



GAHC010248232022

Page No.# 1/18



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Criminal Revision Petition No. 568 of 2022

Sri Amlan Jyoti Baruah,
Aged about 28 years,
S/o- Sri Siva Kanta Baruah,
Village- Nizarapara,
P.Os.- Chapakhowa, P.S.- Sadia,
District:- Tinsukia, Assam.
Represented by his authorized person:
Md. Sowkhatul Islam Bora,
Aged about: 33 years,
S/o- Sri Shariful Islam Bora,
R/o- Dikom Bazar, near old Police Station,
P.O.- Dikom, P.S.- Lahoal,
District – Dibrugarh, Assam,
Pin:- 786101.

.....Petitioner/Revisionist

-Versus-

The State of Assam,
Represented by the Standing Counsel, Forest.

.....Respondent



Advocates for the appellant : Mr T H Hazarika.
Advocate for the respondent : Mr D Gogoi, SC, Forest.

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI

Date of Judgment : 09.01.2023

JUDGEMENT AND ORDER (ORAL)

Heard Mr T H Hazarika, learned counsel appearing on behalf of the petitioner. Also heard Mr D Gogoi, learned Standing Counsel, Forest..

2. The petitioner has preferred this revision petition under Sections 401/397 of CrPC, 1973, against the order dated 28.09.2022, passed by the learned Additional CJM, Lakhimpur, North Lakhimpur in CR(Forest) Case No. 13/2022, under Sections 34/35/40/41/49 (i) and 60 (i) of Assam Forest Regulations, 1891, whereby the learned Additional CJM, Lakhimpur, North Lakhimpur, has rejected the petition of the petitioner/revisionist filed under Section 451 of CrPC, for zimma/custody of a truck.

3. The brief facts of the case is that on 07.08.2022, at around 11:00 pm at night, while the Forest Officer, the informant was going towards Pathalipar at Dhakuakhana, along with some other forest officials, while patrolling at Gogamukh Chariali, they had noticed one truck was coming from NHPC side and in the late night at around 01:00 clock they stopped the truck at Gogamukh Chariali NHPC Road and interrogated the driver, as to what was brought in the vehicle. The driver replied that there were timbers in the truck, bearing Registration AS-23CC-



4944. The informant asked for the documents of the timber from the driver, but he failed to show any documents. After inspecting the vehicle, the informant found timbers and while asking as to from where the timbers were brought, then the driver and the handyman stated that the timbers were brought from Arunachal Pradesh, without any documents obtained from the Forest Department.

4. It is also alleged that they have brought the loaded timbers in the vehicle as per direction of the vehicle owner. Accordingly, the timbers and the vehicle were seized and the driver and the handyman were arrested. Thereafter, a case was registered against the said accused persons for committing offences under Sections 34/35/40/41/49 (i) and 60 (i) of Assam Forest Regulations, 1891. Subsequently, a petition was filed before the learned Additional CJM, Lakhimpur, praying for taking custody of the seized vehicle, AS-23CC-4944 and the prayer of the petitioner was rejected with an observation that as the confiscation proceeding of the seized vehicle has been initiated, the zimma prayer of the petitioner could not be considered.

5. Learned counsel for the petitioner has submitted that the petitioner is the owner of the truck bearing No. AS-23CC-4944. The petitioner has duly authorized Md Sowkhatul Islam Bora for filing the instant revision petition for taking custody of the vehicle, which was seized in connection with CR (Forest) Case No. 13/2022. It is further submitted by the learned counsel for the petitioner that the alleged vehicle has not been confiscated but the process has been initiated.

6. It is also the submission of the learned counsel for the petitioner that the seized vehicle is under finance from TATA Motors Finance Limited (formerly, known as Sheba Properties



Limited) and as the vehicle was seized and kept in the custody of the Forest officer, therefore, the petitioner is facing heavy loss as the petitioner has to pay monthly installments against the said seized vehicle to the Financer Company. Hence, the zimma of the said vehicle be given to the petitioner.

7. In support of his submission, learned counsel has placed reliance on the following case-law:-

Sunderbhai Ambalal Desai Vs. State of Gujarat; (2002) 10 SCC 283.

8. Learned counsel also pointed out paragraphs 16 and 17 of the aforesaid case, wherein the Hon'ble Supreme Court has observed as follows:-

“16. However, the learned counsel appearing for the petitioners submitted that this question of handing over vehicles to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.”

