

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2249 of 2018

=====

Mudrika Prasad, Son of Dhupan Sah, Resident of Village- Penikap Khurd,
Police Station- Raipur, District- Sonbhadra (U.P) at present Village- Sikari,
Police Station- Adhaura, District- Kaimur, Bhabhua.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Forest and Environment
Department, Government of Bihar, Patna.
2. The District Magistrate, Kaimur at Bhabhua.
3. The Divisional Forest Officer-cum-Authorised Officer, Kaimur-Forest
Division, Bhabhua.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Dhaneshwar Prasad Gupta
For the Respondent/s : Mr. Chittranjan Sinha- Paag2

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 08-03-2018

Heard Mr. Dhaneshwar Prasad Gupta, learned counsel for the
petitioner and Mr. Niraj Kumar, learned AC to PAAG-2.

The present Writ application has been filed for a direction to
respondent no. 3, the Divisional Forest Officer –cum- Authorized Officer,
Kaimur Forest Division, Bhabhua for provisional release of the truck bearing
Registration No. UP64H-9748 seized in pursuance to Forest Case No. 42 of
2017 during the pendency of the Confiscation Case No. 31 of 2017.

The factual matrix of the case is that on 18.08.2017, A.S.I. of
Bhagwanpur P.S. seized the truck in question loaded with 220 bags of Piya
Guthali (forest produce) weighing 90 quintals. An information was given to the
Forest Officer, Todi. Subsequently the Forest Officer, Todi reached the police
station and recorded the statement of driver Sanjay Prasad who claimed that he



was carrying the Piyar Guthali after obtaining valid permit from the Sonbhadra forest area and hence, he was having valid challan. Consequently, the Forest Case No. 42 of 2017, as contained in Annexure 2, was registered under Sections 33, 41 and 42 of the Indian Forest (Bihar Amendment) Act, 1989 (Bihar Act 9 of 1990) (hereinafter referred to as 'the Act'), the truck loaded with Piyar Guthali were seized under Section 52 of the Act and the driver was arrested.

Respondent no. 3, the Divisional Forest Officer –cum- Authorized Officer, Kaimur Forest Division, Bhabhua vide letter dated 24.8.2017 intimated to the learned Chief Judicial Magistrate, Kaimur for initiation of confiscation proceeding. Consequently, Confiscation Case No. 31 of 2017 was initiated for confiscation of the truck and loaded forest produce. The petitioner preferred an application on 5.9.2017 before the respondent no. 3, the Divisional Forest Officer –cum- Authorized Officer, Kaimur Forest Division, Bhabhua for release of the seized vehicle but the same has not been disposed of till date.

It is submitted by learned counsel for the petitioner that petitioner is the owner of the vehicle in question and the same is exposed to the vagaries of nature and the petitioner is ready to furnish adequate surety at the time of release of the same. It is further submitted that the Piyar Gutheli was being transported under a valid permit and challan. Learned counsel for the petitioner relies on the order passed by a bench of this Court in C.W.J.C. No. 896 of 2015 and its analogous cases wherein during the pendency of the confiscation proceeding the DFO was directed to pass an order of release of the vehicle under



certain conditions.

Though the writ application was registered on 3.2.2018, but no counter affidavit has been filed. Mr. Niraj Kumar, learned AC to PAAG-2 submits that under the law, after initiation of confiscation proceeding, the Divisional Forest Officer-cum-Authorized Officer has the jurisdiction to pass an order of release of the seized vehicle.

Having heard learned counsels for the parties, this Court is of the view that 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 and, secondly, whether the petitioner can file an appeal before the District Magistrate against the order of the Divisional Forest Officer-cum-Authorized Officer, Gaya when he was neither accused in forest case nor party to the confiscation proceeding nor the vehicle in question has been registered in his name, though he has claimed to have purchased the same.

In order to protect and improve the environment and ecology, the Forest Act, 1927 was enacted and consequently, (Bihar Amendment) Act, 1989 (Bihar Act 9 of 1990) was brought in existence. By 42nd amendment, Articles



48A and 51A were incorporated in the Constitution of India imposing duty on State and citizens to protect and improve the environment.

The above amendments in the Constitution reflect the intention of the Parliament that a duty has been cast not only upon the State but also upon the citizens to protect and improve the environment and natural resources of the country and that is why through Bihar Amendment, the provision has been made more stringent to protect the forest.

