

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

Present:-

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

C.R.R. 49 of 2021

**Suraj Chettri @ Suraj Chhetri & Anr.
Vs.
The Deputy Ranger (Beat Officer) & Anr.**

For the Petitioners : Mr. Arjun Chowdhury, Adv.
Ms. Protusha Dutta, Adv.
Mr. Bikash Singha, Adv.

For the State : Mr. Aditi Shankar Chakroborty, Ld. A.P.P.
Mr. Arun Kumar Sarkar, Adv.

Heard on : **07.03.2022**

Judgment on : **10.03.2022**

Rabindranath Samanta, J.:

1. This criminal revision arises out of an application under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure challenging the orders dated 18.11.2020 passed by the learned Additional Chief Judicial Magistrate, Kurseong in C.R. 01 of 2020.
2. By the impugned orders the learned Magistrate rejected the prayers made by the petitioners Suraj Chettri @ Suraj Chhetri and Abu Rushd

Md. Rafiqul Ahsan for return of two vehicles which were seized by the Deputy Ranger (Beat Officer), Bamonpokhari Range Office of the Forest Range, Kurseong Forest Range, Darjeeling.

3. The background facts which are necessary for disposal of the application on hand may be summarized as under:

A complaint was filed by the Range Officer, Bamonpokhari Range on 22.01.2020 before the learned Additional Chief Judicial Magistrate, Kurseong in pursuance of a complaint being No. POR No. 31 BP of 2019-20 filed by one Loben Gurung, the Beat Officer, Bamonpokhari Beat. The complaint was to this effect that on 21.01.2020 at about 8.50 PM while the complainant Loben Gurung was patrolling the forest area along with forest staff namely Naresh Gurung and Gopal Prodhan they then seized one truck being no. WB-53B 8807 and one JCB machine being no. N633002089. Three persons namely, Sushanta Roy, Sanity Roy and Mahesh Roy were arrested under Sections 64 of the Indian Forest Act, 1927 and they were forwarded to the judicial custody after keeping them in the safe custody of Garidhura Police Station Out Post for the night. The aforesaid persons who have been arraigned as accused persons committed offence punishable under Section 26 (d) (g) of the Indian Forest Act, 1927.

4. The accused persons, ultimately, were forwarded to the Court of learned ACJM, Kurseong and they were released on bail.
5. Petitioner no.1 Suraj Chettri @ Suraj Chhetri is the owner of the vehicle being JCB machine no. N633002089 and the petitioner no.2

Abu Rushd Md. Rafiqul Ahsan is the owner of the truck being no.WB-53B 8807. The petitioners filed applications before the learned ACJM, Kurseong praying for return of the seized vehicles, but their prayers were turned down by the learned Court below.

6. Now the point which falls for consideration is as to whether the impugned orders dated 18.11.2020 passed by the learned ACJM are sustainable in law?
7. Learned lawyer appearing for the petitioners submits that the complaint as filed by the complainant Loben Gurung does not speak of any incident in which the aforesaid vehicles are involved for commission of any forest offence. Learned Lawyer argues that if there is any forest offence, the accused persons who were apprehended, would face the trial of the offence before the learned Trial Judge. Learned Lawyer points out that the petitioners being the registered owners of the seized vehicles made prayers individually before the Beat Officer stating therein that the vehicles were not involved in commission of any forest offence and the vehicles were not loaded with any kind of forest produce. Learned Lawyer argues that if no forest offence has taken place involving the aforesaid two vehicles, the concerned official cannot detain the vehicles. Citing a decision in the case of ***Sunderbhal Ambala Desai-vs- State of Gujarat*** reported in ***(2002) 10 SCC 283*** and a decision in the case of ***General Insurance Council-vs- State of A.P.*** reported in ***(2010) 6 SCC 768*** learned Lawyer urges that no authority can detain any vehicle and it is the duty of the concerned court to decide the matter relating to

return of vehicles to its registered owners with utmost promptitude imposing such conditions as the Court deems it just to ensure its production before the court, if necessary.

8. Perusal of the orders of the learned Magistrate shows that the learned Magistrate rejected the prayers of the petitioners on the ground that as the confiscation proceeding was initiated by the forest officer under Section 59A of the Forest Act and since any order passed by the forest officer under this Section was appealable before the learned District Judge under Section 59C of the Act, he had no authority to pass any order pertaining to the return of the seized vehicles.
9. After reading the complaint filed by the Beat Officer it appears that three persons as above were arrested as accused persons for allegedly committing of an offence punishable under Section 26(d) (g) of the Indian Forest Act. Prima facie, this Court does not find the required contents in the complaint to constitute offence under Section 26 (d) (g) of the Indian Forest Act either involving the seized articles or the persons arrested. However, this Court, at this stage makes no observation on the allegations of such offence as the same requires to be tried by the learned Magistrate in accordance with law.
10. From the seizure list it is evident that the aforesaid two vehicles were seized by the Beat Officer. I do not find anywhere in the seizure list as to what forest produce or property of the forest was seized during seizure of the said two vehicles. On the contrary, it is the defence of the petitioners that the driver and khalasi of the vehicles parked the

vehicles beside the river in the forest for the purpose of cleaning the vehicles and bathing.

11. Learned Lawyer appearing for the State submits that as per the recent directive of the Hon'ble Apex Court, the vehicles cannot be detained in the manner as those were detained by the forest official. Learned Lawyer submits that this Court may direct that the vehicles may be returned to the registered owners imposing necessary conditions so that the vehicles may be produced before the concerned Court as and when the vehicles are required.
12. In the decisions as cited supra, the Hon'ble Apex Court has mandated the concerned Court to dispose of the prayer of any registered owner as to return of any seized vehicle to him/her expeditiously in order to avoid any damage to or diminishing of the condition of the vehicle.
13. It goes without any say that as the complaint and the seizure list as above are subjudiced before the learned Court below it is the learned Trial Judge who will ultimately have to pass necessary order either to return of the seized vehicle to its registered owner or to confiscate the vehicle to the state. Had the complaint along with the seizure list had not been the subject matter of the case before the Court, the concerned forest official would have jurisdiction to dispose of the vehicle in accordance with the procedure as established by law.
14. The facts and circumstances as brought before this Court, I feel that this Court in exercise of the power under Article 227 of the Constitution of India and under Section 482 of the Code of Criminal

Procedure should pass necessary order for returning the seized vehicle to its registered owners.

15. In view of the above, the point as raised is answered in the negative.
16. In the result, the criminal revision succeeds.
17. Accordingly, the criminal revision is allowed. The impugned orders dated 18.11.2020 passed by learned ACJM, Kurseong are hereby set aside.
18. The learned ACJM, Kurseong is directed to return the vehicle being JCB machine no. N633002089 to the petitioner no. 1 Suraj Chettri @ Suraj Chhetri on execution a bond of Rs. 50,00,000/- on the condition that he will produce the vehicle as and when the concerned Court will require. The learned ACJM is also directed to return the truck being no. WB-53B 8807 to the petitioner no. 2 Abu Rushd Md. Rafiqul Ahsan on executing a bond of Rs. 25,00,000/- on the condition that he will produce the vehicle before the concerned Court as and when the concerned Court will require the vehicle.
19. Thus, the criminal revision is disposed of.
20. Connected application, if any, also stands disposed of.
21. No order as to costs.
22. Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta, J.)