

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1901 of 2017

Arising Out of Forest Case No.60 of 2017 District- SASARAM (ROHTAS)

=====

Shyam Sunder Tiwari S/o Dinnath Tiwari, R/o Village- Berukahi, P.S.- Shiosagar,
District- Rohtas at Sasaram.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Forest Department, Government of Bihar, Patna.
3. The Divisional Forest Officer Cum Authorised Officer, Rohtas at Sasaram.
4. The Forest Range Officer Tilauthu, Rohtas at Sasaram.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Uma Shankar Singh, Adv.

For the Respondent/s : Mr. Alok Kumar, AC to SC-15

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 24-01-2018

Heard learned counsel for the petitioner and learned
counsel representing the State.

Petitioner in the present case is seeking following
reliefs:-

*“That the instant criminal writ application
is being preferred on behalf of the petitioner
invoking the writ jurisdiction of this Hon’ble
court for seeking the following relief(s):*

*i) For issuance of writ in the nature of
Certiorari or any other appropriate writ for
quashing of the Forest Case bearing No.60 of*



2017 which was lodged in the Court of Learned Sub-Divisional Judicial Magistrate, Dehri-on-Sone (Rohtas) u/s 33, 41, 42 and 52 of Forest Act. And during pendency of this application may pleased to stay the proceedings of the Forest Case bearing No.60 of 2017 and other consequential proceedings and directed the respondent No.3 to release the Truck bearing Registration No. UP-67T/1331 in favour of the petitioner which was seized in connection of Forest Case no.60 of 2017 lodged on 20.05.2017 under section 33, 41, 42 and 52 of Forest Act.

ii) For holding that an order of Confiscation case no.156 of 2017 has to be passed by the Authorized Officer-cum-Divisional Forest Officer which is an Executive Authority. The issue required to be examined is whether a person can be deprived of his property by an Officer of the Executive though adjudication of an offence under the Act is to be tried only by a Judicial Magistrate.

iii) For issuance of any other appropriate writ, order or direction which your Lordships may deem fit and proper in the facts and circumstances of the case.”

During the pendency of the writ application by an interim order dated 16.10.2017 the vehicle in question has been



ordered to be released in favour of the petitioner on execution of surety bond of Rs.20,00000/-.

Learned counsel has now pressed this writ application limited to the prayer for quashing of the Forest Case No. 60 of 2017 which has been lodged in the court of learned Sub-Divisional Judicial Magistrate, Dehri-on-Sone (Rohtas) under Sections 33, 41, 42 and 52 of the Forest Act. Although he has prayed for holding that an order of confiscation passed by the Authorized Officer-cum-Divisional Forest Officer is without jurisdiction but the fact remains and admitted in course of hearing that presently the order of confiscation has not been passed.

In course of argument, learned counsel has stated that the petitioner is ready and willing to contest the case lodged before the learned Magistrate, but it is duty of the officer concerned who has lodged the case to prove the guilt against the accused. In the present case he has not taken the Court into the merit of the case lodged against this petitioner as contained in Annexure-1 to the writ application.

It is further contention of the learned counsel representing the petitioner that Section 52 of the Indian Forest Act, 1927 read with the Bihar amendments would show that when a report of seizure is submitted to the Magistrate having jurisdiction to try the



offences on account of which seizure has been made, the State has to take it to a logical end and thereupon only the confiscation proceeding could have been initiated.

On the other hand, learned counsel representing the State submits that admittedly at this stage confiscation order is not under challenge because no order of confiscation has been passed by the Authorized Officer as envisaged under sub-section (3) of Section 52, Section 55 and Section 56 of the Indian Forest Act, 1927. Learned counsel also submits that the petitioner has not challenged the virus of the provisions contained in the Indian Forest Act, 1927 by virtue of which the Authorized Officer has been conferred with the power of confiscation, moreover the petitioner will have an opportunity to challenge the order of confiscation taking all such pleas which may be available to the petitioner after passing of the confiscation order.

It is submitted that because the order of confiscation is not in existence as of today, the issues raised herein is not required to be gone into. He further submits that by judicial pronouncements of the Hon'ble Supreme Court in the case of **State of West Bengal Vs. Sujit Kumar Rana** reported in **2004(1) SCR 870**, it has been held that confiscation envisages a civil liability, thus the petitioner may challenge the confiscation proceeding if so advised in accordance with law when such order of confiscation will be available to him.



I have considered the rival submission at the bar and perused the records. The submission of learned counsel for the petitioner is that he is ready to contest and face the criminal case to prove his innocence, therefore in fact his challenge to the forest case bearing no.60 of 2017 loses its significance. The only argument of learned counsel for the petitioner is that the Officer who has lodged the case must prove the guilt and only thereupon the confiscation case will be initiated or contested. I am unable to agree with the submission of learned counsel for the petitioner. It has been held in the catena of judgments one of which is in the case of **State of West Bengal Vs. Gopal Sarkar** reported in **AIR 2002 SC 221** wherein the Hon'ble Supreme Court has held that criminal proceeding before the learned Magistrate and a confiscation proceeding are two independent proceedings and initiation of a confiscation proceeding is not dependent upon the conviction of the accused.

In the case of **State of West Bengal Vs. Sujit Kumar Rana** reported in **2004(1) SCR 870**, the Hon'ble Supreme Court had occasion to consider the distinction between two words 'confiscation' and 'forfeiture' while discussing a case arising out of a forest offence lodged against the petitioner in the said case. The Hon'ble Supreme Court has held that to initiate a confiscation proceeding conviction of the accused is not required. It has further been held that confiscation



envisages a civil liability.

In the present case, the order of confiscation has yet not been passed. Learned counsel for the petitioner has admitted that presently he has been called upon to show cause in the confiscation case and he has submitted to the jurisdiction of the Authorized Officer where he is ready to contest the case.

In this view of the matter, for the present nothing remains for adjudication in the present case. The petitioner will have certainly a remedy available after passing of the order of confiscation by the Authorized Officer. It would be apart from his constitutional right to challenge the virus of the Act. For the present this writ application does not have any issue for adjudication.

At this stage, learned counsel for the petitioner submits that this Court in its Constitutional power under Article 226 of the Constitution of India may direct the Prosecuting Officer and the court below to expedite the disposal of the criminal cases. This Court would remind the authorities under the Indian Forest Act, 1927 as well as the court below that an accused has a fundamental right in terms of Article 20 and 21 of the Constitution to seek speedy trial of the cases and therefore the trial court would take into consideration all these aspects of the matter and shall not keep the matter pending by granting unnecessary adjournments.



In the facts and circumstances as stated above, this writ application stands disposed off.

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	
CAV DATE	
Uploading Date	29.01.2018
Transmission Date	29.01.2018

