

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8961 of 2017

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Pappu Singh, Son of Dharmendra Singh, resident of Village- Kanchanpur,
Police Station- Sasaram (M), 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-authorized Officer, Rohtas, Forest Division, Rohtas at Sasaram.
3. The Forester Tilauthu, Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Tiwary
For the Respondent/s : Mr. Gajendra Pd. Yadav-Sc17

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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 a direction to the respondent authorities, particularly, respondent no. 2, the Divisional Forest Officer-cum-Authorized Officer, Rohtas Forest Division, Sasaram for release of the truck of the petitioner bearing Registration No. JH-05Q 0551 which was seized in connection with Forest Case No. 62 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 Lalan Mochi, Forester, Tilauthu



Forest Area, submitted a written information to the learned SDJM, Sasaram on 19.5.2017 to the effect that while he was on patrolling duty along with other police officials, he noticed that six trucks along with the truck in question loaded with stone chips, coming from Fazilpur Protected Forest. Consequently the truck was seized. Hence, prayer was made to the Divisional Forest Officer-cum-Authorized Officer 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 700 cft. stone chips were loaded in the truck in question from the business premises of Jai Maa Mangla Gauri Stone Chips, Karamkala Chhatarpur, Jharkhand under a valid challan which has been brought on record as Annexure 3. The stone chips were being brought to Sasaram. The driver of the truck namely Dharmendra produced the challan but ignoring the same the truck was seized. There is nothing on record to suggest that the stone chips were mined from the protected forest area. During the pendency of the confiscation proceeding, the petitioner submitted an application for provisional release of the vehicle in question, as contained in Annexure 4, 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. Yet, the application for provisional release of the vehicle in question has still not been disposed of. Hence, the present writ application.

Learned counsel for the petitioner has relied upon the 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.

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 embargo 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.

Having heard learned counsels for the parties, this court is dismayed to find that neither the writ application nor the voluminous counter affidavit filed on behalf of respondent nos. 2 and 3, as also the application filed by the petitioner for provisional release of the vehicle in question, as contained in Annexure 4,



indicates the confiscation case number. However, this fact has been specifically admitted by the petitioner in paragraph 13 of the writ application and by the respondents in paragraph 16 of the counter affidavit that the confiscation proceeding has been initiated. Such lapse shows the casual 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, the the discretionary jurisdiction under Articles 226 and 227 of the Constitution of India 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.

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.



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, 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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Transmission Date	

