

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Civil Revisional Jurisdiction
Appellate Side**

Present:
The Hon'ble Justice Rai Chattopadhyay

C.O 9 of 2024

**Md. Rehan Alam
Vs.
The State of West Bengal & Ors.**

For the Petitioner	: Mr. Arjun Chowdhury, : Ms. Pratusha Dutta Chowdhury, : Ms. Riya Agarwal, : Mr. Koushik Kr. Khan, : Ms. Tulip Saha.
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For the State	: Mr. Hirak Barman, : Mr. Kumar Shantanu.
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Heard on : 02/09/2024
Judgment on: 10/09/2024

RaiChattopadhyay,J.

- 1) Confiscation of the vehicle of the petitioner, allegedly being involved in a forest offence, is under challenge in this case along with the order of the "*Authorised Officer*", confiscating the same, as well as the judgment of the Additional District and Sessions Judge, 1st Court at Darjeeling dated September 4, 2023 in Misc. Appeal No. 7 of 2022, thereby upholding the order of confiscation of the vehicle and rejecting the prayer of the petitioner for return of the seized vehicle.

- 2) The sole question involved in this case is whether confiscation of the vehicle under the provisions of the Indian Forests Act 1927, as amended by the West Bengal Amendment Act, would be or not subject to the substantial and procedural criminal laws.
- 3) With the factual background of the case, necessary to be dealt with for proper adjudication thereof be narrated as herein below.
- 4) The petitioner is the registered owner of a truck bearing number BR-11-GB-8714. This same was detained by the Assistant Divisional Officer, Kurseong, on March 19, 2021, on the allegation of illegal and unauthorisedly mining of the forest produce, that is, boulders from the riverbed. The alleged offending vehicle was found partially loaded with boulders and left abandoned by the driver and other miscreants using the said vehicle. The vehicle was seized and seizure list was prepared.
- 5) The “*Authorised Officer*”, Kurseong and Siliguri Sub-division and Divisional Forest Officer, Kurseong Division, has initiated the process of confiscation of the said vehicle, under the provisions of the Indian Forest Act, as amended, vide order dated May 23, 2022, has confiscated the vehicle.
- 6) The said order of confiscation dated May 23, 2022, of the “*Authorised Officer*”, was challenged by the present petitioner in Misc Appeal No.7 of 2022, before the learned Additional District and Sessions Judge 1st Court at Darjeeling, filed under section 59D(3) of the said Act. The Court has passed its judgment dated

September 4, 2023, which is impugned in the instant case. The Court has upheld the order of the “*Authorised Officer*”, and declined the petitioner’s prayer for release of the vehicle. Hence this revision.

- 7) Mr. Chowdhury, learned advocate appearing for the petitioner has submitted firstly that confiscation procedure under the said Act, would be subject to commission of a forest offence. Following the commission of an offence the statutory authorities were required to promptly address the matter by filing a first information report before the police immediately after receipt of information thereof. According to Mr. Chowdhury, the same would have been the prima facie material to show commission of an offence. Otherwise, without any prima facie material to show commission of offence under the provisions of the said Act, no process as well as order for confiscation of petitioner’s vehicle would be maintainable and sustainable in the eye of law, Mr. Chowdhury says. He would say that in order to deprive a person of his right to property it is necessary for the State to show that deprivation of the person’s right to property is a consequence of commission of an offence and not otherwise. He would rely on judgments of the Hon’ble Supreme Court in (i) ***Abdul Vahab vs. State of Madhya Pradesh*** reported in **2022 LiveLaw (SC) 243**, (ii) ***State of M.P. vs. Madhukar Rao*** reported in **(2008) 14 SCC 624** , (iii) ***State of West Bengal vs. Sujit Kumar Rana*** reported in **(2004) 4 SCC 129**, to buttress his such submission.
- 8) Mr. Chowdhury would further submit about the procedural irregularity and non-compliance with the principles of natural justice in the process of confiscating the vehicle, which

