

14.12.2022
S/L No.25
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**C.R.R. 2725 of 2021
With
IA No. CRAN 1 of 2022
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CRAN 2 of 2022
Nilratan Panda & Anr.
-Vs.-
The State of West Bengal & Anr.**

Mr. Himanshu De
Mr. Navanil De
Mr. Rajeshwar Chakraborty
Mr. Srinjan Ghosh
Mr. Subhrajit Dey

..... For the Petitioners

Mr. Saswata Gopal Mukherjee, Ld. P.P.
Mr. Sabir Ahmed
Mrs. Debjani Sahoo

.....For the State

Mr. J. Ganguly
Mr. D. Ganguly
Mr. S. Dutta

.....For the O.P. No.2

Mr. De, learned senior advocate appearing for the petitioners being the Divisional Forest Officer, Durgapur Division and the Forest Range Officer, Ukhra Range, Durgapur Division challenges the order dated December 24, 2021 passed by the Learned A.C.J.M., Durgapur in connection with P.O.R. No.5/UK of 2021-2022. Mr. De, learned senior advocate submits that in spite of the confiscation proceeding being initiated by the authorized officer under the Forest Act, the Learned A.C.J.M., Durgapur granted interim custody of the vehicle being, WB 37B 5137 to the registered owner, Dharmendra Gupta by way of

furnishing a bond of Rs.15 lakhs. Learned Senior advocate challenges the observation and the finding of the Learned A.C.J.M., Durgapur and submits that it is established principle of law that once the authorized officer has initiated confiscation proceeding, the Learned A.C.J.M. loses its jurisdiction as is incorporated in Section 59G of the Forest Act, 1927. Learned advocate relying upon the judgment of the Hon'ble Supreme Court in *State of Madhya Pradesh Vs. Uday Singh* reported in (2020) 12 SCC 733 submits that the Learned A.C.J.M., Durgapur exceeded his authority in passing the impugned order dated December 24, 2021 while granting interim custody to the registered owner. In course of hearing, learned advocate also pointed out that the authorized officer has already concluded the confiscation proceeding and has already passed confiscation order in respect of the vehicle being, WB 37B 5137.

Mr. Ganguly, learned advocate appearing for the private opposite party no.2 submits that seizure was effected under the provisions of the Wildlife Protection Act, 1972 and the Forest authorities while submitting their complaint incorporated the provisions of the interpretation clause of the Forest Act, 1927 and thereby exercised their powers for confiscation under the said Act. Learned advocate further submits that the opposite party is not an accused in the case and he has been forced to undergo pecuniary loss because of the act of the employees. Additionally, it has been submitted that the Learned Magistrate had the authority under Section 50(4) of the Wildlife Protection Act, 1972.

I have considered the submission advanced by both the parties, prima facie, it appears from the records that the authorized officer initiated the confiscation proceeding earlier to that of the Learned Magistrate who on receipt of the application by the opposite party no.2 started his proceeding regarding deciding the interim custody of the vehicle.

I have also considered the relevant provisions of law under Section 59G of the Forest Act incorporated by way of an amendment by the State of West Bengal which provides for appeal from orders under Sections, 55, 56 and 57. Section 59G of the West Bengal Amendment Act incorporated vide W. B. Act 22 of 1988 is set out as follows:-

“59-G. Bar of Jurisdiction in certain cases.- Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, the officer authorised under Section 59-A or the Forest – officer specially empowered under Section 59-C or the District Judge to whom an appeal may be preferred under Section 59-D shall have and any other officer or Forest – officer or Court, tribunal or authority shall not have jurisdiction to make orders with regard to the custody, possession, delivery, disposal or distribution of any property or tools, ropes, chains, boats, vehicles or cattle seized under Section 52.” [Vide W.B. Act 22 of 1988, S. 17].

In the instant case, the complaint was filed under the provisions of the Wildlife Protection Act, 1972, Section 7 of the Biological Diversity Act, 2002 and Section 52 read with Sections 53 / 59A of the Indian Forest Act, 1927. The authorized officer, as such, had the jurisdiction to exercise his powers under the Act dealing with the property which has

been seized in course of investigation. Records reflect that the opposite party no.2 did not participate in the proceedings before the authorized officer. Without going into the details, I direct that the order passed by the Learned A.C.J.M., Durgapur relating to interim custody of the vehicle be set aside so far as the return of the vehicle is concerned. Without entering into the merits of the case and only on the issue that the opposite party no.2 is required to be heard out, prior to a final order being passed, I direct the authorized officer to re-hear the subject-matter relating to confiscation/return of the said vehicle.

Accordingly, the confiscation order so passed is hereby set aside.

The opposite party no.2 either personally or through his representative/lawyer would appear before the authorized officer on 9th January, 2023. The authorized officer would grant opportunity to the opposite party no.2 or his representative and, thereafter, within a period of four weeks from the said date decide the issue regarding the fate of the vehicle which has been seized in connection with the P.O.R. No.5/UK of 2021-2022 dated August 26, 2021.

The order dated 27th December, 2021 and order dated 28th December, 2021 wherein observations have been made by the Learned A.C.J.M., Durgapur in respect of the Forest officials for not participating in the proceedings are restricted only for the purposes of this case for compelling the officer to appear before the Learned Magistrate for progress of the case. The same may not be used to the detriment of the officers so far as their service career/record is concerned.

With the aforesaid observations, C.R.R. 2725 of 2021 is disposed of.

Pending applications, if any, are consequently disposed of.

All parties are directed to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Tirthankar Ghosh, J.)