

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 265 OF 2018
IN
CRIMINAL WRIT PETITION NO. 1058 OF 2017**

Mrs. Anjani Bhagwan Itadkar	]	
Age 39, Occupation : Business	]	
R/at 867/B, Itadkarwadi, Purna Village,	]	
Thane -Near Sai Mandir, Bhiwandi,	]	
Thane – 421 302.	]	... Applicant

Versus

1.	The State of Maharashtra	]	
	Through	]	
	The Forest Conservator,	]	
	Dahisar Region at Dahisar,	]	
	Tal & Dist. Dahisar.	]	
2.	The Forest Officer of Durvesh	]	
	At Durvesh, Tal & Dist : Palghar	]	... Respondents

Mr. Abhijit S. Deshmukh, Advocate for the Petitioner.
Mrs. Rutuja Ambekar, APP for the Respondent/State.

CORAM : S. S. SHINDE, J.

RESERVED ON	: 10th July, 2019.
PRONOUNCED ON	: 23rd July, 2019.

JUDGMENT:

1. Rule. Rule made returnable with the consent of the parties and heard finally.

2. This Criminal Application is filed seeking direction to the

respondent No.2 i.e. the Forest Officer of Durvesh, at Durvesh, Tal & Dist : Palghar to release the vehicle of the applicant.

3. It is the case of the applicant that, applicant is the owner of Tata Tempo No. MH-04-GR-1320, Engine No. 497TC96KVY/835272, Chassis No. MAT/453131E8K26637, Model No. SFC-709/38/2014 and the said Tempo is the only source of income of the applicant.

It is the case of the applicant that on 2nd February 2016 Tempo was plied on hire as goods carrier by appointed regular driver to ply the vehicle. The driver was arrested and vehicle was seized with allegation that the vehicle was used in commission of forest offence i.e. illegally carrying wooden logs of "Khair". Offence was registered by the Conservator being Crime No. 6 of 2015-16 was registered.

Thereafter the Assistant Forest Conservator, Palghar, the authorized officer by State Government under Section 61-A of the Indian Forest Act (hereinafter referred to as the "said Act"), directed confiscation of "Khair" logs as well as the vehicle of the Government.

4. The Assistant Forest Conservator, Palghar directed to

confiscate the vehicle by order dated 28/10/2016. Against the said order, the Petitioner herein filed an Appeal being Criminal Appeal No.32 of 2016 before the learned Additional Sessions Judge, Palghar. The said Appeal came to be dismissed by the learned Additional Sessions Judge, Palghar by the impugned order dated 30th January 2017. Being aggrieved and dissatisfied by the said order dated 30th January 2017, the Petitioner has filed the present Criminal Writ Petition No. 1058 of 2017. In the Writ Petition, the present Criminal Application has been filed by the Applicant/Petitioner thereby seeking direction to respondent No. 2 to release above mentioned vehicle of the Applicant/Petitioner.

5. Learned counsel appearing for the applicant/petitioner submits that, applicant is a lady owner of the aforesaid vehicle and is solely dependent upon the income earned from the said vehicle and therefore, this court may direct concern authority to release the vehicle. It is submitted that in case directions are not issued to release the vehicle, the vehicle will stand idle for a considerable period in future, and it would cause damages and deterioration to the vehicle due to non-usage of vehicle, and it will cause grave and irreparable loss to the applicant which cannot be compensated in

terms of money. No loss or prejudice will be caused to the respondents if the vehicle is released, so that the applicant can earn livelihood by giving said vehicle on hire basis. Learned counsel invites attention of this Court to the grounds taken in the application, and submits that the application may be allowed.

6. On the other hand, the learned APP appearing for respondent submits that, the impugned order passed by the learned Additional Session Judge, Palghar is legal, proper and correct. No ground is made out in the Petition calling for interference in the impugned order. The Additional Sessions Judge, Palghar has not committed an error in passing the impugned order, and maintaining the Order of the authorized Officer dated 28/10/2016 directing confiscation of “Khair” logs as well as the Tempo under Section 61-A of the Indian Forest Act, 1927.

7. It is further submitted by the learned APP that, the forest officer filed a criminal case against the offender in the Court of Judicial Magistrate First Class, Palghar, and still that case is pending. The learned APP sought to rely upon the judgment of the Hon'ble Supreme Court in the case of *State of Madhya Pradesh Vs. Uday*

Sing (Writ Ptition No. 524/2019). In Para 22 of the said Judgment the Hon'ble Supreme Court has observed that, "Criminal prosecution is distinct from confiscation proceedings. The two proceedings are different and parallel, each having a distinct purpose. The object of confiscation proceeding is to enable speedy and effective adjudication with regards to confiscation of produce and the means used for committing the offence while the object of the prosecution is to punished the offender. The scheme of the adhiniyam prescribes and independent procedure for confiscation. The intention of prescribing separate proceedings is to provide a deterrent mechanism and to stop further misuse of the vehicle".