according to him, has rendered the process of confiscation as illegal and not tenable in the eye of law. He would say that the petitioner was issued notice by the “*Authorised Officer*” and questioned before an order of confiscation was passed. However allegedly the petitioner has not been afforded the opportunity to cross-examine the complainant or other officials alleging an offence against the said vehicle. For this, the petitioner has to contend that he has been deprived of the vital right of cross examination and in that way right of his defence and the right of his being heard. Mr. Chowdhury would say that if the “*Authorised Officer*” has to record a finding of offence being proved, it was incumbent upon him to afford an opportunity to the petitioner for cross examination of the complainant/officers, who affirm regarding commission of such offence. He would say that the petitioner has not been extended any such opportunity and without the same the authorities have held guilt of the petitioner to be proved. That, such a decision is vitiable under the law. Mr. Chowdhury would rely on the judgment of the Supreme Court, in ***New India Assurance Company Limited vs. Nusli Neville Wadia & Ors.*** Reported in **(2008) 3 SCC 279** to submit that right of cross examination may not be provided in the statute but is a part of the principle of natural justice and is an indefeasible right of the petitioner.

- 9) Mr. Chowdhury, for the petitioner would seek that the revision may be allowed and consequential order be passed, by setting aside the impugned order dated September 4, 2023.
- 10) The respondent State is represented by Mr. Barman. He has contested the petitioner’s contentions and prayer by submitting that in the process of confiscation of the vehicle, the concerned

authorities have maintained and complied with the statutory formalities. He would take this court to the various provisions under the said Act, as amended by the West Bengal Amendment Act, to submit that the “*Authorised Officer*” has been duly empowered under the statute to undertake the process of confiscation, irrespective of any first information report having been lodged, alleging an offence or not. He would indicate that certain procedure has been promulgated therein, which are duly complied with by the “*Authorised Officer*”, in the process of confiscation of the vehicle. He would further said that the power of confiscation of the “*Authorised Officer*” is an independent power of related to any proceeding of the prosecution of the forest offence committed. He says that in order to pass an order of confiscation of a vehicle under the provisions of the said Act, satisfaction of the “*Authorised Officer*” with regard to commission of a forest offence in respect of some forest property, would be sufficient, had or not there be a separate criminal case been filed. In support of his submissions, he has relied on a Supreme Court judgment reported in **(2002) 1 SCC 495 (State of W.B vs. Gopal Sarkar)**. He would suggest that the impugned order passed by the “*Authorised Officer*”, of confiscation of the vehicle as well as that passed by the Court dated September 4, 2023, would not suffer from any illegality or procedural irregularity to warrant any interference to the same, by this Court. He seeks for dismissal of the instant revision.

- 11) The vehicle was detained on March 19, 2021 and the order of confiscation of the same was made by the “*Authorised Officer*”, on May 23, 2022. As stated earlier, the Court has to see if the “*Authorised Officer*” is empowered for passing a confiscation

order against the said vehicle, under section 59A(3) of the said Act, without finding of the trial Court regarding commission of a forest offence, by the same.

- 12) One may note provisions under the section 52 (1) of the said Act and sub-section (3) thereof, added by the West Bengal Amendment Act 22 of 1988, which have empowered any police officer, in alternative of a forest officer, either for seizure or apprehension and interception of a suspicious vehicle. Provisions of the said Act under section 55 would also be worth noticing. The same has provided as to when the forest produce, tools etc would be liable to confiscation. It has provided firstly in section 55(1) that the forest produce in respect of which a forest offence has been committed and tools et cetera used in committing any forest offence, shall be liable to confiscation. Section 55(2) has provided that such confiscation may be in addition to any other punishment prescribed for such offence.
- 13) *Vis-à-vis* the provision under section 55 of the said Act, as stated above, the language employed in section 59A as inserted by the West Bengal Act 22 of 1988 may be noted. Power of confiscation is bestowed upon the designated forest official, by virtue of the provisions thereof, where a forest offence is believed to have been committed.
- 14) The terminology employed in the aforementioned two legal provisions differs, which amply demonstrates the disparity between the intentions behind their separate promulgations and their true purposes.