9. Per contra, the learned Standing Counsel, Forest, Mr Gogoi has vehemently opposed the prayer of the petitioner to release the vehicle in favour of the petitioner. By referring to the provisions of Sections 49-A, 49-B and 49-C of the Assam Forest Regulations, 1891, the learned Standing Counsel has submitted that the confiscation proceeding of the seized vehicle has already been initiated and notice has been issued to the petitioner asking him to show



cause as to why the seized vehicle should not be confiscated to the State. It is also submitted by Mr Gogoi that it is not permissible for the trial Court or this Court to release the said seized vehicle after initiation of the confiscation proceeding. Learned Standing Counsel further prays to reject the prayer of the petitioner.

10. In support of his submission, learned Standing Counsel (Forest) has cited the following case laws:-

1) **(2000) 7 SCC 80 (State of Karnataka vs. K Krishnan)**

2) **GHC Case No.- Criminal Revision Petition No. 224 of 2022 (Md Offijol Hoque vs. State of Assam & Anr.)**

11. I have considered the submissions of the learned counsel for the parties and also gone through the order of the learned trial Court.

12. Before advertng to the rival contentions, this Court deems it fit to consider some decisions of the Hon'ble Supreme Court and different High Courts.

13. As regards power of the Court to order for release of the vehicle, pending proposal for confiscation, it was observed in **G.Chandramohan v. State by Inspector of Police, Prohibition Enforcement Wing, Kumbakonam**; reported in **2005 (1) LW (CrI.) 93**, which is reproduced as follows:-

“Even if the vehicle, interim custody will not be a bar. Even if confiscation proceedings are initiated, appropriate orders could be passed, directing the petitioner to produce the vehicle.”

14. In **Multani Hanifbhai Kalubhai v. State of Gujarat**, reported in AIR 2013 SC 644, the Hon'ble Supreme Court set aside the order of the High Court, refusing to return the vehicle,

involved in transportation of the buffaloes and ordered the same to be released under [Section 451](#) of the Criminal Procedure Code.

15. In *David v. Sakthivel, Inspector of Police*; reported in 2010 (1) MLJ (Crl.) 929, proceedings under [Section 14\(4\)](#) of the TNP Act, were initiated on 23.07.2009. Notice was ordered to the Investigating Officer, in the petition filed under [Section 457](#) Cr.P.C. On 24.07.2009, the Magistrate was informed that confiscation proceedings have already been initiated and therefore, the vehicle could not be produced before the Court. Even then, the Magistrate directed the vehicle to be produced. As the same was not done, Contempt Petition was filed. Considering a catena of decisions and under [Sections 451](#) and [457](#) Cr.P.C., it was held as follows:

“As rightly submitted by the learned Advocate General, [Section 14\(4\)](#) of the Act does not take away the jurisdiction of the Court and exercise of power under [Sections 451](#) or [457 Cr.P.C.](#) But discretion of Court has to be exercised judiciously and exercised with due care and caution. Where seizure of vehicle involved in an offence of prohibition reported to the Magistrate, exercise of discretion and ordering of interim custody under [Sections 451](#) or [457 Cr.P.C.](#) is not automatic. Notwithstanding the involvement of the vehicle in the commission of prohibition offence, if there is automatic exercise power by the Court, [Section 14\(4\)](#) of the Act would become a dead letter. In our view, order of confiscation of a vehicle involved in the commission of offence under [Section 14\(4\)](#) of TNP Act is not only punitive but also deterrent. While so, when the vehicle is involved in the commission of a prohibition offence, exercise of discretion by the Court with care and caution would serve various purposes. While before passing any order in respect of the vehicle involved in the commission of prohibition offence, Court should keep in view the spirit of [Section 14\(4\)](#) of the Act and the

benevolent objects of Tamil Nadu Prohibition Act.”

16. In the case of *P.Pannerselvam v. State*; reported in 2013 (2) MLJ (Crl.) 583, confiscation proceedings already initiated, were pending. Before the Court below, application for return of the vehicle, involved in the offences, under the Essential Commodities Act, was made. The Court below dismissed the petition, refusing to release the vehicle. Revision case was filed, challenging the said order. After considering the decision of the Supreme Court in Shambhu Dayal Agarwala v. State of West Bengal reported in 1990 (3) SCC 549, Oma Ram v. State of Rajasthan reported in 2008 (5) SCC 502 and State of Bihar v. Arvind Kumar reported in 2012 (12) SCC 395, it was held as follows:

“Following the decision of the Hon'ble Supreme Court dated 23rd July 2012 passed in Criminal Appeal Nos.1075-76 of 2012 (State of Bihar and another versus Arvind Kumar and another), and also following the decision of the Hon'ble Supreme Court reported in (2008) 5 SCC 502 (Oma Ram v. State of Rajasthan and others), as in this case the confiscation proceedings has already been initiated and the vehicle and the material are now placed in the custody of the Deputy Commissioner (North), Food Supplies Chepauk, Chennai, the petitioner is always at liberty to move the appropriate Authority under Section 6(C) of the Essential Commodities Act.

Further, as per the decision of the Hon'ble Supreme Court reported in (1990) 3 Supreme Court Cases 549 (Shambhu Dayal Agarwala Versus State of West Bengal and Another), the use of the word release is used only to define the seized vehicle to be sold for public consumption and not for return to the

owner.”

17. Reverting to the case in hand, it is the objection of the prosecution that confiscation proceeding has already been initiated and, therefore, the Court should not entrust the custody of the vehicle to the petitioner. [Sections 451](#) and [457](#) Cr.P.C., dealing with the order for custody and disposal of property pending trial in certain cases and the procedure by Police upon seizure of property, respectively and both the Sections are extracted hereunder:

451. When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.- For the purposes of this section, "property" includes-

(a) property of any kind or document which is produced before the Court or which is in its custody,

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

457. (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation

18. Code of Criminal Procedure is a general law, but Assam Forest Regulations, 1891 is a special enactment, in order to ensure proper check and arrest, illegal cutting and transportation of forest produce.

19. As per [Section 452\(1\)](#) of the Criminal Procedure Code, when an inquiry or trial in any Criminal Court is concluded, the Court may make order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

20. As per [Section 458](#) of the Code, if no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, the Magistrate may by order direct that such property shall be at the disposal of the State Government and may be sold by that Government and the proceeds of such sale shall be dealt with in such manner as may be prescribed.

21. Thus, confiscation is one of the modes of disposal of the property, after inquiry or trial

under code of criminal procedure. Section 49 of the Assam Forest Regulations, 1891, deals with the procedure for confiscation, which reads thus-

49. 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, motorised boats, vessels, cattle, carts, rafts, machineries, vehicles, trucks, ropes, chains or any other implements, articles or materials used in the commission of such offence may be seized by any Forest Officer not below the rank of a Forester or any Police Officer not below the rank of a Sub-Inspector of Police.*

(2) *Every Officer, seizing any property under sub-section (1), shall place on such property or the receptacle, if any, in which it is contained, a mark indicating that the same has been so seized and shall, as soon as may be, either produce the property seized before an officer not below the rank of Assistant Conservator of Forests authorised by the State Government in this behalf by the notification in the official Gazette (hereinafter referred to as the 'Authorised Officer') or where it is, having regard to the quantity or the bulk or any other genuine difficulty, not practicable to produce the property seized before the Authorised Officer, or where it is intended to launch prosecution against the offender, immediately make a report of such seizure to the Magistrate having jurisdiction to try the offence of account of which the seizure has been made :*

Provided that where the forest produce within respect to which such offence is believed to have been committed is the property of the 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 superiors.



(3) Any Forest Officer or Police Officer may, if he has reason to believe that a vehicle has been or is being used for the transport of any forest produce in respect of which any forest offence has been committed, require the driver or any other person or persons in-charge of such vehicle to stop the vehicle and cause it to remain stationary as long as may reasonably be necessary to examine the contents in the vehicle and inspect all records relating to the goods carried, which are in possession of such driver or other person in charge of the vehicle.

(4) Subject to the provisions of sub-Sections (5) and (6), where the authorised Officer upon production before him of the property seized or upon receipt of a report about seizure as the case may be, and after such personal inspection or verification as he may deem fit and necessary, is satisfied that a forest offence has been committed in respect thereof, he may, by order in writing and for reasons to be recorded therein, confiscate the forest produce so seized together with all tools, vehicles, cattle, trucks, motorised boats, carts, machineries, rafts, vessels, ropes, chains or any other implements or articles used in committing such offence. A copy of the order of confiscation shall, without any undue delay, be forwarded to the Circle Conservator of Forests of the Circle in which the forest produce has been seized and the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

(5) No order confiscating any property shall be made under the preceding provisions unless the authorised officer-

(a) sends an intimation in the prescribed form about the initiation of the proceeding for confiscation of property to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made;

(b) issue a notice in writing to the person from whom the property is seized, and to any other person who may appear to the authorised officer to have some interest in such property and in cases of motorised boats, vessels, vehicles, trucks, etc., having a registered number to the registered owner thereof;

(c) affords to the persons referred to in Clause (b) above a reasonable opportunity of making a representation within such reasonable time as may be specified in the notice, against the proposed confiscation; and

(d) gives to the officer effecting the seizure and the person or persons referred to in Clause (b) or (c) above, a reasonable opportunity of being heard on a date or dates to be fixed for the purpose.

