

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD**

CRIMINAL WRIT PETITION NO. 1765 OF 2017

Arjun Bhaurao Patil,
age 54 years, occ. Agriculture,
R/o Gotane, Tal.& Dist. Dhule ... Petitioner

VERSUS

- 1] The State of Maharashtra,
- 2] The Authorised Officer,
Assistant Conservator of Forest,
Forest Department, Dhule ... Respondents

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Mr. S.S.Patil, advocate for the petitioner
Mr. G.O.Wattamwar, A.P.P for respondents

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CRIMINAL WRIT PETITION NO. 1817 OF 2017

Pramod Ananda Gujar,
age 49 years, occ. Agriculture,
R/o At Post Wadi,
Tal.Shirpur, Dist. Dhule ...Petitioner

VERSUS

- 1] The State of Maharashtra,
through Range Forest Officer,
Shirpur, Tal.Shirpur,
District Dhule,
- 2] The Authorised Officer,
Assistant Conservator of Forest,
(Regional and Wild Life)
Forest Department, Dhule ... Respondents

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Mr. S.P.Brahme and Mr. R.S.Devdhe, advocates for
the petitioner

Mr. G.O.Wattamwar, A.P.P for respondents

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CORAM : K.L.WADANE, J.

DATE OF RESERVING

THE JUDGMENT

: 21.3.2018

DATE OF PRONOUNCEMENT

OF THE JUDGMENT

: 23.3.2018

J U D G M E N T :

Rule. Rule returnable forthwith. With
the consent of the learned counsel for the
parties, both the petitions are taken up for final
hearing.

Heard the learned counsel for the
petitioners and the learned A.P.P. For respondents
in both the petitions.

2. By the present petitions, under Article
227 of the Constitution of India, the petitioners
challenge the orders, dated 19.10.2015 and
29.10.2015, respectively, passed by respondent

no.2 and the judgment and order dated 23.11.2017, passed by learned Sessions Judge, Dhule, in Criminal Appeal Nos. 89 and 92 of 2015, respectively.

3. It is the case of the petitioners that they are agriculturists by occupation and for the purpose of carrying out agricultural activities they have purchased JCB machine bearing registration no. MH-18/Z-7364 and no. MH-18/Z-3071, respectively.

4. In Writ Petition No. 1765 of 2017, Chhagan Pawar is accused no.1 and Bhausahab Mausule, driver of JCB machine is accused no.2. It is contended that on 29.6.2015, the accused persons spotted felling and cutting trees for preparing boundary of agricultural land by using aforesaid JCB machine on Block No. 205 of Chaugan reserved forest land. It is further contended that Chhagan Pawar owner of land bearing Gut No. 385 has engaged the said JCB machine for preparing

boundary of his agricultural land. It is contended that forest officer registered offence bearing C.R. No. 2 of 2015 for an offence punishable under Section 26 (1) of Indian Forest Act, 1927 (for short, 'the Forest Act') against said Chhagan Pawar and driver of JCB machine namely, Bhausahab Mausule.

5. In Writ Petition No. 1817 of 2017, Shrikant Chaudhari is accused no.1 and Pravin Bhil, driver of JCB machine is accused no.2. it is contended that on 3.7.2015, the reserved forest land bearing compartment No. 909, situated at Nandarda was found to be encroached by the accused persons and it was noticed that leveling and digging work was done by them by using JCB machine, thereby causing damage to the forest property. Hence, the forest officer registered offence at C.R. No. 1 of 2015, for offence punishable under Section 26 (1) of Indian Forest Act, 1927 (for short, 'the Forest Act') against said Shrikant Chaudhari and driver of JCB machine

namely, Pravin Bhil.

6. It is further contended that the forest officer seized said JCB machines. It is contended that the accused persons were arrested and released on bail. It is further contended that the petitioners are merely owners of said JCB machines and they had no knowledge about the alleged offence. However, the JCB machines owned by the petitioners came to be seized by respondent authorities.

7. The petitioners preferred Criminal Miscellaneous Application No. 1351 of 2015 and Criminal Miscellaneous Application NO. 345 of 2015, respectively, under Section 457 of the Code of Criminal Procedure, before Judicial Magistrate, First Class, Dhule for custody of JCB machines. Learned Magistrate rejected the said applications by orders, dated 27.8.2015 and 18.8.2015, respectively, on the ground that he does not have jurisdiction to entertain such applications, since

the JCB machines were seized under Section 52 of the Forest Act.

8. The petitioners thereafter approached respondent no.2 seeking custody of JCB machines. The petitioners have contended that the JCB machine were not used in commission of the offence, but those were given on hire for carrying out agricultural activities, namely cultivation, etc. The petitioners have no knowledge that the JCB machines would be used for causing damage to the forest land. The petitioners have stated before respondent no.2 that they are ready to execute necessary bond and furnish security for release of the JCB machines. The petitioners also contended before respondent no.2 that they have purchased JCB machines by obtaining loan and it is becoming difficult for them to pay installments to the finance company, and thus, they are suffering financial loss.

9. Respondent no. 2 passed orders on

19.10.2015 and 29.10.2015, respectively, confiscating the JCB machines under Section 61-A of the Forest Act.

10. Aggrieved by the orders, dated 19.10.2015 and 29.10.2015, passed by respondent no.2, the petitioners preferred Criminal Appeal Nos. 89 of 2015 and 92 of 2015, respectively, under Section 61-D of the Forest Act, before learned Sessions Judge, Dhule. After hearing the parties, learned Additional Sessions Judge, Dhule dismissed the appeals, by order, dated 1.3.2016, thereby confirming the orders passed by respondent no. 2.

