

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6946 of 2018

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Ganesh Pandey, Son of Dukhi Pandey, Resident of Village- Nawadih,
Police Station- Jamua, District- Giridih (Jharkhand).

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Forest and Environment Department, Govt. of Bihar, Patna.
2. The District Magistrate, Jamui.
3. The Authorized Officer-cum-Divisional Forest Officer, Forest Division, Jamui.
4. The Forest Range Officer, Dulampur Forest Range, District- Jamui.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Lakshmi Kant Sharma, Advocate
Mr. Amresh Kumar, Advocate

For the Respondent/s : Mr. Sarvesh Kr. Singh- AAG13
Mr. Tej Pratap Singh, AC to AAG13

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

02/ 11-05-2018

Heard learned Senior counsel for the
petitioner and learned AC to AAG-13.

No counter affidavit has been filed on behalf
of the Respondents.

In view of nature of order this Court intends
to pass, this Court is not inclined to adjourn the matter any further.

The present Writ application has been filed
for quashing the order dated 16.01.2018 passed in Confiscation
Case No. 13 of 2017 by Respondent no. 3, Authorized Officer –
cum- Division Forest Officer, Forest Division, Jamui, whereby the
petitioner's truck bearing Registration No. JH 10V 5561 has been



confiscated along with the stone chips loaded thereon.

The factual matrix of the case would unveil that on 24.07.2017 Sunil Kumar, Forest Guard received a secret information, during patrolling, about transportation of stone chips when the truck bearing Registration No. JH 10V 5561 was intercepted, being loaded with stone chips. The truck driver Shamim Ansari was arrested. The information was given to the Authorized Officer –cum- Divisional Forest Officer, Forest Division, Jamui as well to the learned Chief Judicial Magistrate, Jamui and the request was made for the confiscation of the vehicle along with stone chips in question.

It is submitted by learned Senior counsel for the petitioner that the petitioner is the owner of the vehicle in question. The forest case has been instituted and the truck has been confiscated on mere suspicion as the order is cryptic, since without verifying the fact whether the stone chips has been loaded from the protected forest, or without ascertainment of the place from where it was suspected to have been mined, the case has been instituted.

Learned AC to AAG-13 submits that the petitioner is having the statutory remedy of appeal under Section 52-A of the Indian Forest Act, 1927 substituted by Bihar



Amendment Act, 9 of 1990.

The basic issue involved in the present writ application is whether in view of the specific provisions as contained in Section 52 of the Act which is a complete Code stipulating specific provision of seizure, confiscation, appeal and the revision, whether this Court should exercise the discretionary jurisdiction under Article 226 of the Constitution of India. Moreover, Section 52-C of the Act bars the jurisdiction of Courts/Tribunal or Authority except the jurisdiction of Authorized Officer, Appellate Authority or Revisional Authority under Sections 52, 52A and 52B of the Act. Section 52-C of the Forest Act reads as follows:-

“52-C. Bar to jurisdiction of Court, etc. under certain circumstances. – (1) On receipt of intimation under sub-Section (4) of section 52 about initiation of proceedings for confiscation of property by the Magistrate having jurisdiction to try the offence on account of which the seizure of property by the Magistrate having jurisdiction to try the offence on account of which the seizure of property which is subject-matter of confiscation, has been made, no Court, Tribunal or Authority (other than the Authorized Officer, Appellate Authority and Revisional Authority referred to in Sections



52, 52-A and 52-B) shall have jurisdiction to make orders with regard to possession, delivery, disposal or distribution of the property in regard to which proceedings for confiscation are initiated under Section 52, notwithstanding anything to the contrary contained in this Act, or any other law for the time being in force.

Explanation- Where under any law for the time being in force, two or more Courts, have jurisdiction to try forest-offence, then receipt of intimation under sub-Section (4) of Section 52 by one of the Courts of Magistrates having such jurisdiction to shall be construed to be receipt of intimation under that provision by all the Courts and the bar to exercise jurisdiction shall operate on all such Courts.

(2) Nothing in sub-Section (1) shall affect the power saved under Section 61”.-M.P. Act 25 of 1983, S. 4 (w.e.f. 1.11.1983). Substituted by M.P. Act 7 of 2010, S.7. ”

The above provision stipulates that once the confiscation proceeding is initiated, no Court, Tribunal or Authority (other than the Authorized Officer, Appellate Authority and the Revisional Authority referred to in Sections 52, 52-A and 52-B) shall have jurisdiction to make orders with regard to



possession, delivery, disposal or distribution of the property, concerning which proceedings for confiscation are initiated. Elaborating the provision under Section 52-C of the Act, 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, has held that Section 52C of the Act ousts the jurisdiction of any Court except the Authorized 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 read 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.”

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 then in such circumstance the jurisdiction under Article 226 of the Constitution of India cannot be exercised. However, the alternative remedy would 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 where the vires of an Act is under challenge.

Above all the exercise of jurisdiction under Article 226 of the Constitution of India is a subject to self imposed restraint and if it is exercised in casual manner it will reduce the provisions under the Special Act redundant and otiose.



In view of the discussions made above, this Court is not inclined to interfere. However, the present writ application is disposed of with liberty to the petitioner to prefer appeal before the District Magistrate, Jamui within a period of four weeks of receipt of a copy of this order along with condonation of delay application. It is expected from the Appellate Authority to dispose of the appeal within a period of two months of filing and if there is any difficulty in early disposal of the appeal, the Appellate Authority may consider the provisional release of the vehicle in question.

(Dinesh Kumar Singh, J)

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