

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
WP227 No. 675 of 2009

- Rajendra Kumar, S/o Laxman Das Satnami, Aged About 34 years, R/o Village Bade Sajapali, Tahsil Basna, District Mahasamund (C.G.)

---- **Petitioner**

Versus

1. State of Chhattisgarh, Through Collector, Mahasamund, District Mahasamund (C.G.)
2. Forest Range Officer (General), Range Saraipali, Tahsil Saraipali, District Mahasamund (C.G.)
3. Divisional Forest Officer (General), Saraipali, Tahsil Saraipali, District Mahasamund (C.G.)
4. Conservator of Forest, Raipur, District Raipur (C.G.)
5. Bundram, Aged About 27 years, S/o Girija Khadiya (Driver of vehicle Tractor No. MP 23 G 6611 and Trolley No. MP 23 G 6612), R/o Village Bade Sajapali, Police Station – Basna, Tahsil Basna, District Mahasamund (C.G.)
6. Dhansingh, Aged about 30 years, S/o Prahalad, Caste – Saura (Tribal) (owner of land bearing Khasra No.118 situated at Koyal Bahal and owner of tree standing on the said land)

---- **Respondents**

For Petitioner	:	Shri Vikram Dixit, Advocate.
For Respondent Nos.1 to 4/State :		Shri U.N.S. Deo, Government Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

06.07.2018

1. Petitioner, by this petition has challenged the legality and validity of the impugned order dated 27.12.2007 passed by 8th Additional Sessions Judge (F.T.C.), Raipur in Criminal Revision No.58 of 2007, whereby the learned Revisional Court dismissed the criminal revision filed by the Petitioner and upheld the order of confiscation passed by prescribed officer/Sub Divisional Officer (Forest), Saraipali under the provisions of Section 15 of the Chhattisgarh Vanopaj (Vyapar Viniyam) Adhiniyam, 1969; hereinafter referred as 'Adhiniyam, 1969'.
2. Brief facts of the case are that on 24.03.2005, when the employees of the Saraipali Range were on patrolling duty, they found one tractor loaded with wooden logs in agriculture field of Dhan Singh near village Koyal Bahal. The forest employees enquired with regard to the papers of transporting woods from

the driver of the tractor namely Set Lal, son of Nayan Singh who stated that he was not in possession of any transport permit for transporting loaded wooden logs. The employees of the forest department on the said averments of the driver, seized the tractor bearing registration No.CG 04 ZG 3732 (old No. MP 23 G 6611) and tractor Trolley bearing registration No.CG 04 ZG 3733 (old No. MP 23 G 6612) and wooden logs of Beeja, 8 in numbers measuring 2.072 cubic meters. The seizure of the aforementioned article have been made by one Shri S.K. Panigrahi i.e. the forest guard which is also evident from the seizure memo dated 25.03.2005 which is annexed at Page No.126 of the paper book. After seizure of the article and registration of the offence under Indian Forest Act, 1927 bearing POR No.759 of 2008 information was sent to the Sub Divisional Officer (Forest), Saraipali on 31.03.2005. The prescribed officer/ Sub Divisional Officer (Forest), Saraipali issued notice intimating the Judicial Magistrate for initiating the proceedings of confiscation on 31.03.2005. Subsequently, the notices were also issued to the Petitioner to show cause as to why the tractor Trolley should not be confiscated. The Petitioner appeared and his statement was also recorded by the prescribed authority wherein he stated that he was having no knowledge of any offence as he had sent his vehicle alongwith the driver for religious work in the function organized by Gayatri family.

3. That, the prescribed authority/ Sub Divisional Officer (Forest), Saraipali after completion of proceeding of confiscation, by considering all the materials, facts and evidence available on record passed an order of confiscation of tractor bearing registration No.CG 04 ZG 3732 (old No. MP 23 G 6611) and tractor Trolley bearing registration No.CG 04 ZG 3733 (old No. MP 23 G 6612) vide its order dated 24.11.2006.
4. Petitioner, being aggrieved by order of confiscation passed by the prescribed authority preferred an appeal before the appellate authority and the appellate authority vide its order dated 13.03.2007 dismissed the appeal and confirmed

the order passed by the prescribed authority/ Sub Divisional Officer (Forest), Saraipali.