It is well settled law that the High Court under Article 226 of the Constitution of India has a discretion to entertain or not to entertain a writ petition but the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available but the alternative remedy does not operate as a bar in certain circumstances, such as, 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 similar issue was under consideration before 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 where it was held that Section 52C of the Act ousts the jurisdiction of any court except the Authorised



officer, Appellate Authority and Revisional Authority referred to in Sections 52,52A and 52B of the Act. However, in exceptional circumstances and for good reason such power can be exercised . Paragraph no. 22 of the judgment reads as follows:

“22. The next question is as to whether the bar created under Section 52C will also oust the jurisdiction of this Court. This question will not detain me for long as it is well settled by now that Articles 226 & 227 of the Constitution of India are not one of such provisions which can be changed by ordinary legislation. The power can be curtailed only by amendment in the Constitution. The State amendment brought by State Act cannot curtail or take away the power of this Court under Articles 226 & 227 of the Constitution of India is to be exercised on well established principles and not arbitrarily and it is subject to the certain self imposed restrictions. Its object is to see that authorities and tribunals act within the bound of their jurisdiction. No writ can be issued to frustrate the object of the Act. Nor it can be to make a valid statutory enactment otiose and redundant. However, I do not mean to say that this Court is powerless to interfere in appropriate cases but such cases will be far and few.”

The Supreme Court in the case of Section Forestor and Anr. Vs. Mansur Ali Khan reported in (2004) 1 Supreme Court Cases 293 has held that High Court should exercise the power of release in forest related offence very reluctantly in exceptional cases for good reasons. Paragraph No. 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 view of the discussions made above, this Court is not inclined to order for release of the vehicle in question in exercise of jurisdiction under Article 226 of the Constitution of India. As per the provisions under Section 52(4)(a) and 52C of the Act which mandates that no order of confiscating any property shall be made under sub-section (3) of Section 52 unless the Authorized Officer sends an intimation about initiation of proceeding for confiscation to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made on receipt of the intimation under sub-section (4) of Section 14 about initiation of confiscation proceeding, no court, Tribunal or Authority other than the Authorized Officer, Appellate or Revisional Authority referred to in Section 52,



52A and 52B of the Act shall have jurisdiction to make order with regard to possession, delivery, disposal or distribution of the property in regard to which proceeding for confiscation are initiated under the Act.

Hence, with the initiation of the confiscation proceeding, even the concerned Magistrate becomes *functus officio* so far as the confiscation is concerned.

It is well settled law that the criminal case/forest case and confiscation proceeding are separate entity, inasmuch as both can be initiated together or one without the other. So far as the question of seized Piya Gutheli and the same being transported on a valid challan is concerned, it is a question of fact, which requires leading of evidence by the Divisional Forest Officer-cum-Authorized Officer in confiscation proceeding and the same cannot be resolved in exercise of discretionary jurisdiction under Article 226 of the Constitution of India.

Section 52 of the Act does not stipulate any time frame for disposal of the confiscation proceeding by the Divisional Forest Officer-cum-Authorized Officer, but it does not mean that it should be kept pending for an indefinite period. Since the vehicle of the petitioner is rotting in open air, hence, it is expected from the respondent no. 3, the Divisional Forest Officer-cum-Authorized Officer, Kaimur Forest Division, Bhabua to conclude the confiscation proceeding within a period of eight weeks of the receipt/production of a copy of this order. Though the petitioner has relied upon the order dated 16.2.2015 passed in C.W.J.C. No. 896 of 2015, as contained in Annexure 9, whereby this Court directed the Divisional Forest Officer-cum-Authorized Officer, Rohtas to release the vehicle under



certain conditions but since that order does not lay down any ratio, this Court is not inclined to direct for release of the vehicle in question pending confiscation proceeding. Hence, it is also expected from the respondent no. 3, the Divisional Forest Officer-cum-Authorized Officer, Kaimur Forest Division, Bhabua to dispose of the application of the petitioner for provisional release of the vehicle in question dated 5.9.2017, as contained in Annexure 6 expeditiously within a period of three weeks from the date of receipt/production of a copy of this order.

Accordingly, this writ application stands disposed of

anil/-

(Dinesh Kumar Singh, J)

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

