

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

CRIMINAL WRIT PETITION NO.708 OF 2016

Ismail Abdulganikhan Pathan
Age: 36 years, Occu.: Business,
R/o.Jadhavwadi, Cidco,
Aurangabad, Taluka and
District Aurangabad.

..Petitioner

VERUS

- 1) The State of Maharashtra
- 2) Forest Ranger, Ahmednagar,
320, Bhingar Ropwatika,
Nagar-Aurangabad Road,
Ahmednagar, Dist.Ahmednagar.
- 3) Designated Officer &
Assistant Forest Ranger,
(EGS & Compa), Ahmednagar.
Dist.Ahmednagar.

..Respondents

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Advocate for Petitioner : Mr.Zafar M.Pathan
APP for respondents : Mr.G.O.Wattamwar

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CORAM : PRAKASH D.NAIK, J.

RESERVED ON : 20th NOVEMBER, 2017
PRONOUNCED ON : 22nd DECEMBER, 2017

JUDGMENT :-

1) The petitioner is aggrieved by the order dated 4.11.2015 passed by the learned District Judge-1 and Additional Sessions Judge, Newasa, in Criminal Appeal No.1 of 2015 below Exh.11. The petitioner has also assailed the order passed by Assistant Conservator of Forest, Ahmednagar dated 1.12.2014, u/s 61-A of the Indian Forest Act and the order dated 25.8.2014 passed by the Tree Officer-cum-Range Forest Officer.

2) The petitioner is the owner of the vehicle viz.Mahindra Scorpio Jeep MH-23 E-5746. The said vehicle was involved in an accident, which has allegedly occurred on 16.3.2014 on Nagar-Aurangabad road. It is alleged that three gunny bags of Sandalwood were found in the vehicle and therefore the Sandalwood and vehicle were seized. Crime No.I-90 of 2014 was registered for the offence u/s 379 of the Indian Penal Code and under the provisions of Indian Forest Act. Crime No.91 of 2014 was registered for offence u/s 304-A, 279, 337, 328, 427 of

the Indian Penal Code and Section 184 of Motor Vehicles Act.

3) The petitioner preferred an application for return of vehicle before the Court of Judicial Magistrate First Class, Newasa on 4.6.2014, which was numbered as Criminal Miscellaneous Application No.240 of 2014. The learned Magistrate by order dated 24.6.2014 allowed the said application and Newasa Police Station was directed to deliver custody of the vehicle to the petitioner on his executing bond in the sum of Rs.6,00,000/-. It was further directed that the petitioner shall not alter, sale, alienate, transfer, convey the custody of the said vehicle.

4) The petitioner preferred another application for return of the said vehicle in connection with Crime No.I-90 of 2014 before the Trial Court, which was numbered as Miscellaneous Application 241 of 2014. The said application was rejected by the Court vide order dated

24.6.2014. The petitioner preferred Revision Application No.90 of 2014 challenging the said order. The Sessions Court vide order dated 26.8.2014, allowed the revision application by setting aside the order dated 24.6.2014 passed by the learned Judicial Magistrate First Class, Newasa in Miscellaneous Application No.241 of 2014. The vehicle was directed to be released to the petitioner on executing bond of Rs.5,00,000/-. The Crime No.I-90 of 2014, which was registered in Newasa Police Station also included the charges u/s 41(b)(2) of the Indian Forest Act and Sections 3, 4 and 5 of the Maharashtra Felling of Trees Regulation Act, 1964, alongwith Section 379 of the Indian Penal Code.

5) The Range Forest Officer passed order of seizure of Mahindra Scorpio Jeep by order dated 25.8.2014. In the said order, it was stated that the order passed in accordance with Section 3, 4 and 5 of the Maharashtra Felling of Trees Regulation Act, 1964. The vehicle was confiscated with the Government alongwith the Sandalwood.

6) In pursuant to the order dated 25.8.2014, the Assistant Conservator of Forest passed an order of confiscation vide Section 61-A of the Indian Forest Act on 1.12.2014.

7) The petitioner preferred an Criminal Appeal before the District and Sessions Judge, Newasa bearing No.1 of 2015 and challenged the order dated 1.12.2014, passed by the Assistant Conservator of Forest u/s 61-A of the Forest Act. The said appeal was dismissed on 4.11.2015. Hence, the petitioner has approached this Court challenging the aforesaid order.

8) The learned counsel for the Petitioner submitted that the vehicle was ordered to be returned to the petitioner by the Court vide order dated 24.6.2014 and 26.8.2014. The order dated 25.8.2014 was passed confiscating the vehicle under the provisions of the Maharashtra Felling of Trees Regulation Act, 1964, which

was followed by another order dated 1.12.2014 passed by the Assistant Conservator of Forest confiscating the vehicle u/s 61-A of the Forest Act.