5. Aggrieved by the order passed by appellate authority, the Petitioner preferred criminal revision before learned 8th Additional Sessions Judge (F.T.C.), Raipur and the learned Revision Court, by impugned order dated 27.12.2007 dismissed the revision filed by the Petitioner and confirmed the orders of the confiscation as well as the order passed by the appellate authority against which this writ petition is filed by the Petitioner under the provisions of Article 227 of the Constitution of India.
6. Learned counsel for the Petitioner though have raised various other grounds but have given stress on the ground that as the seizure on spot has been made admittedly by the forest guard, who was not authorized to initiate the proceeding of seizure in view of the provisions of Section 15 of the Adhiniyam, 1969. Therefore, the entire confiscation proceeding is vitiated in the eyes of law.
7. Per contra, learned Government Advocate would submit that alongwith forest guard, other employees were also present during the time of patrolling and in their presence the search and seizure proceedings have been carried out and they were competent to initiate the proceedings of seizure. The learned State counsel would support the impugned order passed by the learned Revisional Court.
8. Heard the counsels and perused the record carefully. For appreciating the arguments of the learned counsel for the Petitioner it will be essential to look into the provisions of Section 15 of the Adhiniyam, 1969 as under:

“15. Search and seizure of property liable to confiscation and procedure therefor – (1) Any Forest Officer as may be notified by the State Government or any Police Officer nor below the rank of an Assistant Sub Inspector or any other person authorized by the State Government may, with a view to securing compliance with the provisions of this Act or the rules made thereunder or to satisfying himself that the said provisions have been complied with-

- (i) stop and search any person, boat, vehicle or receptacle used or intended to be used for the transport of specified forest produce;*
- (ii) enter and search any place.*

(2) When there is reason to believe that any offence under this Act has been committed in respect of any specified forest produce, (any forest officer or any person notified by the State Government or any Police Officer not below the rank of any Assistant Sub Inspector) or any person authorized by the State Government in this behalf may, seize such specified forest produce along with all tools, boats, vehicles, ropes, chains or any other articles used in committing such offence under the provisions of this Act."

From bare perusal of aforementioned provisions the word which has been used in the Adhiniyam, 1969 with regard to the person competent to search and initiate the proceedings of seizure is mentioned as any 'Forest Officer' or 'Police Officer' not below the rank of 'Assistant Sub Inspector' or any other person authorised by the State Government.

9. In the case in hand, the proceeding of seizure has been initiated by the employee of forest department holding the post of forest guard who cannot be equated as forest officer as provided under the provisions of Section 15 of the Adhiniyam, 1969. Even in the subsequent notification dated 28.12.1990, there is no mention of the Forest Guard as being authorised to act as authorised officer or has been armed with powers to seize the property under the Adhiniyam, 1969.

10. Learned counsel appearing for the Petitioner placed his reliance in support of his argument with regard to the competence of the forest guard to initiate the proceeding of the seizure on the judgment passed by the Hon'ble High Court in the matter of **Bhagwan Khushwaha & Another Vs. State of Chhattisgarh & Another** dated 27.07.2017 in WPC No.6612 of 2007 wherein the Hon'ble High Court while considering the judgment of **Bahadur Singh Vs. State of Chhattisgarh & Others reported in 2015 (2) M.P.H.T. 97 (CG)** held that the

forest guard was incompetent to search and seize the article including wooden logs and vehicle which gave rise to initiation of confiscation proceedings and held the confiscation proceedings to be vitiated.

11. In the case in hand, the facts is also identical to the case cited by the learned counsel for the Petitioner and in the instant case also the proceedings of seizure has been initiated by the forest guard and, therefore, in view of the submissions mentioned and in the light of the judgment cited by the Petitioner in the opinion of this Court, the entire proceedings of confiscation is vitiated as the seizure made by a person/employee was not in conformity with the provisions of Section 15 of the Adhiniyam, 1969.

12. In the result, the impugned order passed by the learned Revisional Court i.e. 8th Additional Sessions Judge (F.T.C.), Raipur, the appellate order passed by the Conservator of Forest, Raipur and the order passed by prescribed authority/Sub Divisional Officer (Forest) deserves to be and are hereby set aside. The Tractor and Trolley which were seized under the confiscation proceedings shall be returned to the Petitioner.

13. No order as to costs.

Sd/-
(Parth Prateem Sahu)
Judge