

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8504 of 2017

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Guput Prasad son of Keshwar Prasad Resident of Mohalla - Company Sarai,
Rouja Road, Sasaram, Police Station - Sasaram (T), District - Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Forest Department,
Government of Bihar, Patna.
2. The District Magistrate, Rohtas at Sasaram.
3. The Divisional Forest Officer-cum-Authorized Officer, Rohtas Forest
Division, Sasaram, District - Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajani Kant Singh
For the Respondent/s : Mr. Anant Pd.Singh-Sc15

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 06-03-2018

Heard learned counsels for the parties.

The present Writ application has been filed for directing the respondent authorities, particularly, respondent no. 3, the Divisional Forest Officer-cum-Authorized Officer, Rohtas Forest Division, Sasaram for release of the truck of the petitioner bearing Registration No. BR-24GA 2994 which was seized in connection with Forest Case No. 59 of 2017 registered under Sections 33,41 and 42 of the Indian Forest (Bihar Amendment) Act, 1989 (Bihar Act No. 9 of 1990) (hereinafter referred to as 'the Act').

The factual background in which the truck of the petitioner was



seized is that one Narbadeshwar Prasad, Forester, Darigaon Forest Area, Sasaram Forest Range submitted a written information to the learned CJM, Sasaram on 20.5.2017 that while he was on patrolling duty along with other officials on Ara Sasaram Main Road, he intercepted a truck (Highwa Dumper) on chase which was being rashly driven but the driver of the truck in question managed to escape, though one person was apprehended from the truck who suggested that he was only a passenger and he has nothing to do with the truck and the stone chips loaded thereon. Consequently, the truck was seized and the Divisional Forest Officer-cum-Authorized Officer was requested to confiscate the truck and the stone chips under section 52(3) of the Act.

It is submitted by learned counsel for the petitioner that the petitioner is the owner of the commercial vehicle in question. The stone chips were loaded on 18.5.2017 from the crusher machine of M/s Gautam Enterprises, Palamu under a valid challan which has been brought on record as Annexure 1. The stone chips were being brought to Ara but the truck in question was intercepted, and despite the fact that the driver showed the challan, yet the informant asked for calling the owner and when the petitioner could not reach the place, the truck was seized. The petitioner submitted a show-cause on 3.6.2017, as contained in Annexure 3, before the Divisional Forest Officer-cum-Authorized Officer, Rohtas suggesting that the stone chips were being carried under valid challan and



there is nothing on record to suggest that it was being transported from the protected forest area. It is further submitted that the vehicle in question is rotting in open air and the petitioner is ready to furnish adequate surety for provisional release of the vehicle.

The petitioner has also submitted a petition for provisional release of the truck in question before the Divisional Forest Officer-cum-Authorized Officer, Rohtas on 3.6.2017 but the same has not been disposed of. Learned counsel for the petitioner has relied upon order dated 16.2.2015 passed in CWJC No. 377 of 2015 and its analogous cases, as contained in Annexure-5, whereby the Divisional Forest Officer, Rohtas-cum-Authorized Officer-cum-Authorized Officer, Rohtas has been directed to release the said vehicle pending confiscation proceeding with certain conditions though no ratio has been laid down in the aforesaid order. Yet the application of the petitioner for provisional release of the truck in question has still not been disposed till date. Hence, the present writ application.

Learned counsel for the respondent State, on the basis of counter affidavit, submits that the vehicle in question was carrying illegally mined stone chips, without a valid challan and hence, in view of the provision stipulated under Section 52 C of the Act, the Authorized Officer, Appellate authority and the Revisional authority only are authorized to pass an order for release of the vehicle in question.



This court is dismayed to find that neither the writ application nor the voluminous counter affidavit contains the confiscation case number. The application filed by the petitioner for interim release of the vehicle in question, as contained in Annexure 4, also does not contain the confiscation case number. However, the statement has been made in paragraph 14 of the counter affidavit that confiscation proceeding has been initiated. The counter affidavit is nothing but xerox copy of several judgments without specifying the stage of the confiscation proceeding which suggests the causal manner in which the writ application as well as the counter affidavit has been drafted.

