-produce and all tools, arms, boats, vehicles, ropes



chains or any other article used in committing such offence.”

14. It would be manifest from a reading of Section 52 of the State Amendment that no order of confiscation under sub-section (3) of machinery, arms, tools, boats, cattle, vehicle, ropes, chains or any other article used in committing such offence can be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of the forest officer that any such machinery, arms, tools, boats, cattle, vehicle, ropes, chains or any other article were used without his knowledge or connivance or, as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against, use of the objects aforesaid for commission of forest offence.

15. Section 52-A of the State Amendment provides for appeal against the order of confiscation before the District Magistrate of the District in which the forest-produce has been seized. The appellate authority is vested with the power to pass an order of confirmation, reversal or modification of the order of confiscation.

16. Section 52-B of the State Amendment provides for the forum of revision before the Secretary, Forest and Environment Department, Government of Bihar against final order passed by the appellate authority. In sub-section (5) of Section 52-B, it is set out that



notwithstanding anything to the contrary contained in the Cr.P.C. the order passed by the revisional court shall be final and shall not be called in question before any court.

17. Section 52-C of the State Amendment bars the jurisdiction of the Court on receipt of intimation under sub-section (4) of Section 52 about initiation of proceedings for confiscation of property by the Magistrate having jurisdiction to try the offence. Section 52-C prescribes that no Court, Tribunal or Authority other than Authorized Officer, the Appellate Authority and the Revisional Authority referred to in Sections 52, 52-A and 52-B shall have jurisdiction to make orders with regard to possession, delivery, disposal or distribution of the property in regard to which proceedings for confiscation are initiated notwithstanding anything to the contrary contained in 'the Act' or any other law for the time being in force.

18. Section 61 of 'the Act' saves the power to release the seized property. It reads as under :-

“61. Saving of power to release property seized.—
Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the State Government from directing at any time the immediate release of any property seized under section 52.”

19. Thus, on a careful reading of the relevant provisions of



‘the Act’; it would be manifest that an authorized officer upon being satisfied that a forest offence has been committed with the use of vehicle may confiscate the vehicle by order in writing and for reasons to be recorded. However, the forest officer cannot order for such confiscation unless he sends an intimation in a prescribed form about the initiation of proceeding for confiscation of property to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made

20. Section 52-C of the State Amendment completely bars the jurisdiction of the Court to make orders with regard to possession, delivery, disposal or distribution of the property seized immediately on receipt of intimation under sub-section (4) of Section 52 of the Act about the initiation of proceedings for confiscation. This bar is notwithstanding any thing to the contrary contained in the Act or in any other law for the time being in force.

21. The provisions of State Amendment discussed above, clearly shows that once a confiscation proceeding is initiated after the vehicle is seized for the reason to believe that it has been used in committing forest offence upon prior intimation in prescribed form to the Magistrate, no Court including the court of Magistrate shall have jurisdiction to order for release of such vehicle on execution of bond or on furnishing sureties.



22. In **State of W. B. & Ors. vs. Sujit Kumar Rana [(2004) 4 SCC 129]**, the Supreme Court while considering Section 59-G of ‘the Act’, as amended by West Bengal Act 22 of 1988, which is identical to Section 52-C of ‘the Act’, as amended by the Bihar Act 9 of 1990.

23. In that case, a truck of the respondent carrying forest produce and said to be without transit permit was detained and seized. Upon a report of the said seizure, show-cause notice was issued to the respondent by the Authorized Officer as to why the vehicle shall 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 thereunder under Article 226 of the Constitution of India before the High Court of Calcutta, which was disposed of by directing the Divisional Forest Officer to complete the confiscation proceedings expeditiously and preferably within a period of five weeks. Subsequently, the High Court of Calcutta passed an *ex parte* order directing that the custody of the truck be given to the owner on his executing bond to the satisfaction of the Divisional Forest Officer with a further direction 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 of the High Court, which was rejected by the High Court. The order of the High



Court was challenged by the State of West Bengal before the Supreme Court.