Learned APP, relying upon the aforesaid decision of the Apex Court, submits that once, the criminal court had no power to deal with the property seized under the said Act, The High Court has no jurisdiction under Section 482 of the Cr.P.C. to quash proceedings for confiscation of forest produced.

8. The learned APP has also relied upon the judgment of the Hon'ble Supreme Court in the case of **State of Karnataka Vs. K. Krishnan (Criminal Appeal No. 668 of 2000)** wherein it has been held by the Supreme Court that vehicle seized for committing forest

offences shall not normally be returned to party till culmination of all proceedings in respect of said offences. The learned APP therefore, prays that this application may be rejected.

9. Heard the counsel appearing for the applicant and learned APP appearing for the State. With able assistance of the learned counsel for the parties, I have perused the grounds taken in the petition, annextures thereto and impugned Judgment and order passed by the Additional Session Judge, Palghar. I have also perused the material placed on record. In the present case, the vehicle in question i.e. Tempo, was seized together with the “khair” logs by the Officer of the Forest Department by invoking Section 26, 41 and 52 of the said Act. Intimation of the seizer was given to the learned Magistrate having jurisdiction under Section 52 of the Indian Forest Act 1927, on 2nd February 2016. Similarly, intimation of the seizer was also given to the Manor police station. Two offenders namely Shri. Raju Damu Jadhav alis Pawar and Shri. Santosh Badhu Chavan also taken into custody, and were produced before Hon'ble Magistrate having jurisdiction. Hon'ble Magistrate gave them three days forest custody.

10. It further appears that, after interrogation of the

offenders they confessed before the forest officer that earlier also the aforesaid vehicle was used in two-three similar offences. It is the case of the forest department that offenders also showed the places where the loaded “khair” logs were transported unauthorizedly. It appears that Spot Panchanama was done by the Forest Officer. The driver of the vehicle gave statement before the Assistant Conservator of Forest, Palghar on 2nd February 2018, stating that prior to said incident, he had illegally carried wooden logs of “khair” on two to three occasions, and also stated that the amount of transportation charges given to the vehicle owner, i.e. present applicant. *Prima facie* it appears that the petitioner had the knowledge that the aforesaid vehicle is being used by the same driver for transportation of wooden logs of “Khair” illegally, still applicant did not bother to inform about the same to the Forest Department. *Prima facie* it appears that applicant accepted the money of such illegal transport of the forest produce. It further appears that Assistant Conservator of Forest, Palghar recorded the statement of the offenders under Section 72 1(d) of the said Act which according to the officer is admissible in the subsequent trial before Magistrate under Section 72(2) of the Indian Forest Act. It further appears that in due course the vehicle and said wooden logs seized by the officer were

produced before the Assistant Conservator of Forests, Palghar. The said officer is an authorized officer under Section 61(a) of the said Act. It further appears that, the said officer afforded an opportunity of hearing to the present applicant to prove that, she had no knowledge of the illegal transportation of wooden logs in her vehicle. *Prima facie* it appears that the procedure prescribed for seizure of vehicle has been followed.

11. The Supreme court in the Case of **State of Madhya Pradesh Vs. Uday Sing** (Supra) held that the jurisdiction under Section 451 of the Cr.P.C. was not available to the Magistrate, once the authorized officer initiated confiscation proceedings. It was further held that, the direction which was issued by the High Court in a petition under Section 482 of the Cr.P.C. to the Magistrate to direct the interim release of the vehicle, which had been seized, was contrary to Law.

In the present case, by well reasoned order the appellate authority dismissed the appeal preferred by the applicant under the provisions of Section 61(D) of the said Act.

12. Since the Writ Petition No. 1058 of 2017 filed by the petitioner has been admitted by an order dated 7th March 2018

passed by this Court (Coram : NITIN W. SAMBRE, J), I refrain myself from entering into the merits of the case at greater length and from assigning detailed reasons.

13. For the reasons stated herein above, in my view, no case is made out to entertain the Criminal Application No. 265 of 2018. Hence, the said application stands rejected. Rule stands discharged.

14. Registry to place the Writ Petition No. 1058 of 2017 for final hearing on 5th September 2019.

(S. S. SHINDE, J.)