

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLMC No.458 of 2021**

***Rahul Kanhar***

....

***Petitioner***

***-versus-***

***State of Odisha***

....

***Opposite Party***

**CORAM: JUSTICE S.PUJAHARI**

**ORDER**

**21.07.2022**

**Order No.**

02.

1. This matter is taken up through Hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order dated 8.2.2021 passed by the learned Additional District & Sessions Judge, Boudh in Criminal Revision No.01 of 2020 confirming the order dated 23.11.2020 passed by the learned S.D.J.M., Boudh in Misc. Case No.34 of 2020, with a direction to release the seized motor cycle bearing registration number OD-27-B-5854 in his favour.
3. Heard the learned counsel for the Petitioner and the learned counsel for the State.
4. As it appears the Petitioner's motor cycle was seized in connection with an offence stated to have been

committed under the Wildlife (Protection) Act. Learned S.D.J.M., Boudh vide order dated 23.11.2020 passed in Misc. Case No.34 of 2020 rejected such prayer on the ground that the case was under investigation under Section 50(8) of the Wildlife Protection Act by the Assistant Conservator of Forests of Mahanadi Wildlife Division, Nayagarh, and declined to release the same under Section 457 of Cr.P.C. When a revision was carried against the said order, the same was confirmed vide the order impugned, assigning the reason that the aforesaid being the property of the State was incapable of being released by the SDJM under Section 457 of Cr.P.C., a confiscation proceeding under Section 56(2-a) of the Orissa Forest Act had already been initiated.

5. Learned counsel for the Petitioner submits that Section 56 of the Orissa Forest Act has no application to this case and the learned Magistrate as such was not bereft of jurisdiction to allow interim release of the motor cycle in view of the power vested under Section 451 or 457 of the Code of Criminal Procedure, as the case may be. In this regard, he has drawn the notice of this Court to the decision rendered by the apex Court in the case of **State of Madhya Pradesh and Others v. Madhukar Rao**, reported in (2008) 14 SCC 624. In such premises, it is submitted that the impugned order be quashed and on taking note of the facts and submissions, especially the

law laid down in the case of **Sunderbhai Ambala Desai v. State of Gujarat**, reported in **(2003)24 OCR (SC) 444**, the motor cycle in question be released in favour of the Petitioner intermly on suitable terms and conditions as this Court may deem it just and proper.

6. Learned counsel for the State, however, has defended the impugned order passed by the learned Magistrate, which has been confirmed in the revision.

7. Before appreciating the contention of the learned counsel for the parties on the question of sustainability of the impugned orders, it would be apposite to have a look to Section 56 of the Orissa Forest Act, which reads as thus:-

“56. Seizure of property liable to confiscation – (1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, ropes, chains, boats, vehicles or cattle used in committing any such offence may be seized by any Forest Officer or Police Officer.

(2) Every officer seizing any property under this section shall place, on such property a mark indicating that the same has been so seized and shall, as soon as may be, except where the offender agrees in writing to get the offence compounded, 1 [either produce the property seized before an officer not below the rank of an Assistant Conservator of Forests authorised by the State Government in this behalf by notification (hereinafter referred to as the authorised officer) or] make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made :

Provided that, when the forest produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer make, as soon as may be, a report of the circumstances to his official superior and the Divisional Forest Officer.

[(2-a) When an authorised officer seizes any forest produce under sub-section (1) or where any such forest produce is produced before him under sub-section (2) and he is satisfied that a forest offence has been committed in respect thereof, 3[he shall] order confiscation of the forest produce so seized or produced together with all tools, ropes, chains, boats, vehicles or cattle used in committing such offence.

(2-b) No order confiscating any property shall be made under Sub-section (2-a) unless the person from whom the property is seized is given –

(a) a notice in writing informing him of the grounds, on which it is proposed to confiscate such property;

(b) an opportunity of making a representation in writing within such reasonable times as may be specified in the notice against the grounds for confiscation; and

(c) a reasonable opportunity of being heard in the manner.

(2-c) Without prejudice to the provisions of Subsection (2-b), no order of confiscation under Sub-section (2-a) of any tool, rope, chain, boat, vehicle or cattle shall be made if the owner thereof proves to the satisfaction of the authorised officer that it was used without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of the tool, rope, chain, boat, vehicle or cattle, in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.

(2-d) Any Forest Officer not below the rank of a Conservator of Forests empowered by the Government in this behalf by notification, may, within thirty days from the date of the order of confiscation by the authorised officer under Sub-section (2-a), either suo motu or on application, call for and examine the records of the case and may make such inquiry or cause such inquiry to be made and pass such orders as he may think fit:

Provided, that no order prejudicial to any person shall be passed without giving him an opportunity of being heard.