24. After having heard the parties and examined the provisions prescribed under Section 482 of the Cr.P.C., the Supreme Court held that a confiscation proceeding is independent of a criminal proceeding and once a confiscation proceeding is initiated, the jurisdiction of the criminal court in this behalf stands excluded. It observed as under :

“31. 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.”**

(emphasis mine)

25. The Supreme Court further held that the criminal court had no power to deal with the property seized under ‘the Act’. While



saying so, it observed as under :-

“33. 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 exercising its jurisdiction under Section 482 of the Code of Criminal Procedure would not arise.”**

(emphasis mine)

26. While concluding in **State of W. B. vs. Sujit Kumar Rana** (Supra), the Supreme Court observed as under :-

“46. 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.”

(emphasis mine)

27. In **State of Karnataka vs. K. Krishnan [(2000) 7 SCC 80]**, while dealing with a similar provision, the Supreme Court observed in paragraph 7 and 8 as under :-

“7. 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, cattle, etc., used in the commission of the forest offence, which are liable to forfeiture, should not be released. This, however, does not debar



the officers and the authorities under the Act including the Appellate Authority from passing appropriate orders under the circumstances of each case but only after assigning valid reasons. The liberal approach in the matter would perpetuate the commission of more offences with respect to the forest and its produce which, if not protected, is surely to affect 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.

8. 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 CrPC in the matter which we do not express in this case.”

(emphasis mine)

28. In Divisional Forest Officer & Anr. vs. G. V. Sudhakar Rao & Ors. [(1985) 4 SCC 573], the Supreme Court observed in paragraph 12 as under:

"12. ... The conferral of power of confiscation of seized timber or forest produce and the implements etc., on the Authorised Officer under sub-section (2-A) of Section 44 of the Act on his being satisfied that a forest offence had been committed in respect thereof, is not dependent



upon whether a criminal prosecution for commission of a forest offence has been launched against the offender or not. It is a separate and distinct proceeding from that of a trial before the Court for commission of an offence. Under sub-section (2-A) of Section 44 of the Act, where a Forest Officer makes a report of seizure of any timber or forest produce and produces the seized timber before the Authorised Officer along with a report under Section 44(2), the Authorised Officer can direct confiscation to Government of such timber or forest produce and the implements etc. if he is satisfied that a forest offence has been committed, irrespective of the fact whether the accused is facing a trial before a Magistrate for the commission of a forest offence under section 20 or 29 of the Act."

(emphasis mine)

29. In **State of W. B. vs. Gopal Sarkar [(2002) 1 SCC 495]**, relying on the judgment in **Divisional Forest Officer vs. G. V. Sudhakar Rao** (Supra), the Supreme Court observed in paragraph 10 as under :

“10. 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. This position is manifest from the statute and has also been held by this Court in Divisional Forest Officer and Anr. v. G. V. Sudhakar Rao and Ors., (1985) 4 SCC 573 ...”**

(emphasis mine)

30. In **State of M. P. vs. S. P. Sales Agencies and Ors. [(2004) 4 SCC 448]**, the Supreme Court had an opportunity to deal with the question as to whether confiscation proceeding can be initiated only after launching of the criminal prosecution or it is open to the forest authorities upon seizure of forest-produce to initiate both or either. Relying on the ratio laid down in the **Divisional Forest Officer vs. G. V. Sudhakar Rao** (Supra) and **State of W. B. vs. Gopal Sarkar** (Supra), the Supreme Court held that **the power of confiscation is independent of any criminal prosecution for forest offence committed.**

31. In **State of Karnataka vs. K. A. Kunchindammed** (Supra) while dealing with the same subject-matter, in reference to the provisions of Forest Act after noticing the purpose and scheme of ‘the Act’, the Supreme Court held that the High Court was in error in



taking a view to the contrary and setting aside the orders passed by the Magistrate and the Session Judge whereby they had held that it was the Authorised Officer under 'the Act', who was vested with the power to pass order for interim custody of the vehicle and not the Magistrate. The court observed :-

“23. ... 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 CrPC** 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.

24. 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.”**

(emphasis mine)

32. In **Shambhu Dayal Agarwala vs. State of West Bengal [(1990) 3 SCC 549]**, the Supreme Court while examining the provisions of the Essential Commodities Act, 1955, particularly Section 6 E of that Act which bars the jurisdiction of Court, Tribunal or Authority with regard to release of seized vehicle, vessel or other conveyance in the commission of the offence held that Section 6 E was enacted to debar the courts from making any order with regard to release of any vehicle or other conveyance used in commission of the offence.