9) The learned counsel for the petitioner submits that while passing the aforesaid orders, no notice was issued to the petitioner and without giving him opportunity, the said orders were passed. It is submitted that the Sessions court while dismissing the appeal preferred by the petitioner has observed in the order dated 4.11.2015 that the order dated 1.12.2014 is *non-est* as the said authority ought not to have proceeded with confiscation in view of the earlier order dated 25.8.2014. It is submitted that the appeal preferred by the petitioner was maintainable before the said authority and the Court ought not to have dismissed the same on the ground of maintainability. The vehicles were already ordered to be released on executing bond to the petitioner and earlier order was frustrated by the subsequent confiscating order. The order dated 1.12.2014 was passed without

giving notice of hearing as contemplated u/s 61-B of the Indian Forest Act. The Sessions Court ought to have passed order releasing vehicle.

10) Learned APP submitted that there is no error in the orders passed by the authorities. The vehicle is involved in serious crime. It is therefore prayed that the petition may be dismissed.

11) On perusal of the documents, it appears that the vehicle was concerned with Crime No.I-90 of 2014 and I-91 of 2014. The first Crime No.I-90 of 2014 relates to the offence under the Indian Forest Act and Crime No. I-91 of 2014 involved the offence under Section of the Indian Penal Code. The learned Judicial Magistrate First Class has allowed the application for return of vehicle in connection with Crime No.I-91 of 2014. The Sessions Court has allowed the revision application directing release of vehicle in connection with Crime No.90 of 2014. The confiscation order was passed on 25.8.2014 by

Tree Officer-cum-Range Forest Officer by exercising powers u/s 3, 4 and 5 of the Maharashtra Felling of Trees Regulation Act. The Assistant Conservator of Forest passed order of confiscation u/s 61-A of the Forest Act on 1.12.2014. While passing the said orders, apparently no notice was given to the petitioner.

12) In case of *Mangal s/o Balasaheb Deshmane vs. State of Maharashtra & Anr. [2008 All M.R. (Cri) 3436]*, it has been observed by this Court that the order confiscating the motor vehicle u/s 61-B of the Indian Forest Act, cannot be made without giving notice in writing to the registered owner thereof. In the said decision, reference was also made to another decision in the case of *Inderjit Sing Vs. State of Maharashtra [1990 (3) (Cri.) 779]* wherein it was observed that there was no show cause notice prior to confiscation order order to the owner of vehicle, therefore, the order requires to be set aside.

13) It is pertinent to note that the petitioner had preferred an appeal before the Sessions Court, which was dismissed on the ground that it is not maintainable. The petitioner has challenged the order dated 1.12.2014. The Court observed in the order dated 4.11.2015 that once the seizure proceedings were held under the Maharashtra Felling of Trees Regulation Act, no fresh proceedings could have been initiated under the provisions of the Indian Forest Act. Thus, the subsequent order of confiscation u/s 61 of the Indian Forest Act passed by the Assistant Conservator of Forest on 1.12.2014 is *non-est*. It was therefore observed that no appeal can be preferred against that order. The order of Sessions Court thus makes it clear that the order dated 1.12.2014 is not in existence, however, the Court did not set aside the said order. Surprisingly, the Sessions Court held that appeal is not maintainable against the order of the Forest Officer before the said Court. The Sessions Court then could have set aside the order dated 1.12.2014. However, from the order dated 4.11.2015, it can be

inferred that the Sessions Court has held that the order dated 1.12.2014 is *non-est* in view of the earlier order dated 25.8.2014. The petitioner was not heard before passing the order dated 1.12.2014. Since the order becomes *non-est* for reasons stated by the Court and also considering the fact that it was passed without hearing the petitioner, the said order is bad in law. In the circumstances, the confiscation order dated 1.12.2014 is required to be set aside.

14) In the appeal preferred before the Sessions Court viz. Appeal No.1 of 2015, which is referred to herein above, the petitioner has stated that the petitioner had preferred an appeal against the order dated 25.8.2014, before the Collector, Ahmednagar. Since the said authority has no power to entertain the same, the appeal has been preferred before Deputy Conservator of Forest, which is pending and during the pendency of the said appeal, the order dated 1.12.2014 has been passed. It is therefore, apparent that the appeal preferred by the

petitioner is pending before the said authority against the order dated 25.8.2014. The said authority can be directed to decide the appeal preferred by the petitioner challenging the order dated 25.8.2014 and there would be no embargo upon the authority to consider the same since the order dated 1.12.2014 is being set aside. In the aforesaid circumstances, I pass the following order:-

ORDER

(I) Criminal Writ Petition No.708 of 2016 is partly allowed.

(II) The order dated 1.12.2014 passed by the Assistant Conservator of Forest, Ahmednagar u/s 61-A of the Indian Forest Act, is set aside.

(III) The appeal preferred by the petitioner before the Deputy Conservator of Forest challenging the order dated 25.8.2014 passed by Tree Officer-cum-Range Forest Officer, Ahmednagar, be decided in accordance with law.

[PRAKASH D.NAIK, J.]