

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on: 25/08/2017****Judgment delivered on: 11/09/2017****CRMP No. 893 of 2013**

- Suraj Kumar Sahu S/o Rajkumar Sahu Aged About 23 Years R/o Siddhartha Nagar Mohla, P.O. And Ps Mohla, Civil And Rev. Distt. Rajnandgaon C.G.

---- Petitioner**Versus**

1. Forest Conservator Durg Circle, Durg Distt. Durg C.G.
2. Appellate Authority Forest Conservator Durg, Distt. Durg C.G.
3. Authorize Officer Sub Forest Division Officer, Dallirajhara, Distt. Balod C.G.

---- Respondents

For Petitioner : Shri B.P. Singh, Advocate.

For Respondents/State : Shri Anil S. Pandey, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV Order****11/09/2017**

Heard.

1. This petition is brought under Section 482 of Cr.P.C. with a prayer to exercise inherent jurisdiction and grant relief to the petitioner.
2. It is submitted by counsel for petitioner that petitioner is the registered owner of pick-up vehicle bearing registration No.CG08-0798. On 19.10.2011, this vehicle was seized by the Forest Officials when it was used for transporting forest produce i.e. teakwood, and a POR 7581/14 was registered against the petitioner, who is owner of said vehicle. Confiscation proceeding was drawn by respondent No.3 against the petitioner with respect to the seized vehicle and order dated 03.03.2012 was passed by which it was directed that the confiscation proceeding be

dropped and the seized vehicle be released to its registered owner. Respondent No.2 by invoking *suo motu* jurisdiction as appellate authority passed the order dated 13.02.2013 and set aside the order passed by respondent No.3 and further directed for confiscation of the vehicle in question. This order was challenged before the Revisional Court, 6th Additional Sessions Judge, Durg in Criminal Revision No.57/13 which was decided on 29.06.2013 and the revision petition has been dismissed. Hence, this petition.

3. It is submitted by learned counsel for the petitioners that the teakwood that was transported in the vehicle concerned was of a fallen tree standing on the agricultural land of one Kanhaiya resident of Village Kadbattar, hence, the teakwood found loaded in the vehicle was not a forest produce. Petitioner never admitted that he had committed any forest offence even then the order of confiscation has been passed by respondent No.2 illegally and arbitrarily. Hence, prayed that the order of the confiscation passed by respondent No.2 and order of the revisional Court below be set aside and the relief, as claimed in the prayer clause, be granted to the petitioner.
4. Counsel for respondent submits that petitioner could not justify the fact that the teakwood which was being transported in the seized vehicle was not a forest produce because while transporting the teakwood in the said vehicle, the petitioner was not in possession of any valid transit pass or permission as required under the C.G. Vanopaj Vyapar Adhiniyam, 1969. Hence, the proceeding of confiscation of the seized vehicle was rightly drawn and the order passed by respondent No.2 does not call for any interference. Hence, for these reasons, there is no scope for interference by this Court in this petition in exercise of its extraordinary jurisdiction under Section 482 of CrPC.
5. Heard and Perused.
6. Main ground of contention appears to be is that the teakwood found in the vehicle of petitioner was not the forest produce. It was the burden of petitioner to prove in the confiscation proceeding, as it was his ground of defence. It is not disputed that petitioner, owner of the vehicle, was not in possession of any transport permit or any sanction letter permitting

transportation of teakwood. Defence witnesses were examined during confiscation proceeding. Witness namely Kanhaiya gave his statement before respondent No.3 to the effect that he is the owner of agricultural land over which a teak tree was standing. He has further stated that as the said teak tree had fallen down on account of cyclone, therefore, he has given the same to one Chetram. No question was put to this witness by the department to refute his statement. Said Chetram has stated that after receipt of teakwood from Kanhaiya, he had hired the vehicle of the petitioner for its transportation, but the vehicle in which it was being transported was seized by the forest department. Petitioner has also stated in the similar tune. In support of these statements, document of khasra panchsala, record of rights & map were produced by Kanhaiya resident of Kadhbattar. From perusal of the map it is clear that many trees including the tree of teakwood are shown to be standing on the said land. A spot inspection report prepared by forest officer is also available on record having mention of the presence of remnant of falling teak tree on the land belonging to Kanhaiya.

7. After the evidence brought by the petitioner in his defence, the burden had shifted on the forest department to prove that the teakwood which was found being transported by the seized vehicle was a forest produce.
8. Section 2(1)(k) of CG Revenue Code, 1959 defines that land in support of the earth surface whether or not under water; and, where land is referred to in this Code, it shall be deemed to include all things attached to or permanently fastened to any thing attached to such land.
9. The forest department failed to bring any evidence to prove that the teakwood found in the vehicle of the petitioner was a product from forest. Section 240 of the Land Revenue Code, 1959 provides for prohibition of cutting of certain trees. It further provides that the State Government may prohibit or regulate the cutting of such trees whether such trees stand on the land belonging to bhumiswami or on land belonging to the State Government. Hence, it appears that the land owner, the transferee and the transporter may have breached the rules framed with respect to cutting, felling etc. of tree found on bhumiswami land and also with respect to its transportation, but it is not made out beyond doubt that the

teakwood transported was a forest produce.

10. Petitioner has placed reliance on the judgment of this Court in Mohd. Shoaib and another Vs. State of CG. & Others in 2016(4) CGLJ 112 in which relying on the judgment of Madhukar Rao vs. State of M.P. and others in 2000(1) J.L.J. 304 wherein it was held that property seized in connection with forest offence may be treated as properties of the State only on finding by the competent court, that vehicle was being used for commission of a forest offence. It was also held that in this backdrop, interim custody of the seized vehicle can also be granted by the Magistrate. Hence, in view of these judgments and the facts of this case, it appears that order of confiscation passed by respondent No.2 is bad in law which has been erroneously upheld by the Sessions Court in the revisional order.
11. In the result and for the foregoing reasons, this petition deserves to be allowed and it is hereby allowed. The impugned order and the order passed by respondent No.2 are hereby set aside. Respondents are directed to deliver possession of the seized vehicle to the petitioner within a period of 60 days from today.

Sd/-
(Rajendra Chandra Singh Samant)
JUDGE