

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 13.05.2024
DELIVERED ON: 13.05.2024

CORAM:

**THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**M.A.T. 2513 of 2023
With
I.A. No. CAN 1 of 2024**

**State of West Bengal & Ors.
Vs.
Shaikh Majid Shaikh Chand & Ors.**

Appearance:-

Mr. Rajarshi Basu

Ms. Rajyashree Mukherjee

.....for the appellants

Mr. Sunil Kumar Gupta

.....for the respondents

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the State is directed against the order dated 13th October, 2023 passed in W.P.A. 13826 of 2023. The vehicle owned by the respondent/writ petitioner was seized for violation of the provisions of the Indian Forest Act, 1927 on the alleged ground that it was carrying contraband timber.

2. The learned Single Bench has directed return of the vehicle, which was seized on 8th January, 2023. In paragraph 13 of the impugned order, the learned Single Bench has discussed about the various provisions of the 1927 Act and the West Bengal Forest Produce Transit Rules, 1959 and has come to the conclusion that prior to seizure, notice is mandatory.
3. The learned Government counsel appearing for the appellants/State pointed out that the provisions of the 2019 Rule, West Bengal Forest Produce Transit Rules notified on 31st May, 2019, was not placed for consideration before the learned Single Bench and under the 2019 Rule, there is no requirement of a notice to be issued before seizure. It appears that the writ petition was disposed of without calling for affidavits.
4. Therefore, we are of the view that the legal issue, which has been decided by the learned Single Bench from paragraph 13 of the impugned order, needs to be left open, since the effect of the 2019 Rules had not been considered in the said decision.
5. Therefore, while leaving the question of law open to be decided as and when occasion arises, we affirm the penultimate direction issued by the learned Single Bench to release the vehicle of the writ petitioner within a time frame.
6. In paragraph 25 of the impugned order, the learned Single Bench has made it clear that nothing in the order passed in the writ petition shall prejudice the rights of the department to draw

appropriate proceedings under the relevant law against the writ petitioner on allegations as made in the 1927 Act.

7. Thus, the direction does not, in any manner, prevent the confiscation proceedings to be initiated by the appellants/department.
8. The learned Government counsel has placed reliance on the decision of the Hon'ble Supreme Court in the case of ***State of Madhya Pradesh & Ors. Vs. Smt. Kallo Bai*** in ***Criminal Appeal No.932 of 2017*** to point out the distinction between criminal prosecution and confiscation.
9. It is the settled legal principle that both these proceedings are different and parallel, each having a distinct purpose. The object of confiscation proceeding is to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence while the object of the prosecution is to punish the offender. Since the learned Single Bench has already granted liberty to proceed under the 1927 Act, it is well open to the appellants/department to avail the benefit of such observation.
10. For the above reasons, appeal and the connected application (I.A. No. CAN 1 of 2024) stand disposed of by leaving the questions of law, which was decided by the learned Single Bench in paragraph 13 of the impugned judgment, open to be considered as and when an occasion arises.

11. The penultimate direction issued for release of the vehicle is affirmed and the appellants/departments shall release the vehicle to the respondent/writ petitioner not later than by 17th May, 2024 after obtaining an undertaking from the respondent/writ petitioner by executing a bond that he shall participate in the confiscation proceedings to be initiated and produce the vehicle as and when required by the authorities.
12. No costs.
13. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

I agree.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)