(2-e) Any person aggrieved by an order passed under Sub-section (2-a) or Sub-section (2-d) may, within thirty days from the date of communication to him of such order, appeal to the District Judge having jurisdiction over the area in which the property has been seized, and the District Judge shall, after giving an opportunity to the parties to be heard, pass such order as he may think fit and the order of the District Judge so passed shall be final.]

(3) The property seized under this section shall be kept in the custody of a Forest Officer or with any third party, until the compensation for compounding the offence is paid or until an order of the Magistrate directing its disposal is received.

[Provided that the seized property shall not be released during pendency of the confiscation proceeding or trial even on the application of the owner of the property for such release.]”

8. Forest offence has been defined under Section 2(e) of the Orissa Forest Act, which is as follows:-

“Forest Offence” - means an offence punishable under this Act or under the rules and includes the abetment of a forest offence;

9. A bare perusal of Section 56 of the Orissa Forest Act would go to show that the authorized officer is competent to make confiscation of the forest produce along with tools, ropes, chains, boats, vehicles or cattle used in committing such offence in exercise of the power under Section 56(2-a) and while the confiscation proceeding has been initiated, the court prosecuting the offenders, cannot invoke the jurisdiction under Section 457 Cr.P.C. for interim release either the forest produce or the tool, rope, chain, boat, vehicle or cattle used in committing such offence.

10. Admittedly, in this case the offence allegedly committed is one under the Wildlife Protection Act. Therefore, the very initiation of the proceeding under Section 56(2-a) of the Orissa Forest Act for confiscation of the motorcycle seized for the alleged commission of offence under the Wildlife Protection Act is misconceived.

11. Furthermore, in the case of Madhukar Rao (supra), the apex Court in no uncertain terms affirmed the power of the Magistrate to exercise jurisdiction under Sections 451 and 457 Cr.P.C. for release of any articles seized in connection with such cases. Learned Magistrate in oblivious to the aforesaid decision rendered in the case of Madhukar Rao (supra) refused to exercise the jurisdiction on the ground that the investigation is in progress. The said ground is unsustainable inasmuch as the apex Court in the case of *Sundarbhai Ambala Desai vrs. State of Gujarat*, reported in (2003) 24 OCR (SC) 444 in paragraph 17 have held as follows:

“Whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time.”

12. It is also not known how the seized motorcycle allegedly used in commission of offence, is essential for further investigation. So the ground assigned by the learned S.D.J.M for rejection of the prayer is misconceived and the learned S.D.J.M appears to have exercised the jurisdiction vested with him with material irregularity. Furthermore, in the revision the learned Addl. Sessions Judge vide the impugned order confirmed the same though on different reasons, which was also on a misconceived notion that since Section 56 of the Orissa

Forest Act prohibits interim release of the articles in favour of the owner once a proceeding under Section 56 of the Orissa Forest Act has been initiated, the prayer cannot be acceded to or in other words the prayer made has been rendered infructuous. So also in this regard learned Addl. Sessions Judge has placed reliance on a decision of the apex Court in the case of ***State of West Bengal vrs. Sujit Kumar Rana***, reported in (2004) 4 SCC 129. Furthermore, though learned Addl. Sessions Judge has referred to the statutory provision as well as the decisions rendered, but applied them wrongly. The same is apparent on the fact that when an offence is committed under the Orissa Forest Act in respect of any forest produce the same, the authorized officer assumes jurisdiction to initiate a proceeding under Section 56 of the Orissa Forest Act for confiscation. But in view of the definition of the 'offence' under the Orissa Forest Act, the very initiation of the confiscation proceeding under Section 56 of the Orissa Forest Act in the present case is incompetent one. In such a situation, the learned Addl. Sessions Judge could have held that by invoking the jurisdiction under Section 56 of the Orissa Forest Act, which was incompetent, the same cannot take away the power of the court vested in it under Section 451 and 457 Cr.P.C. The same is more so when exercise of jurisdiction under Section 56 of the Orissa Forest Act is palpably illegal. In such premises, even if Section 56 of the Orissa Forest Act prohibits for interim

release of the articles seized, once the confiscation proceeding is initiated in respect of the articles seized, learned Addl. Sessions Judge could not have refused to release the same particularly when in the case of ***Madhukar Rao*** (supra) it has been held that the power of the Magistrate under Sections 451 and 457 Cr.P.C., as the case may be, for interim release of seized property is not ousted.

13. For the said reason, this Court quashes both the orders and remits the matter back to the learned S.D.J.M., Boudh to exercise its jurisdiction for interim release of the motor cycle seized and pass a reasoned order, not later than fifteen days of receipt of the certified copy of this order.

14. With the aforesaid order, this CRLMC stands disposed of.

15. Urgent certified copy of this order be granted on proper application.

***(S. Pujahari)***  
***Judge***