



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

CRIMINAL WRIT PETITION NOS.317 of 2023, 268 OF 2025, 269 OF 2025,
335 OF 2023, 348 OF 2023, 349 OF 2023, 370 OF 2023, AND 764 OF 2024.

CRIMINAL WRIT PETITION NO.317 OF 2023

Jagmal s/o Devasibhai Zala
Aged about 41 years, Occupation: Business,
R/o. Peti Vava Vadi, Veraval,
Chattroada Junagadh, Gujrat-362266

.. Petitioner

versus

1. State of Maharashtra, through Authorized Officer,
Assistant Conservator of Forest
No.2, Wild Life Division, Akot,
Tiger Project Melghat, Taluka-Akot
District Akola. **...Respondents.**
2. Deputy Conservator of Forest,
Akot Wild Life Division,
Tiger Project Melghat, Tq. Akot,
District Akola.

With

CRIMINAL WRIT PETITION NO.268 OF 2025

Kamgonda Bhimashankar Patil,
Aged about 46 years, Occupation:Agri.
R/o. Hattur, Taluka Dakshin,
District Solapur.

.. Petitioner

versus

1. State of Maharashtra, through Authorized Officer,
Assistant Conservator of Forest
No.2, Wild Life Division, Akot,
Tiger Project Melghat, Taluka-Akot
District Akola. **...Respondents.**
2. Deputy Conservator of Forest,
Akot Wild Life Division,
Tiger Project Melghat, Tq. Akot,
District Akola.

With

CRIMINAL WRIT PETITION NO.269 OF 2025

1. Chandrashekhar Gurappa Birajdar
Aged about 48 years, Occupation : Business,
R/o Vadakabal Taluka Dakshin,
District Solapur.

.. Petitioners

2. Khandu Chandu Koli,
Aged about 37 years, Occupation : Business,
R/o Soregaon Bijapur Road North,
Solapur, District Solapur.

versus

1. State of Maharashtra, through Authorized Officer, ...**Respondents.**
Assistant Conservator of Forest
No.2, Wild Life Division, Akot,
Tiger Project Melghat, Taluka-Akot
District Akola.
2. Deputy Conservator of Forest,
Akot Wild Life Division,
Tiger Project Melghat, Tq. Akot,
District Akola.

with

CRIMINAL WRIT PETITION NO.335 OF 2023

Liladhar Gulabchand Rathi. .. **Petitioner**
Aged about 67 years, Occupation : Business,
R/o. Near State Bank of India,
Telhara, Taluka Akot, District Akola.

versus

1. State of Maharashtra, through Authorized Officer, ...**Respondents.**
Assistant Conservator of Forest
No.2, Wild Life Division, Akot,
Tiger Project Melghat, Taluka-Akot
District Akola.
2. Deputy Conservator of Forest,
Akot Wild Life Division,
Tiger Project Melghat, Tq. Akot,
District Akola.

With

CRIMINAL WRIT PETITION NO.348 OF 2023

Yogesh s/o Narayan Porje .. **Petitioner**
Aged about 34 years, Occupation: Business,
R/o Near Naka No.4, Valdevi Estate Camp Road,
Wadneardumala, Nasik-422401.

Versus

1. State of Maharashtra, through Authorized Officer, ...**Respondents.**
Assistant Conservator of Forest

No.2, Wild Life Division, Akot,
Tiger Project Melghat, Taluka-Akot
District Akola.

2. Deputy Conservator of Forest,
Akot Wild Life Division,
Tiger Project Melghat, Tq. Akot,
District Akola.

with

CRIMINAL WRIT PETITION NO.349 OF 2023

1. Vijaykumar Sirdramb Sarsambi, .. **Petitioners**
Aged about : 47 years, Occupation : Business,
R/o. Badure Vasti Vitbhatti Majerwadi
Indira Nagar (N.V.), Solapur.
2. Madani Mallinath Pujari,
Aged about 27 years, Occupation : Business,
R/o. Wadkbal, Tal. South Solapur.
3. Abdul Matin Dastagir Korbu,
Aged about : 34 years, Occupation : Business,
R/o. Limbi Chincholi Valsang, Solapur Valsang,
District Solapur

versus

1. State of Maharashtra, through Authorized Officer, ...**Respondents.**
Assistant Conservator of Forest No.2, Wild Life
Division, Akot, Tiger Project Melghat,
Taluka Akot, District Akola.
2. Deputy Conservator of Forest, Akot Wild Life
Division Tiger Project Melghat, Tq. Akot,
District Akola.