- 15) Commission of a forest offence and imposition of punishment therefor is imperative as per section 55 of the said Act. The same (that is section 55(2) of the said Act), provides confiscation as an additional measure, to any other punishment to be imposed in case of a proved offence. The observation of the Court in the case of **Abdul Vahab (supra)** is worth noting at this juncture, when the Court has held that “commission of an offence” is one of the requisite ingredients for passing an order of confiscation and an order of confiscation should not be passed automatically.
- 16) On the other hand, under section 59A of the said Act, as amended vide the West Bengal Amendment Act, has empowered the forest officer to confiscate, in case of forest offence believed to have been committed. Therefore, it is not a conclusive proof of the forest offence having been committed but belief of the officer regarding commission of such offence would be sufficient for him to pass an order of confiscation. It is noteworthy that, the provisions under section 55 of the said Act, have not lost force, with the coming into effect of the West Bengal Amendment, to incorporate section 59A as mentioned above. The Hon’ble Apex Court, in **Sujit Kumar Rana’s case (supra)** has held that indisputably having regard to the phraseology used in subsection (2) of section 59A, there cannot be any doubt whatsoever that the commission of a forest offence is one of the requisite ingredients for passing an order of confiscation.
- 17) In the judgment of **Gopal Sarkar (supra)**, as relied on by the State respondent, the Court has held that the power of confiscation is independent of any proceeding of the prosecution for the forest offence committed. That, satisfaction

of the forest officer regarding forest offence having been committed would not be dependent upon whether a criminal prosecution for commission of a forest offence has been lodged against the offender or not. The Court reiterates, as was held earlier also, that confiscation proceeding is separate and distinct from that of the trial before the Court for commission of an offence. In the same however, the Court had no occasion to deal with the provision under the parent Act, but has only dealt with the West Bengal Amendment Act of 1988. Therefore, on the basis of the discussion as made above, the proposition of law as held therein may not be applicable in case of the present petitioner.

- 18) Regarding the petitioner's other point of violation of natural justice, the Court takes into consideration the law as settled in this regard and iterated by the Supreme Court in the judgements of ***New India Assurance Company Limited (supra)***. The Court has relied therein several other pronouncements of the same Court on the issue. By referring to the other judgment in ***Bareilly Electricity Supply Co. Ltd versus The Workman*** reported in ***1972 (1) SCR 241***, the Court quotes from the same, as follows:

“The application of the principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no material can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used.”

- 19) The petitioner's contention is that the "*Authorised Officer*", while passing his order dated May 23, 2022, though has questioned and heard the petitioner, with respect to the allegations made against him, but he has not afforded any opportunity of cross examining the complainant or other officials in his defence. Thus, the petitioner has stated that in one hand his right of defence has been jeopardised and on the other, the spirit of the statute itself has got defeated and decimated. Mr. Chowdhury says that the petitioner has the right to cross examine the witness, as an indefeasible right of him being a part of the principle of natural justice. That, in view of whatsoever provision in a statute, the petitioner cannot be deprived of the procedural safeguard.
- 20) As to such contention of the petitioner, there would not be any material available adverse to the same. That prompt this Court to find the fact that before passing the impugned order dated May 23, 2022, "*Authorised Officer*" has not afforded the petitioner any opportunity to cross-examine either the complainant or any other witness of the case. Therefore, this Court is of the opinion that pursuant to the law settled in this regard, as discussed earlier, the same would amount to violation of the vital and indefeasible right of the petitioner and violation of the principles of natural justice, as regards the petitioner. On this score too, the impugned order passed by the "*Authorised Officer*", as mentioned above and that of the Additional District and Sessions Judge, 1st Court at Darjeeling, upholding the order of the "*Authorised Officer*", are found to be illegal and not maintainable.
- 21) Hence, the instant revision should succeed.

- 22) C.O. No. 9 of 2024 is allowed. The order of confiscation of the vehicle as mentioned above by the “*Authorised Officer*”, dated May 23, 2022 and that of the Additional District and Sessions Judge, 1st Court at Darjeeling, dated September 5, 2023, upholding the said order of the “*Authorised Officer*”, are set aside.
- 23) Let the concerned opposite party immediately release and return the vehicle to its original owner, against proof of his ownership being produced before the same. However, the owner thereof shall be duty bound to produce the vehicle before the Court for the purpose of a trial, if any and as and when called for by the Court or otherwise the Court shall be at liberty to take appropriate action against the owner thereof, in accordance with law.
- 24) C.O. No. 9 of 2024 is disposed of.
- 25) Urgent Photostat certified copy of this judgment, if applied for, be made available to the parties upon compliance of all necessary formalities.

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(Rai Chattopadhyay, J.)