

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 299 of 2017****Order reserved on 19/06/2020****Order delivered on 29/06/2020**

Manoj Kumar Agrawal S/o. late Shri Mahadeo Prasad Agrawal, aged about 30 years, resident of Nichepara Kapu Road, Dharamjaigarh, District Raigarh, Chhattisgarh.

---Petitioner**Versus**

State of Chhattisgarh, through : Divisional Forest Officer, Bakaruma, Tahsil Dharamjaigarh, District Raigarh, Chhattisgarh.

--- Respondent/State

For Petitioner:- Mr. Surfaraj Khan, Advocate
 For State :- Mr. Animesh Tiwari, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. Proceedings of this matter have been taken up for final hearing through video conferencing.
2. Petitioner's motor vehicle was found involved in commission of forest offence bearing PRO No. 6702/23 under section 52 (26) (1) (A) of Indian Forest Act, 1927 read with Section 41(3) of Chhattisgarh Van Upaj (Vyapar-Viniyam) Adhiniyam, 1989 and thereafter, on 27.06.2011, the authorized officer in exercise of power conferred

to him under section 52(4) of the Act of 1927 informed about the initiation of confiscation proceedings against the petitioner to the Judicial Magistrate 1st Class, Dharamjaigarh, District Raigarh.

3. Thereafter, the petitioner made an application for grant of interim custody under Section 451 of Criminal Procedure Code, 1973. Learned JMFC allowed the application and directed for release of vehicle in favour of petitioner which was questioned by the State by filing revision before the Court of sessions. Learned session judge, by its impugned order, allowed the revision petition in light of the provisions contained under Section 52-C of Indian Forest Act, 1927 (M.P. State Amendment) rejecting the application filed under Section 451 of Cr.P.C.

4. Questioning the order of learned sessions judge, this petition under Section 482 has been preferred stating that the impugned order is unsustainable and bad in law. The state has filed its return stating that the authorized officer has initiated confiscation proceeding and intimated the same fact to the Judicial Magistrate on 27.06.2011 under Section 52(4) of

the Act of 1927 and in that view of the matter, jurisdiction of Judicial Magistrate is ousted under Section 52-C of the Act of 1927 (M.P. State amendment), as such, the present petition under Section 482 of Cr.P.C. deserves to be dismissed.

5. Mr. Surfaraj Khan, learned counsel for the petitioner, would submit that Additional Sessions Judge is absolutely unjustified in allowing the revision and rejecting the application for interim custody filed by the petitioner. He would further submit that petitioner, being the owner of the vehicle, was never informed about the initiation of confiscation proceedings, therefore, section 52-C of the act of 1927 is not at all attracted and he would rely upon the decision of Madhya Pradesh High Court in the matter of **Firoz Khan v. State of M.P.**¹ to buttress his submission.

6. On the other hand, Mr. Animesh Tiwari, learned Deputy Advocate General would support the impugned order and submit that since the initiation of confiscation proceedings has been intimated to jurisdictional Judicial Magistrate, therefore, Section 52-C of the Act of 1927 is

¹ 2015(4) Crimes 94

squarely attracted and the present petition deserves to be dismissed as jurisdiction of concerned Magistrate is already ousted.

7. I have heard learned counsel for the parties, considered the rival submissions made hereinabove and went through the record with utmost circumspection.

8. In order to consider the plea raised at the bar, it would be appropriate to consider Section 52-C of the Indian Forest Act substituted by the M.P. Amendment Act No. 1983 with effect from 1st November, 1983.

9. At this stage, it would be appropriate to notice Section 52-C of the aforesaid act:-

"52C. Bar of Jurisdiction of Courts etc. in certain circumstances.— (1) On receipt of intimation under sub-section (4) of section 52 about initiation of proceedings for confiscation or 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 authorised officer, Appellate Authority and Revision Authority referred to in sections, 52, 52A and 52B) 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 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 on receipt of intimation under sub-section (4) of section 52 by one of the Courts of Magistrate having such jurisdiction 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."

10.A careful perusal of the aforesaid provision i.e.

Section 52-C would show that when the forest produce and the vehicle is seized in commission of forest offence and proceedings for confiscation are initiated of which an intimation has been received under Section 52(4) of the Indian Forest Act, 1927 about initiation of proceedings for confiscation by the Magistrate having jurisdiction to try the offence, no Court, Tribunal or authority (other than authorized officer, Appellate Authority and the Court of Sessions referred in Sections 52, 52-A and 52-B) shall have jurisdiction to make orders with regard to possession, delivery, disposal of distribution of the property and as such section 451/457 of Criminal Procedure Code, 1973 will have no application as jurisdiction to consider the said application is ousted.

