

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1333 of 2022

Kishore Kumar Ray

....

Petitioner

-versus-

State of Orissa

....

Opposite Party

CORAM: JUSTICE S. PUJAHARI

ORDER

07.07.2022

Order

No.

04.

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 12th May, 2022 passed by the learned Additional Sessions Judge, Nimapara in Crl. Revision No.12 of 2022 confirming the order dated 26th April, 2022 passed by the learned J.M.F.C., Nimapara in Criminal Misc. Case No.19 of 2022 and also with a direction to release the seized Trawler bearing registration No.IND OR 04 NM 93 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 Trawler was seized in connection with an offence stated to have been committed under the Wildlife (Protection) Act. Learned J.M.F.C., Nimapara vide order dated 26th April, 2022 passed in Crl.

Misc. Case No.19 of 2022 rejected such prayer assigning the reasons that in view of the provision under Section 56(3) of the Orissa Forest Act, 1972 (hereinafter referred to as “Forest Act”), the Court is bereft of jurisdiction to interim release of the vehicle in exercise of power under Section 457 of Cr.P.C. A revision being carried against the same to the learned Additional Sessions Judge, Nimapara, the said order was also confirmed.

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 interim release of the vehicle 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 vehicle 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 parties, it would be apposite to have a look under Section 56 of the 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*[(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 Sub-section (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 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. It appears that Trawler of the Petitioner was seized not in connection with a commission of any offence under Forest Act or Rules, but for a commission of the Wildlife (Protection) Act. Therefore, the Authorized Officer could not have invoked jurisdiction under Section 56 of the Forest Act for confiscation of the Trawler in question. The learned Magistrate in oblivious to the same, however, refuse to entertain the prayer, as under Section 56(3) of the Forest Act, there is prohibition for interim release by the Magistrate.

10. In the case of *Madhukar Rao* (supra), the Apex Court have held that for release of the article seized used in commission of Wildlife (Protection) Act, the power of the

Magistrate as provided in the Code of Criminal Procedure is not ousted.

11. In view of the same, this Court is of the view that since the court below have misinterpreting the law refused to exercise the jurisdiction vested under the Code of Criminal Procedure, learned Additional Sessions Judge should have interfered with the same. But, the learned Additional Sessions Judge also oblivious to the same refused to exercise the revisional jurisdiction under such misconception.

12. In view of the aforesaid, the Criminal Misc. Case is allowed. Consequently, the order impugned is set aside and the matter is remitted back to the learned J.M.F.C., to address the petition of the Petitioner afresh within ten days of receipt of copy of this order taking note of the law laid down in the case of *Madhukar Rao and Sunderbhai Ambala Desai* (supra).

(S. Pujahari)
Judge

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