33. The decision rendered in **Shambhu Dayal Agarwala**



(supra) has been reiterated and followed by the Supreme Court in **State of Bihar & Anr. vs. Arvind Kumar & Anr. [(2012) 12 SCC 395]** in which the foodgrains of public distribution system were seized from a place. The first information report was lodged under Sections 7 and 10 of the Essential Commodities Act as well as Sections 421 and 424 of the Indian Penal Code. The criminal writ was filed before this Court to quash the confiscation proceeding and/or to release the confiscated goods. By observing that keeping the seized goods for a long time may not be justified, this Court allowed the writ petition and directed for the release of the confiscated goods. When the petitioner approached the court of Chief Judicial Magistrate, Patna for releasing the goods in pursuance of the order passed by this Court 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 petitioner again approached this Court, which directed for the release of the goods. The State of Bihar, being aggrieved by the order of release, filed an appeal before the Supreme Court.

34. While setting aside the order of the High Court directing the release of the goods, the Supreme Court remitted the matter back to the High Court for fresh consideration observing that **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. It further observed: “we are at pains to observe that the High Court has dealt with the issue in most casual and cavalier manner without any application of mind showing complete disregard of the legislature enacting the provisions for general welfare”. It further observed as under :-

“What we found shocking in the instant case is that the petition was filed before the High Court for quashing of the FIR and alternatively for releasing the seized items and the High Court without giving any reason whatsoever disposed of the petition observing as under:

"Considering the submissions of the parties, in the opinion of the Court, continuing the seizure of the seized items for a long time may not be justified, at least the seizure of the wheat."

(emphasis mine)

35. In **State (NCT of Delhi) vs. Narender [(2014) 13 SCC 100]**, while examining the provisions of Delhi Excise Act, particularly Sections 33, 58, 59 and 61 of that Act as also Sections 457 of the Cr.P.C. which bars the jurisdiction of the Court from releasing the seized vehicle used in commission of offence, the Supreme Court, relying upon the decision in **State of Karnataka vs. K. A. Kunchindammed** (Supra), set aside the judgment and order of the



High Court and held that **the High Court exceeded in its jurisdiction in directing for release of the vehicle on security.**

36. In that case, a 'Cruiser Force' vehicle bearing Registration No. H R 56 7290 was seized by police carrying 27 cartons, each containing 12 bottles of 750 ml mashaedar country-made liquor and 20 cartons, each containing 48 quarters of Besto Whisky. All the 47 cartons were embossed with 'Sale in Haryana Only'. On the basis of an information given by the police constable, an FIR was instituted under Section 33(1)(a) and Section 58 of the Excise Act, 2009. During the course of investigation, the respondent Narender claimed himself to be the owner of the vehicle filed an application for its release on security before the Metropolitan Magistrate which was rejected, vide order dated 24.05.2011 holding that he has no power to release the seized in connection with the offence under the Delhi Excise Act. Aggrieved by the order of the Magistrate, the respondent filed an application before the Delhi High Court under Section 482 of the Cr.P.C. assailing the order of the learned Metropolitan Magistrate. The High Court, vide its order dated 28.11.2011, directed the vehicle to be released in favour of the registered owner on furnishing security to the satisfaction of Metropolitan Magistrate. Being aggrieved by the order of the High Court, the State of Delhi preferred an appeal before the Supreme



Court. Taking into consideration the provisions prescribed under Section 61 of the Delhi Excise Act, the Supreme Court held **that the general power of the Magistrate under the Cr.P.C. for releasing the vehicle has to yield where a statute makes a particular provision with regard to its confiscation and disposal. Under the aforesaid circumstances, it held that the Metropolitan Magistrate was right in rejecting the application for release whereas the High Court erred in directing for release of the vehicle.**

37. Thus, having regard to the fact that 'the Act' is a special Statute for the purpose of preserving the forest and forest-produce in the State. The necessary corollary of the provisions prescribed therein 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 thereunder, the general power vested in the Magistrate of dealing with interim custody/release of seized materials under Cr.P.C. has been taken away. As seen under Section 54 of 'the Act', the Magistrate, upon receipt of report under sub-section (2) of Section 52, is empowered to take such measures, as may be necessary for the arrest and trial of the offender and disposal of the property. According to law, he has been restricted to pass any order for disposal of property seized. No order confiscating any property shall be made unless the Magistrate having jurisdiction to try



the offence on account of which seizure has been made receives an intimation provided under sub-section (4) of Section 52 of the Bihar Amendment under 'the Act'. Thus, the clear mandate of law under 'the Act' is that once the vehicle is seized with a reason to believe that it has been used in committing an offence and seized vehicle is subjected to confiscation proceeding upon prior intimation to the Magistrate, no Court shall have jurisdiction to order for release of such vehicle on or without sureties.