11. Even otherwise, this issue is no longer *res integra* and stands authoritatively and conclusively adjudicated by their Lordships of the Supreme Court in the matter of **State of Madhya Pradesh v. Uday Singh**² in which their Lordships took note of the provisions contained in section 52-C of the Indian Forest Act, 1927 as substituted by State of Madhya Pradesh and clearly held that the jurisdiction under Section 451 of Criminal Procedure Code, 1973 is not available to the Magistrate once authorized officer initiate confiscation proceedings and it is intimated to the jurisdictional Magistrate being Judicial Magistrate First Class under section 52 (4) of the Act of 1927 and held as under :

“26. Our analysis of the amendments brought by MP Act 25 of 1983 to the Indian Forest Act 1927 leads to the conclusion that specific provisions have been made for the seizure and confiscation of forest produce and of tools, boats, vehicles and articles used in the commission of offences. Upon a seizure Under Section 52(1), the officer effecting the seizure has to either produce the property before the Authorised Officer or to make a report of the seizure Under Sub-section (2) of Section 52. Upon being satisfied that a forest offence has been committed, the Authorised Officer is empowered, for reasons to be recorded, to confiscate the

2 A.I.R. 2019 SC 1597

forest produce together with the tools, vehicles, boats and articles used in its commission. Before confiscating any property Under Sub-section (3), the Authorised Officer is required to send an intimation of the initiation of the proceedings for the confiscation of the property to the Magistrate having jurisdiction to try the offence. Where it is intended to immediately launch a criminal proceeding, a report of the seizure is made to the Magistrate having jurisdiction to try the offence. The order of confiscation Under Section 52(3) is subject to an appeal Under Section 52-A and a revision Under Section 52-B. Sub-section (5) of Section 52-B imparts finality to the order of the Court of Sessions in revision notwithstanding anything contained to the contrary in the Code of Criminal Procedure and provides that it shall not be called into question before any court. Section 52-C stipulates that on the receipt of an intimation by the Magistrate Under Sub-section (4) of Section 52, no court, tribunal or authority, other than an Authorised Officer, an Appellate Authority or Court of Sessions (Under Sections 52, 52A and 52-B) shall have jurisdiction to pass orders with regard to possession, delivery, disposal or distribution of the property in regard to which confiscation proceedings have been initiated. Sub-section (1) of Section 52-C has a non obstante provision which operates notwithstanding anything to the contrary contained in the Indian Forest Act 1927 or in any other law for the time being in force. The only saving is in respect of an officer duly empowered by the State government for directing the immediate release of a property seized Under Section 52, as provided in Section 61. Hence, upon the receipt of an intimation by the Magistrate of the initiation of confiscation proceedings Under Sub-section (4)(a) of Section 52, the bar of jurisdiction Under Sub-section (1) of

Section 52-C is clearly attracted. The scheme contained in the amendments enacted to the Indian Forest Act 1927 in relation to the State of Madhya Pradesh, makes it abundantly clear that the direction which was issued by the High Court in the present case, in a petition Under Section 482 of the Code of Criminal Procedure, to the Magistrate to direct the interim release of the vehicle, which had been seized, was contrary to law. The jurisdiction Under Section 451 of the Code of Criminal Procedure was not available to the Magistrate, once the Authorised Officer initiated confiscation proceedings.

27. The Madhya Pradesh amendments to the Indian Forest Act 1927 are infused with a salutary public purpose. Protection of forests against depredation is a constitutionally mandated goal exemplified by Article 48A¹⁹ of the Directive Principles and the Fundamental Duty of every citizen incorporated in Article 51A(g)²⁰. By isolating the confiscation of forest produce and the instruments utilised for the commission of an offence from criminal trials, the legislature intended to ensure that confiscation is an effective deterrent. The absence of effective deterrence was considered by the Legislature to be a deficiency in the legal regime. The state amendment has sought to overcome that deficiency by imposing stringent deterrents against activities which threaten the pristine existence of forests in Madhya Pradesh. As an effective tool for protecting and preserving environment, these provisions must receive a purposive interpretation. For, it is only when the interpretation of law keeps pace with the object of the Legislature that the grave evils which pose a danger to our natural environment can be suppressed. The avarice of humankind through the ages has resulted in an alarming depletion of the natural environment. The consequences of climate

change are bearing down on every day of our existence. Statutory interpretation must remain eternally vigilant to the daily assaults on the environment."