11. Being aggrieved by the aforesaid orders, passed by the learned Additional Sessions Judge, Dhule, the petitioners have preferred Criminal Writ Petition Nos. 426 and 452 of 2016, respectively, in this Court. This Court, by order dated 24.8.2016, allowed the petitions partly, set aside the judgment and order, dated 1.3.2016, passed by the learned Additional Sessions Judge,

Dhule, in Criminal Appeals and remitted matter back to the learned Sessions Judge, Dhule, thereby directing to decide the same by himself. This Court also directed that till final decision of appeals, respondent no.2 or his subordinates are restrained from auctioning the JCB machines belonging to the petitioners.

12. After remand as aforesaid, learned Sessions Judge, Dhule, by judgment and order, dated 23.11.2017, dismissed the appeals preferred by the petitioners. Thus the present petitions.

13. Mr. Patil and Mr. Brahme, learned counsel appearing on behalf of the petitioners, in both the petitions, argued that the petitioners are not at all concerned with the offence registered under the provisions of the Forest Act. They submit that the petitioners are owners of the JCB machines and they have given the same on hire. The petitioners have no knowledge that the JCB machines would be used in commission of alleged

offence under the Forest Act. In view thereof, respondent no.2 committed an error in passing the order of confiscation. Learned counsel submits that the learned Additional Sessions Judge committed an error by dismissing the appeals preferred by the petitioners. They further submit that for lack of knowledge that the JCB machines would be used in commission of forest offence, respondent no.2 ought not to have confiscated the JCB machines.

14. Learned counsel submit that the forest officer has recorded statements of the petitioners, wherein the petitioners have stated that they are neither connected with the commission of the offence nor they have done the same intentionally and that they have given on hire the said JCB machines to the accused.

15. In support of their submissions, learned counsel for petitioners placed reliance on the judgment rendered by the Division Bench of this

Court at Nagpur in the matter of **Authorised Officer/Assistant Conservator of Forest (FLS) and others vs Mohammad Arif Ibrahim Solanki and another**, reported in 2012 (1) Bom.C.R. (Cri.) 276 and the judgments rendered by learned Single Judge of this Court in the matter of **State of Maharashtra and another vs Kisan Genu Pawar**, reported in 1991 (2) Bom.C.R. 167 and in the matter of **Laxman Kisan Mundhe and others vs The Conservator of Forest, Thane and others**, reported in 1999 Bom.C.R. (Cri.) 849.

16. Learned Additional Public Prosecutor opposed the petitions. Affidavit-in-reply of respondent no.2 is filed on record. Learned Additional Public Prosecutor submits that the impugned orders are legal and justified in the facts and circumstances of the present case. In support of his submissions, learned Additional placed reliance on judgments in the case of, (1) **State of West Bengal and anr. Vs Mahua Sarkar** [2008 (12) SCC 763], (2) **Mohd. Ashique vs State**

of Maharashtra [2009 (1) SCC 368], and (3) Kavita Sandip Tandel vs State of Maharashtra and another [2015 ALL M.R. (Cri.) 2760].

17. Upon hearing the parties and on perusal of the record as well as affidavit-in-reply and the authorities cited, it is noticed that respondent no.2, without there being any supporting material, arrived at the conclusion that the petitioners had knowledge that the JCB machines given on hire to accused persons would be used in commission of the forest offence. There is no material on record to draw an inference that the petitioners had knowledge that the said JCB machine would be used in commission of the forest offence. Thus, the orders passed by respondent no.2 confiscating the JCB machines are not sustainable in law.

18. Learned counsel for petitioners were justified in placing reliance on the judgments cited supra. In the judgment rendered in the matter of **Laxman Kisan Mundhe** (supra), learned

Single Judge has held that the order passed on assumption that offence was committed with knowledge of owner was not proper. The ratio laid down in the judgment in the matter of **Laxman Kisan Mundhe** (supra) is squarely applicable to the facts of the present case, whereas the facts in the cases relied on by the learned Additional Public Prosecutor are different than the present case, and thus, those judgments are not applicable to the facts of the present case.

19. The petitioners are not involved in the forest offence. They are owners of the JCB machines in question. Their statements were recorded by the forest officer, wherein the petitioners have stated that they have no knowledge that the said JCB machines given on hire to the accused for the purposes of carrying out agricultural activities would be used for clearing forest land for cultivation. The trial against the accused may take considerable time for its conclusion. If the said machines are kept idle

for longer period, there is every likelihood of causing damage to the machines and financial loss to the petitioners. It is also to be noted that the trial in STCC No. 1311 of 2015 and STCC No.1285 of 2015, respectively, against aforesaid accused is pending adjudication before learned Magistrate and the offence is yet to be proved against the accused.

20. In the light of what has been stated above, in my opinion, it would be just and necessary to order interim custody of the JCB machines in favour of the petitioners, subject to certain conditions.

21. Thus, I pass the following order : -

(i) Criminal Writ Petition No. 1765 of 2015 and Criminal Writ Petition No. 1817 of 2017 are allowed.

(ii) The impugned order, passed by respondent no.2, dated 19.10.2015 and 29.10.2015, respectively, and the impugned

orders, dated 23.11.2017, passed by learned Sessions Judge, Dhule, in Criminal Appeal Nos. 89 and 92 of 2015 are quashed and set aside.

(iii) The custody of the JCB machines be given to the petitioners, on executing suprutnama of Rs. 25 Lakh, till disposal of the trial.

(iv) The petitioners shall not dispose of or transfer the JCB machines and shall not change the nature and look of the JCB machines.

(v) The petitioners are directed to produce the JCB machines, as and when required by the Trial Court, for the purpose of hearing.

(vi) Rule is made absolute accordingly.

(K.L.WADANE, J.)

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