38. As far as the order dated 15.12.2016 passed in Letters Patent Appeal No. 2200 of 2016, which was heard analogous with Letters Patent Appeal No. 2240 of 2016 is concerned, noticing the similar provisions of the Essential Commodities Act, as are contained in 'the Act' and, in the light of the order passed in Letters Patent Appeal No. 1647 of 2015 (Baleshwar Roy vs. The State of Bihar & Ors.), the Division Bench has directed for provisional release of the seized vehicles pending confiscation proceeding to the satisfaction of the Authorised Officer-cum-Divisional Forest Officer, Rohtas at Sasaram on certain conditions. The Division Bench adjourned the matter to be listed after disposal of Letters Patent Appeal No. 1647 of 2015 wherein the following questions were framed vide order dated 19.12.2016 and the matter was referred to the Larger Bench for consideration :-



“(1) Whether the Collector, who has seized any animal, vehicle, vessel or other conveyance used in carrying essential commodity, has the jurisdiction to release such animal, vehicle, vessel or other conveyance, and if so, on what conditions?

(2) Whether the Separation of judicial and executive functions will empower the Collector to confiscate the animal, vehicle, vessel or other conveyance without trial as the deprivation of a property can be ordered by a Court only after trial of the criminal case?

(3) Whether the provisions of Section 6-D of the Act, so as to inflict any other punishment after confiscation, would stand the legal scrutiny on the touchstone of double jeopardy.

(4) Whether the power of confiscation of the goods and the vehicle vesting with the Collector as an Executive Authority can be said to be legal in view of the principle of separation of executive and judicial power and/or that the power of confiscation of the goods and the vehicle can be exercised only by the Court.”

39. It would be evident from the aforesaid order dated 15.12.2016 that no ratio has been laid down by the Division Bench in Letters Patent Appeal No. 2200 of 2016.

40. As far as the reference made by the Division Bench to the Larger Bench is concerned, the reference has not been answered by the Larger Bench till date. Hence, in the opinion of this Court, mere reference does not obliterate or extinguish the precedentiary value of



the ratio laid down by the Supreme Court in the cases, discussed hereinabove.

41. At this stage, it would be apposite to refer to Article 141 of the Constitution of India which reads as under:-

“141. Law declared by Supreme Court to be binding on all courts- The law declared by the Supreme Court shall be binding on all courts within the territory of India.”

42. A mere reading of Article 141 brings into sharp focus its expanse and its all pervasive nature. When the Supreme Court decides the principle, it would be binding on all the courts including the High Court.

43. Thus, in view of the law laid down by the Supreme Court in **State of W. B. vs. Sujit Kumar Rana**(Supra), **State of Karnataka vs. K. Krishnan** (Supra), **Divisional Forest Officer vs. G. V. Sudhakar Rao** (Supra), **State of W. B. vs. Gopal Sarkar** (Supra), **State of M. P. vs. S. P. Sales Agencies** (Supra), **State of Karnataka vs. K. A. Kunchindammed** (Supra), **State of Bihar vs. Arvind Kumar** (Supra) and **State (NCT of Delhi) vs. Narender** (Supra), I am of the considered opinion that allowing the application of the petitioner for release of the truck bearing Registration No. BR-25G-3355 after initiation of the confiscation proceeding under ‘the Act’



would not only be against the provisions of ‘the Act’, as amended by the Bihar Amendment Act 9 of 1989 (Bihar Act 9 of 1990), but the same would also amount to passing an order in complete breach of the law laid down by the Supreme Court in its various judgments.

44. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	AFR
CAV DATE	05.09.2017
Uploading Date	22.09.2017
Transmission Date	22.09.2017