with

CRIMINAL WRIT PETITION NO.370 OF 2023

- Gundappa Suresh Devkar .. **Petitioner**
Aged about 51 years, Occ Business,
R/o. A/p. Venkatesh Niwas, Venkatesh Nagar,
Charanwadi, Shingave Bahula,
Devlali Camp, Nashik, District Nashik-422401 (MS).

versus

1. State of Maharashtra,
Through Assistant Conservator of Forest
No.2, Tiger Project Melghat, at Akot
District Akola. **...Respondents.**
2. Deputy Conservator of Forest,
Akot Wild Life Division,
Akot Tiger Project, Melghat,
District Akot.

with
CRIMINAL WRIT PETITION NO.764 OF 2024

Vijay Radhakishan Gahile **.. Petitioner**
Aged about 29 years, Occupation : Agriculture,
R/o At Post Dadli, Taluka Sinnar, Nashik.
District Nashik-422401 (MS)

versus

1. State of Maharashtra, through Authorized Officer, **...Respondents.**
Assistant Conservator of Forest
No.2, Wild Life Division, Akot,
Tiger Project Melghat, Taluka-Akot
District Akola.
2. Deputy Conservator of Forest,
Akot Wild Life Division,
Tiger Project Melghat, Tq. Akot,
District Akola.
3. Mohan Shankar Jaras,
Aged 59 years, Occupation: Farmer,
R/o. Lahvit Taluka & District Nashik-422502.

Mr. K. H. Anandani with Mr. Bhavin Suchak, Advocates for petitioners in all writ petitions.
Mr. I. J. Damle, Additional Public Prosecutor, for respondents/State in all writ petitions.

CORAM :- NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.

DATE :- 24.04.2025

ORAL JUDGMENT (PER NITIN W. SAMBRE, J.)

Rule. Rule made returnable forthwith and heard finally by consent of
the learned counsel for the respective parties.

2. All these criminal writ petitions are preferred by the vehicle owners whose vehicles are ordered to be confiscated under the provisions of the Indian Forest Act, 1927 (for short, the Act of 1927) vide impugned order dated 25.02.2020, which was confirmed in appellate jurisdiction by the learned Sessions Judge, Akot, district Akola, vide order impugned dated 21.03.2023.

In Criminal Writ Petition No.768 of 2024, the petitioner has challenged the order dated 04.07.2023 passed below Exhibit 1 by the Additional Sessions Judge, Akot, whereby the application preferred by the petitioner for condonation of delay in filing the appeal came to be rejected.

3. The facts necessary for deciding the present criminal writ petitions are as under:

A] One Liladhar Gulabchand Rathi owner of agricultural land bearing Gat No.49 Mouza-Moyapani Taluka Telhara, District Akola. He has decided to develop agricultural water tank by extracting the minor mineral (*murram*) to the extent of 8500 brass for a period from 20.10.2019 to 19.11.2019. Accordingly, he has entered into an agreement with one M/s. Sudhir Constructions Infraspace Private Limited.

B] The said Sudhir Construction accordingly obtained the permission from the District Collector for excavation of the minor mineral *murram* to the extent of 8500 brass from 100 x 100 x 2.5 meters on the area out of private Gat No.49. The said construction Company deposited with the Revenue Authority requisite royalty for extraction of the *murram* which was to be transported.

C] The said Sudhir Construction entered into an agreement by hiring pokland/poclain machine and eight tippers for the transportation of excavated *murram* from the aforesaid private Gat No.49 referred to above.