12.Reverting to the facts of the case in the light of principles of law laid down in aforesaid judgment in the matter of Uday Singh(supra), it is quite vivid that in the instant case the Authorized officer/DFO initiated confiscation proceeding of the vehicle owned by the petitioner and on 26.06.2011 informed the initiation of confiscation proceeding to the Judicial Magistrate First Class, Dharamjaigarh by its memo dated 26.06.2011 which is filed as Annexure R-1 with the return which states as under :

जप्त शुदा सम्पति । जो वन अपराध मं प्रयुक्त की गई है, को राज सात करने की कार्यवाही प्रारंभ करने की सूचना:-

कार्यालय:- सक्षम प्राधिकृत अधिकारी

एवं उप वन मंडलाधिकारी, लैलूंगा

क्रमांक- राज./454 स्थान बाकारूमा दिनांक 26/6/11

प्रति,

मान. न्यायिक दण्डाधिकारी

प्रथम श्रेणी, धरमजयगढ़

विषय:- पी०ओ०आर० क्रमांक – 6702/23 दिनांक – 26/06/2011 से हुए अपराध में अपराध करने में प्रयुक्त वाहन पीकप (नम्बर नहीं) इंजन नं. GASIK – 64681 को राजसात

निवेदन है कि मैंने भा. वन अधिनियम 1927 की धारा 26 (1) क के धारा 52, अभिवहन वनोपज नियम 2001 धारा 41 नियम 3 के अनुसार वन अपराध में हुए प्रयुक्त होने वाली पीकप (मैक्स) महिन्द्र & महिन्द्रा (नम्बर प्लेट नहीं) इंजन नं. GASIK – 64681 को राजसात करने की कार्यवाही प्रारंभ कर दी है, जिसकी सूचना निम्न विवरण में दी जा रही है ।

1. (अ) उस वस्तु का विवरण जिसको राजसात किया जाना प्रस्तावित है - पीकप (मैक्स) महिन्द्र & महिन्द्रा (नम्बर प्लेट नहीं) इंजन नं. GASIK - 64681
- (ब) उन परिस्थितियों का संक्षिप्त विवरण जिसमें वह जप्त की गई पीकप का नं. प्लेट नहीं, इंजन नं. GASIK - 64681, सागौन चिरान 99 = 1.352 घन, साल चिरान 41 = .261 घन
2. जप्तशुदा वस्तु के मालिक का नाम, पिता का नाम - श्री महावीर S/o - जगताराम अग्रवाल, पत्थलगाँव
निवास स्थान, पेशा आदि व्यापार फरार है
3. उस व्यक्ति का नाम/पिता का नाम, निवासी जिसमें कालम 'अ' में दर्शायी सम्पत्ति जप्त की गई श्री महावीर अग्रवाल, पत्थलगाँव - फरार
4. जप्ती का दिनांक, समय, स्थान 26/06/2011, 12 बजे दिन, तिलडेगा ग्राम, महावीर के गोदाम के सामने
5. उस अधिकारी का नाम/पद जिसने ऊपर वर्णित वस्तु जप्त की चन्द्र विजय सिंह सिदार, रैरूमा
6. जप्त शुदा वस्तु का अनुमानित मूल्य वाहन का Rs. 3,00,000/- + ईमा. लकड़ी 17062/- Rs.
7. अपराध/अपराधों का विवरण मय धारा व अधिनियम
जिनके अंतर्गत अपराध हुआ है भा.व.अ. 1927 की धारा (26) 1 व धारा 52, अभिवहन वनोपज नियम 2001 धारा 41 नियम 3
8. सूचना प्रेषण का दिनांक 26/06/2011

सही/-

सक्षम प्राधिकृत अधिकारी
एवं
उप वनमंडलाधिकारी
लैलूंगा

क्र./राज./455 दिनांक - 26/06/2011

प्रतिलिपि:-वन मंडलाधिकारी धरमजयगढ़ वन मंडल को सूचनार्थ सादर सम्प्रेषित है।

वन परिक्षेत्र अधिकारी बाकारूमा को सूचनार्थ, प्रकरण के तत्थात्मक एवं विस्तृत जाँच कर अविलम्बर इस न्यायालय में प्रस्तुत करें।

सही/-

सक्षम प्राधिकृत अधिकारी
एवं
उप वनमंडलाधिकारी
लैलूंगा

13. Once the confiscation proceeding is initiated for confiscation of vehicle seized in forest offence and the initiation of confiscation proceeding has been informed under Section 52(4) of the Act of 1927 as amended by the State of Madhya Pradesh to concerned Magistrate, jurisdiction of Magistrate to grant interim custody under Section 451 is expressly barred and stand ousted by virtue of provision contained in Section 52-C of the Act of 1927.

14. Consequently, learned Session Judge is absolutely justified in setting aside the order of learned Judicial Magistrate First Class granting interim custody to the petitioner. I do not find any merit in this petition and it deserves to be and is accordingly dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet