

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.8987 of 2017**

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Sunil Kumar Singh Son of Vijay Bahadur Singh, Resident of Mohalla-  
Company Sarai, Police Station-Sasaram, District-Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Forest and Environment, Bihar, Patna.
2. The Divisional Forest Officer-cum-Authorised Officer, Rohtas, Forest Division, Rohtas at Sasaram.
3. The Forester Darigaon, Rohtas.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Sanjay Kumar Tiwary  
For the Respondent/s : Mr. Raghwanand-Gall

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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. 2, the Divisional Forest Officer-cum-Authorized Officer, Rohtas Forest Division, Sasaram for release of the Highwa truck of the petitioner bearing Registration No. AP-16TD 1814 seized in connection with Forest Case No. 38 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 Sinha, Forester, Darigaon Forest Area, Sasaram Forest Range submitted a written information to the learned CJM, Sasaram on 30.3.2017 that while he was on patrolling duty on 29.3.2017 along with other officials near Nahauna Road, he intercepted a truck (Highwa Dumper) but the driver



of the truck in question managed to escape taking advantage of darkness. On search, it was found that forest produce was 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 truck in question. In fact 16 tonnes stone chips were loaded from the business premises of M/s Sone Stone Chips, karamkala Palamu, Chhatarpur, Jharkhand under a valid challan which has been brought on record as Annexure 3. Since the driver was being abused and assaulted, he escaped from the scene.

The truck in question was intercepted and Confiscation Case No. 124 of 2017 was initiated and during the pendency of the same the petitioner submitted an application dated 24.5.2017, as contained in Annexure 4, for provisional release of the vehicle in question before the Divisional Forest Officer-cum-Authorized Officer, Rohtas. 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.

Learned counsel for the petitioner relied upon order dated 17.4.2015 passed in CWJC No. 3544 of 2015 as contained in Annexure-5, whereby the Divisional Forest Officer, Rohtas-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 of till date. Hence, the present writ application.

Learned counsel for the respondents State on the basis of counter affidavit, submits that the vehicle in question was carrying illegally mined stone chips without valid challan and hence, in view of the provisions under section 52 C of the Act, the Authorized Officer, Appellate authority and the revisional authority are only authorized to pass an order for release of the vehicle in question. However, the counter affidavit does not depict the reason for not concluding the confiscation proceeding till date and also for non-disposal of the application for release of the vehicle in question as contained in Annexure 4.

The basic issue involved in the present writ application is whether, in view of the specific provisions in Section 52 of the Act, 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, during the pendency of confiscation proceeding/application 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 Forest Department authority, 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, 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 in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., reported in (1998) 8 Supreme Court Cases 1.

The 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. It is not reasonable to allow the vehicle to rot and become valueless for no valid reason, and if it is so allowed, then any alternative remedy available in the Act, would become meaningless.

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. 2, 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 24.5.2017 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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