D] It appears that when the work of excavation and transportation commenced, the villagers from village Piperkhed objected to use of the village road by tippers as it was not having the capacity to sustain the weight of the loaded tippers. As a sequel of above, another road passing through the forest area was identified which was abandoned as the same was earlier used by the Irrigation Department for the construction of the dam. Since the road was not in use, M/s. Sudhir Construction appears to have used the minor mineral *murram* extracted from the aforesaid land for its levelling and also constructed a temporary bridge by laying down cement pipes in the trench so as to facilitate smooth flow of natural water.

E] In the said activity, it is alleged that the forest officials noticed the illicit felling of the scheduled and non-scheduled trees which has resulted into registration of crime, i.e. forest offence, bearing No.55/2724 dated 18.01.2019 punishable under Sections 26(a)(d)(e)(g)(h), 26 (3), 52 and 55 of the Indian Forest Act, 1927 (for short, the Act of 1927).

F] The said forest offence came to be registered on 18.11.2019 alleging that poclain/pokland machine and eight/nine tippers, details of which are as under, were seized in the aforesaid forest offence and the poclain machine operator was booked and taken in forest custody.

Sr.No.	Type of Vehicles	Vehicle No.
1.	Tata Tipper AMW	MH-13 CV-4915
2.	Tata Tipper AMW	MH-15 CV-7123
3.	Tata Tipper AMW	MH-13 CD-4953

4.	Tata Tipper AMW	MH-15 DK-8385
5.	Tata Tipper AMW	MH-15 GV-3218
6.	Tata Tipper AMW	MH-13 CU-4930
7.	Tata Tipper AMW	MH-10 AA-0200
8.	Tata Tipper AMW	MH-13 AX-4661
9.	Tata Tipper AMW	MH-30 AL-1398
10.	Pokland (Exscavater) Model No.210 NG 33 DO 2215 Engine No. 139710472000	

G] The report/challan was submitted against the accused persons before the competent Court of Magistrate and it is informed that the forest trial is pending consideration against the accused persons.

H] In the interregnum, the vehicles referred to above which seized by the Range Forest Officer were handed over to the Designated Officer i.e. Assistant Conservator of Forest. The said designated Authority passed an order on 25.02.2020 thereby confiscating all the vehicles as the same were involved in the commission of the forest offence. The petitioners' respective appeals preferred under Section 61-D of the Act of 1927 also came to be dismissed on 21.03.2023. As such, these criminal writ petitions.

4. The learned counsel for the petitioners would urge that the only allegation against the petitioners is that of felling of trees (stumps not fully grown up trees) and not the illegal transportation of the same. According to him, one fails to understand as to the mode and manner in which the tippers could be used for felling of trees and as such, the order of confiscation is without application of mind. Similarly, it is urged that the scheme/procedure contemplated under Section 61A and 61B of the Act of 1927 is not at all adhered to by the respondents while ordering confiscation, though the offenders were known to the respondents, neither timely report of the

alleged forest offence and the seizure was made to the Magistrate nor immediately report to that effect was submitted to the Higher Officer. As such, the same speaks of the complete highhanded action on the part of the respondents.

According to the learned counsel for the petitioners, even the respondents have failed to have sufficient material after drawing the seizure panchanama to justify that the vehicles of the petitioners were involved in the commission of the alleged forest offence and as such draconian steps of confiscation and auction of the vehicles is required to be adhered. He would claim that there is complete denial of reasonable opportunity of hearing and that being so, the orders impugned are liable to be quashed and set aside.

According to the learned counsel, even if the case of the respondents is accepted, the fact remains that there was appropriate permission for excavation from the Revenue Authority, the existing abandoned road from the forest area was used by re-filling the potholes and laying down the cement pipes so as to facilitate the transportation of the minor minerals legally. As such, the said act of the petitioners cannot be terms to have acted with *mens rea* to commit the forest offence of illegally felling of the scheduled trees. The counsel for the petitioners, as such, would urge that the respondents have lost sight of the entire matter thereby taken recourse to all the draconian provisions of the confiscation and auction.