The basic issue involved in the present writ application is whether in view of the specific provisions in Section 52 of the Act mandates that the Divisional Forest Officer-cum-Authorized Officer is authorized to conduct the confiscation proceeding, or whether this Court should exercise the discretionary jurisdiction under Article 226 of the Constitution of India directing provisional release of vehicle pending confiscation proceeding/application pending for provisional release of the vehicle in question before the appropriate authority.

It is well settled law that once the confiscation proceeding has been initiated and the matter has been brought to the notice of the Magistrate by the authority of the Forest Department, the jurisdiction of any other Court gets ousted. This Court is of the view that



the discretionary jurisdiction under Articles 226 and 227 of the Constitution of India has to be exercised in special circumstances and for good reasons. The same cannot be exercised for making the provision under the Special Act otiose and redundant, as has been held by a bench of this Court in the case of Enamul Haque and Ors. Vs. State of Bihar and Ors. and analogous cases reported in 1995(2) PLJR 153.

There is no doubt that no provision under any other law can override the constitutional discretionary jurisdiction under Article 226 and 227 of Constitution of India, however, such discretionary jurisdiction is subject to certain self-imposed restrictions one of which is that if an effective and efficacious remedy is available, then the writ jurisdiction cannot be exercised. But the alternative remedy does not operate as a bar in certain circumstances, such as, for enforcement of any of the fundamental rights or where there is violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is under challenge, as has been dealt with in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., reported in (1998) 8 Supreme Court Cases 1.

This Court in the interest of environment and ecology, should be reluctant in passing order for release of the vehicles involved in forest related offences, as it gives an impetus to such persons who are indulged in illegal mining or transporting forest produce illegally,



as has been held by the Apex Court in the case of Section Forester and Anr. Vs. Mansur Ali Khan reported in (2004) 1 Supreme Court Cases 293.

Paragraph 6 reads as follows:

“6.While in regard to the power of the High Court to release the vehicle in a given set of facts cannot be disputed, this Court as noticed by the High Court itself has laid down that such power can be exercised for good reasons and in exceptional cases only. In the instant case, the only reason given by the High Court for the release of the vehicle is on the ground that same was in the custody of the officers for more than one year and there was no likelihood of immediate disposal of the pending case. This by itself, in our opinion, would not be a ground for the release of the vehicle because this would be the case in almost all such cases involving forest offence. In exceptional cases, the act itself has made a provision for interim release of the vehicle on the existence of certain conditions mentioned therein. In the absence of such conditions being fulfilled, we do not think that the High Court as a matter of course could pass mechanical orders releasing such vehicles.”

In similar circumstances, a bench of this court in the case of Pramod Kumar alias Parmod Kumar Vs. State of Bihar (Cr. Misc. No. 45284 of 2016) considered the issue whether during the pendency of confiscation proceeding under the Act, direction can be issued for release of the seized truck/vehicle, in exercise of the inherent powers under Section 482 of the



Cr.P.C., 1973, and on considering several judgments of the Apex Court, it was held that in view of the specific provision under Sections 52A to 52D of the Act, no release order can be passed in exercise of the said jurisdiction.

However, this does not mean that the Divisional Forest Officer-cum-Authorized Officer can keep the confiscation proceeding or the application for provisional release of the vehicle in question, pending for an indefinite period allowing the vehicle to rot in open air as the same has deprecated by a bench of this Court in the case of Dhananjay Kumar and Ors. Vs. The State of Bihar and Ors. and analogous cases, reported in 2013(4) PLJR 849 wherein a time frame has been framed by this court for disposing of such proceeding, in view of the fact that keeping such applications pending would allow the vehicles to rot unnecessarily.

In view of the discussions made above, this Court is not inclined to direct the respondent authorities to release the vehicle in question. However, the respondent no. 3, the Divisional Forest Officer-cum-Authorized Officer, Rohtas at Sasaram is expected to conclude the confiscation proceeding expeditiously, preferably, within a period of three months of the receipt/production of the copy of the order. In the meantime, it is further expected to dispose of the petition dated 3.6.2017, as contained in Annexure 4, filed for provisional release of the vehicle in question within two weeks of the receipt/production of a copy of the order.



Accordingly, the writ application is disposed of.

(Dinesh Kumar Singh, J)

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