IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 464 OF 2022

Kishor S/o Murlidhar Borkar
Aged about 46 years, Occ. Agriculturist
R/o Sadak Arjuni, Dist. Gondia ... Petitioner

// VERSUS //

The State of Maharashtra,
through Forest Range Office,
Jambhali-2, Tah. Sadak Arjuni,
Dist. Gondia ... Respondent

Shri R.D.Wakode, Advocate for petitioner.
Shri A.M.Kadukar, APP for the State / Respondent.

CORAM : ANIL S. KILOR, J.
DATED : 19th OCTOBER, 2022.

ORAL JUDGMENT :

In this writ petition filed under Article 227 of the Constitution of India, the petitioner has questioned the legality and correctness of the judgment and order dated 1st March, 2021 passed by the District Judge-2 and Asst. Sessions Judge, Gondia in Criminal Revision No. 33 of 2022 allowing the revision application and thereby quashing and setting aside the order dated 21st September, 2020, passed by Judicial Magistrate First Class, Sadak Arjuni in Misc. Criminal Application No.85 of 2020, releasing the tractor and trolley allegedly used by the petitioner for the alleged forest crime.

2. It is the case of the petitioner that he is the owner of the seized vehicle, which was seized in Crime No.35 of 2017 for the offence punishable under Sections 26(1)(g)(d)(h) of Indian Forest Act, 1927 (in short referred as "Act of 1927").

3. The applicant thereupon filed an application under Section 457 of Code of Criminal Procedure for releasing of tractor and trolley. The said application was allowed by the learned Judicial Magistrate First Class, Sadak Arjuni vide order dated 21st September, 2020 in Misc. Criminal Application No.85 of 2020.

4. The said order was challenged by the State of Maharashtra through forest Range Officer on the ground that the Magistrate has no authority or jurisdiction to release the seized vehicle. The said objection was upheld by the Revisional Court and set aside the order of the trial Court vide judgment and order dated 1st March, 2021. The same is under challenge in this writ petition.

5. Admittedly, in this matter the seized tractor and trolley was allegedly seized under Section 52 of Indian Forest Act, 1927 reads thus:

> ***52. 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, boats, carts 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, 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 makes, as soon as may be, a report of the circumstances to his official superior.*

6. There is a State amendment in Sub-Section-2 of Section 52 of Act of 1927, which reads thus:

> *"(3) In sub-S.(2), for the words, "make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made", substitute- "make a report of such seizure-*
>
> *(a) where the offence on account of which the seizure has been made is in respect of the forest-produce which is the property of the State Government or in respect of which the State Government has any interest, to the concerned authorised officer under Section 61-A; and*
>
> *(b) in other cases, to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made."*

7. The amended provision makes it clear that where the offence on account of which the seizure has been made is in respect of the forest produce which is the property of the State Government or in respect of which the State Government has any interest, report of such seizure shall be made to the concerned authorised officer under Section 61-A of Act of 1927.

8. Admittedly, in this case no such report of seizure has been made to the concerned Forest Officer under Section 61-A of Act of 1927 and thus, there is no compliance of Section 52 of the Act of 1927.

9. In a similar matter, the Co-ordinate Bench of this Court in the case of *Kamlesh Jaduramji Yadao Vs. State of Maharashtra*[1] has observed thus:

> "5. There is no dispute that the sand is a forest produce. Section 52(2) second proviso lays down that whether the offence on account which the seizure has been made is in respect of timber, sandalwood, firewood, charcoal or such other forest produce as may be notified by the State Government from time to time (hereinafter referred to as the 'notified forest produce') and which is the property of the State Government, such officer shall make a report of such seizure also to the concerned authorised officer under Section 61(A) of the Act. If a report is made under Section 61(A) of the Act to the authorised Forest Officer, then the trial Magistrate does not get jurisdiction to release the property on Supratnama. Otherwise the trial Magistrate has jurisdiction……..."

10. Thus, in the light of above referred observations and in absence of compliance of Section 52 of the Act of 1927, more particularly amended Sub-section 2 of Section 52, I am of the opinion that in this case the learned Magistrate has rightly allowed the application of the petitioner under Section 457 of the Code of Criminal Procedure and thereby directed to release the vehicle i.e. tractor and trolley involved in the forest offence. Whereas, learned Revisional Court has committed error in setting aside the said order of the learned Magistrate vide impugned judgment and order dated 1st March, 2021.

1 1997(1) Mh.L.J

11. In that view of the matter, I am of the opinion that impugned judgment and order passed by the learned Revisional Court needs to be quashed and set aside. Accordingly, I pass the following order.

i. The writ petition is allowed;

ii. The judgment and order dated 1st March, 2021 passed by the learned District Judge-2 and Asst. Sessions Judge, Gondia in Criminal Revision No.33 of 2020 is hereby quashed and set aside and the order dated 21st September, 2020 passed by the learned Judicial Magistrate First Class, Sadak Arjuni in Misc. Criminal Application No.85 of 2020 is upheld.

iii. Writ petition is disposed of.

[ANIL S. KILOR, J.]

SACHINDANAND K NAIR
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