5. As against above, Mr. I.J.Damle, learned Additional Public Prosecutor appearing for the respondent nos. 1 and 2, has opposed the prayer of the petitioners as, according to him, it is an admitted position that the

petitioners are facing the forest offence before the Court of the learned Magistrate punishable under 26(a)(d)(e)(g)(h), 26 (3), 52 and 55 of the Act of 1927. According to him, the record depicts of not only illicit felling of the scheduled and non-scheduled trees but also of illegal excavation which sufficiently justifies the action of confiscation of the vehicles of the petitioners. As such, he would urge that the reasoned confiscation order, so also the order in respective appeal are quite justified. That being so, the petitions are liable to be dismissed.

6. We have considered the rival claims.

7. With an intention to consolidate the law relating to forest, the transit of forest produce, the duty leviable on timber and other forest produce, the Indian Forest Act, 1927 came to be enacted.

Sub section (4) of Section 2 defines for 'Forest Produce'; whereas, sub-section (3) of Section 2 defines 'Forest Offence' .

8. For the purpose of deciding the case in hand, we are required to be sensitive to the definition of 'forest produce' under Clauses (i) and (iv) of sub-section (4-b) of Section 2 of the Act of 1927. The said provisions read thus:

“(i) trees and leaves, flowers and fruits, and all other parts or produce, not hereinbefore mentioned, of trees,

(iv) peat, surface, soil, rock, and minerals (including limestone, laterite, mineral oils, and all produces of mines or quarries).”

Section 26 provides for the acts prohibited in forest area and amongst others, the act of clearing which is prohibited by Section 5, felling of trees,

quarries, stones or removal of any forest produce are prohibited. Even the breaking of the land for cultivation or any other purpose in the forest area is also prohibited.

In case, if there is a reason to believe that a forest offence in respect of any forest produce referred above by using the vehicle is committed, the same is liable for the seizure in the commission of forest offence by any Forest Officer or Police Officer under sub-section (1) of Section 52.

Sub-section (2) of Section 52 contemplates placing of mark on the seized property indicating that the same has been seized and further provides for making a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

Proviso to sub-section (2) of Section 52 contemplates making of a report of such seizure to the Authorized Officer under Section 61A of the Act of 1927.

Section 55 of the Act of 1927 provides for the confiscation of forest produce including timber which is not the property of the Government and in relation to which the forest offence has been committed.

Section 61A, inserted through the Maharashtra Amendment to the Act of 1927, provides for the procedure for confiscation by the Forest Officer of forest produce where the forest offence is believed to have been committed. It further contemplates an officer authorized by the State Government by issuing notification in *Official Gazette* who shall be not below the rank of Assistant Conservator of Forests to form an opinion about the commission of forest offence and in such eventuality, the property seized

under sub-section (1) of Section 52 is required to be produced before the said Authorized Officer by the Officer seizing the same. The Authorized Officer upon satisfying that the forest offence has been committed in respect of such forest produce which is produced before him irrespective of the initiation of prosecution for such offence may order the forest produce so seized to be taken charge of by a Forest Officer and may order confiscation of the vehicle.

9. Similar provisions were interpreted by the Apex Court in the matter of *State of West Bengal and others vs. Sujit Kumar Rana* reported in **[AIR 2004 SC 1851]** and has made an authoritative observation that the provisions are enacted with a laudable object so as to protect and preserve the national wealth and to attack the depletion of forest cover, which would otherwise lead to ecological imbalance. It has further observed that the State is entrusted with the duty to preserve the forests so as to maintain the ecological balance and with a view to achieve such object, the forest is required to be protected. The provisions of confiscation accordingly are inserted so as to act as a deterrent object in the matter of unauthorized felling of trees and deforestation. The Apex Court has further directed to give purposive construction to the provisions of the Act of 1927.

Similarly, while striking out the balance, it has observed that Article 300-A of the Constitution provides for guarantee to right to the property and in case of illegal seizure which may further lead confiscation, the same amounts to deprivation of the property in an illegal manner.

10. So as to have check and balance in the matter by exercising draconian provisions of confiscation, which deprives a person's right to enjoy the property guaranteed under Article 300-A of the Constitution of India, checks and balances are provided.

11. Since the order of confiscation envisages a civil liability and also deprives a person of enjoying the property, it is mandatory to offer a reasonable opportunity of hearing before taking recourse to the provisions of the confiscation.

12. In the light of the aforesaid legal provisions, if we consider the factual matrix of the case in hand, it is to be noted that the one of the petitioners Mr. Liladhar Gulabchand Rathi approached the Department of Agriculture based on his ownership over the land Gat No.49 for development of an earthen lake(pond) so as to have water storage for agricultural purpose. It appears that the Department of Agriculture accordingly had approved and sanctioned for the construction of earthen lake.

M/s. Sudhir Construction was in the business of execution of the State Government projects viz. construction of road under the Public Works Department. Since the owner of the land Mr. Liladhar Rathi was interested in disposing of the minor mineral viz. murram, which is to be extracted for the construction of lake, entered into an agreement with M/s Sudhir Construction for the excavation of the minor mineral so as to facilitate the construction of the lake as was approved by the Department of Agriculture. As M/s. Sudhir Construction was interested by using the minor mineral in the matter of construction of road, the permission to excavate 8500 bras of

minor mineral by excavating the area of 100 x 100 meters with depth of 2.5 meters for the period from 20.10.2019 to 19.11.2019 from the private land owned by one of the petitioners namely Mr. Liladhar Rathi, bearing Gat No.49, was granted. The said Sudhir Construction informed to have already paid requisite royalty.

13. It appears that the work of excavation from the said land of Mr. Liladhar Rathi commenced by Sudhir Construction by hiring in all 8 tippers/trucks and a poclain machine. One of the vehicles of Mr. Liladhar Rathi was also pressed into the service for the excavation.

When the said work commenced, it appears that the residents of village Piperkhed objected to the commutation of the heavy loaded vehicles viz. tippers as the same was damaging their village road. The same has resulted into discontinuation of the activity.

14. There exists a saddle dam which was constructed way back and for the execution of the said irrigation work, a road was already developed by the Irrigation Department which was into a bad shape. The petitioners are admitting that they had filled-in the potholes and levelled the said road and used the same for the purpose of transportation. As a sequel of above, it appears that the minor mineral was excavated from the private land of Mr. Rathi, one of the petitioners, and with the aid of the tippers the same was transported and laid on the road so as to have smooth flow of heavy vehicles. Amongst others, not only the said road was levelled, which was pre-existing, but so as to have a smooth natural flow of water, a temporary bridge by laying down cement pipes was also built.

15. It is the case of the respondents that in the aforesaid activity, the poclain machine and the trucks/tippers were used not only for the excavation of the forest produce as contemplated under Clauses (i) and (iv) of sub-section (4-b) of Section 2 of the Act of 1927, but also the stumps of the scheduled and non-scheduled trees were damaged resulting into registration of forest offence on 18.11.2019 punishable under Sections 26(a) (d)(e)(g)(h), 26(3), 52 and 55 of the Act of 1927.

16. In the investigation of the aforesaid offence, the Investigating Officer has recorded the statement of the vehicle drivers which were seized under Section 52(1) of the Act of 1927, the statement of the vehicle owners and a report of Forest Surveyor. Since the report for confiscation was submitted by the Investigating Officer to the Authorized Officer along with the relevant documents, the Authorized Officer has proceeded to issue show cause notice and final show cause notice for hearing.

17. As we could gather it from the record that the offence alleged is two folds; (a) by felling of trees the area is sought to be cleared and (b) the soil rock is excavated from the forest area which was transported in the vehicles in question and also used for leveling the forest road.

18. The order passed by the Authorized Officer is pursuant to the seizure carried out under Section 52(1) of the Act of 1927. If we consider the provisions of Section 61A particularly sub-section (1), it was incumbent on the part of the Officer to produce the seized forest produce and seized vehicles before the Authorized Officer. There is no material on the record to infer that the seized forest produce viz. the scheduled and non-scheduled

stumps or trees, the vehicles loaded with the minor mineral were in fact produced before the Authorized Officer. Rather, what was produced was only documents and not the material as contemplated under sub-section (1) of Section 61A of the Act of 1927.

19. We are also required to be sensitive to the provisions of Section 52 of the Act of 1927 which contemplate that a mark is required to be placed on the vehicles which are seized and a report of such seizure is to be made to the Magistrate. In the case in hand, seizure is of dated 18.11.2019 and there is no material in spite of specific ground that the seizure and the commission of forest offence was brought to the notice of the Magistrate by submitting a report to that effect. No doubt, at later stage, a report of the forest offence in the form of charge-sheet was submitted. However, that cannot be termed as a sufficient compliance of sub-section (2) of Section 52 of the Act of 1927. Rather, in the reply-affidavit, the respondents have not made any whisper specifically dealing with the said issue. Such serious defect/default on the part of the respondents is non-curable.

20. The fact remains that under sub-section (3) of Section 61A, the seized forest produce and the vehicles seized of which the officer who has registered the offence claims to have taken in custody, has never produced the same before the Authorized Officer before passing the order of confiscation under Section 61A. Atleast to that effect, no material is placed on the record. Such non-compliance of statutory obligations is serious in nature and a non-curable defect in the eyes of law.

Apart from above, we are required to be sensitive to the reasoning and the considerations by the Authorized Officer while passing the order of confiscation. Perusal of the order passed by the Authorized Officer which is impugned in all these writ petitions though speaks of the material in the form of the show cause notice, the explanation and the statements of the witnesses, the impugned order does not reflect that the statement of the witnesses which were referred to in the factual matrix were taken into account. Though the Authority has proceeded to pass the order observing *prima facie* that he is satisfied that the forest offence is committed, however the Authorized Officer is equally required to be sensitive to the evidence which was before him for the purpose of recording such satisfaction. Amongst others, the report of the Forest Surveyor is taken into account which was never made available to the petitioners. Such act of the respondents not only violates the principle of natural justice guaranteed under Article 14 of the Constitution of India but also makes the impugned order unsustainable.

21. Apart from above, the fact about Gat No.49 is owned by one of the petitioners Mr. Liladhar Rathi and there exists permission from the Revenue Authority to excavate the minor mineral was well within the knowledge of the Authorized Officer. However, the same was not at all dealt with in the impugned order. The fact remains that on one hand there exists a permission from the Revenue Authority to excavate the minor mineral and on the other hand, it is claimed by the forest officials that such excavation is from the forest area. In this background, if we consider the report of the Forest

Surveyor, which is a part of the impugned order, it is reflected that excavation was already carried out from the private land and the said excavated minor mineral appears to have been transported by the vehicles which are seized and confiscated in the offence. From the statement of the witnesses, the very same material appears to have been used for the purpose of levelling the pre-existing road, and non-construction of the road. When confronted, it is not disputed that forest road was already existing, which was constructed long back for the construction of irrigation project. Such inference can be drawn from para 28 of the affidavit-in-reply of the respondents.

22. Apart from the above, if we consider the statement of the witnesses viz. vehicle drivers, vehicle owners, it is apparent that the minor mineral extracted from the private land is used for levelling the road and not for the one which is claimed by the Forest Department. Such aspect ought to have been dealt with by the Authorized Officer while passing the impugned order, which is conspicuously absent in the impugned order.

23. It is not the case of the respondents that the vehicles in question or the poclain machine were used for transportation of the timber/trees. What is claimed is that the petitioners have tried to transport the excavated material from the forest area for commercial purpose. The fact remains that there exists a permission from the Revenue Authority for excavation of minor mineral that too, upon permission for construction of agricultural lake was granted and approved by the Department of Agriculture. All these aspects are not at all dealt with by the Authority while passing the

confiscation order. Rather, the order of confiscation was passed in exercise of powers under Section 61A of the Act of 1927, particularly having regard to the provision of show cause as contemplated under Section 61B of the Act of 1927, which speaks of a vague and callous approach on the part of the forest authorities.

24. We have already observed that the Apex Court in the judgment referred to above in the matter of *State of West Bengal vs. Sujit Kumar Rana* (supra) has made the authority sensitive about the right guaranteed under Article 300-A of the Constitution of India and the effect of the order of confiscation, viz. envisages a civil liability.

25. In the aforesaid background, we have recorded sufficient reasons to form an opinion that not only the order of confiscation passed by the Authorized Officer is *de hors* the provision of Sections 52, 55, 61A and 61B of the Act of 1927 but also there is a denial of opportunity of hearing by not providing the material and also by issuing vague show cause notice. There is also failure to consider order of the Revenue Authority permitting the excavation.

26. In Criminal Writ Petition No.764 of 2024 though a prayer for condonation of delay was moved before the Appellate Authority i.e. Additional Sessions Judge, Akot, the Appellate Authority was complete insensitive to the existing social condition of COVID pandemic and has proceeded to reject the prayer for condonation of delay for such reasons which are not germane to the cause. The Appellate Authority though was

not sensitive to the fact that there were restrictions on the movement of the individuals and as such, there was sufficient and bona fide reason for not filing the revision within time. Be that as it may, we are considering the claim of the petitioner on merit and as such the order passed by the learned Additional Sessions Judge, Akot, below Exhibit 1 on 04.07.2023 is also required to be quashed and set aside.

27. In the light of the aforesaid observations, if we test the order of the Appellate Authority, viz. learned Additional Sessions Judge, who was required to be sensitive to the provisions of Section 61D of the Act of 1927, as he, being an Appellate Authority, is required to not only appreciate the entire factual matrix but also the evidence that was placed on record in support of the contentions of the appellant/petitioner that of the respondents in the matter of passing the order of confiscation.

28. Both these authorities i.e., the Authorized Officer exercising powers under Section 61A and the Appellate Authority i.e. learned Additional Sessions Judge, Akot, under Section 61D, were not at all sensitive to the fact that seized material is in fact not in the custody of any of the authorities, including that of the forest authority, as the same has been used and destroyed by them as firewood. We fail to understand, in absence of there being any permission or order from the Competent Court, whether such recourse could have been taken by the forest authorities themselves which amounts to destroying the evidence. As such, there is no material to ascertain whether there were in fact scheduled and non-scheduled trees felled but for the alleged seizure report on record, which was never sent on

a timely basis i.e. immediately after effecting the seizure was not forwarded to the Court of the Magistrate.

29. Apart from the above, there is no iota of evidence to infer as to whether the tippers, which were loaded with the minor mineral, still remained the same, viz. loaded with the minor mineral, or whether the same were offloaded and where such minor mineral was kept. The photographs of the produce which the respondents are claiming to be a forest produce and which are placed on record by the respondents along with their reply do not depict that there is any excavation carried out by the petitioners in the forest area. Rather, it has to be inferred as observed hereinabove, that the vehicles were transporting the minor mineral that was excavated from the private land, viz. Gat No.49, owned by one of the petitioners, Mr. Liladhar Rathi, under the permission granted by the Revenue Authority which is confirmed from the report of Forest Surveyor as reflected in the impugned order.

30. In this view of the matter, we deem it appropriate to allow all these writ petitions with the following order:

(1) The order dated 25.02.2020 passed by the Assistant Conservator of Forest, so also by the learned Additional Sessions Judge, Akot dated 21.03.2021 and 04.07.2023 passed below Exhibit 1 are hereby quashed and set aside.

(2) The vehicles which were seized under Section 52(1) of the Act of 1927 on 18.11.2019 and confiscated vide the impugned confiscation order

are immediately directed to be released on supratnama, containing the following conditions:

(a) The petitioners/applicants shall execute a personal bond of Rs.One lakh each for release of the vehicles on following conditions:

(i) The petitioners shall produce the vehicles as and when directed by the Court of Magistrate or by the Forest Authority in future; and

(ii) that they shall not transfer the vehicles till the prosecution is concluded in the aforesaid forest offence.

31. Rule is made absolute in the above terms.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)

Andurkar.