(6) Notwithstanding anything contained in the foregoing provisions, no order of confiscation under sub-section (4) of any tools, boats, motorised boats, vessels, cattle, carts, rafts, machineries, vehicles, trucks, ropes, chains, or any other implements, articles (other than timber or forest produce) shall be made if any person referred to in Cl. (b) of sub-section (5) proves to the satisfaction of the authorised officer that such tools, vehicles, machineries, trucks, vessels, boats, motorised boats, rafts, carts, cattle ropes, chain or any other implements, or articles were used without his knowledge or connivance or abetment, or as the case may be, without his knowledge or connivance or abetment of his servant or agent and that all reasonable and due precautions had been taken against the use of the object aforesaid for the commission of forest offence.

49A. Power to release property seized under Section 49. - Any Forest Officer not below the rank of a Forest Ranger, whose subordinate has seized any tools, vehicles, trucks,



vessels, rafts, machineries, boats, motorised boats, cattle, ropes chains Or any other implements, articles, etc. under Section 49, may release the same on the execution by the owner or the person-in-charge thereof of a bond for the production of the property so released if and when so required before the Magistrate having jurisdiction to try the offence or before any authorised officer whenever required for the purpose as mentioned under Section 49 to proceed ahead with the offence on account of which the seizure has been made:

Provided that whenever such release is made the officer releasing the property shall immediately make a report to the authorised officer describing the circumstances and the reasons for the release of the property to the claimant or the owner or the person in charge of the property.

22. The Assam Forest Regulations, 1891 is a special statute enacted for the purpose of preserving the forests and the forest produce in the State. [The Scheme of the Act](#), as expressed in the Sections, is to vest power in the authorised officers of the Forest Department for proper implementation/enforcement of the statutory provisions and for enabling them to take effective steps for preserving the forests and forest produce. For this purpose certain powers including the power of seizure, confiscation and forfeiture of the forest produce illegally removed from the forests have been vested exclusively in them. The position is made clear by the non obstante clause in the relevant provisions giving overriding effect to the provisions in the Act over other statutes and laws. The necessary corollary of such provisions is that in a case where the authorised officer is empowered to confiscate the seized forest produce on being satisfied that an offence under the Act has been committed thereof the general power vested in the Magistrate for dealing with interim custody/release of



the seized materials under the Cr. P.C. has to give way. The Magistrate while dealing with a case of any seizure of forest produce 'under the Act should examine whether the power to confiscate the seized forest produce is vested in the authorised officer under the Act and if he finds that such power is vested in the authorised officer, then he has no power to pass an order dealing with interim custody/release of the seized material.

23. In the cases of *Indian Handicrafts Emporium and Ors., v. Union of India;* reported in (2003) 7 SCC 589], *Balram Kumawat v. Union of India* reported in (2003) 7 SCC 628 and *The State of Bihar and Anr., v. Kedar Sao and Another;* reported in (2003) 6 SCALE 639], wherein, the Apex Court has observed that the provision of seizure and its procedure for the property, liable for confiscation, as contained in Section 52 of the Indian Forest Act as amended by Bihar Amendment Act No.9 of 1990 have been made, having regard to the fact, that not only the commission of forest offences are on the increase, but rampant acts involving large scale pilferage and depletion of forest wealth not only causing serious onslaught on the nature and environment causing ecological imbalance and irreparable loss and damage to public property, were taking place and the States, therefore, had to take such drastic legislative measures with a view to prevent commission of such offences.

24. In the case of *State of West Bengal v. Gopal Sarkar;* reported in **2002(1) SCC 495**, wherein, it has been held as follows:

“On a fair reading of the provision it is clear that in a case where any timber or other forest produce which is the property of the State Government is produced under sub-section (1) and an Authorised Officer is satisfied that a forest offence has been committed in respect of such property he may pass order of confiscation of the said property (forest produce)

together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence. The power of confiscation is independent of any proceeding of prosecution for the forest offence committed....."

25. The Hon'ble Apex Court, in [State of West Bengal v. Sujit Kumar Rana](#); reported in AIR 2004 SC 1851, held as follows:

"The upshot of our aforementioned discussion is that once a confiscation proceeding is initiated the jurisdiction of the criminal court in terms of [Section 59-G](#) of the Act being barred, the High Court also cannot exercise its jurisdiction under [Section 482](#) of the Code of Criminal Procedure for interim release of the property. The High Court can exercise such a power only in exercise of its power of judicial review."

26. In the case of [The Secretary to Government v. M/s.Subam Auto Finance Co.](#), reported in AIR 2008 (NOC) 1052 (Mad.), while testing the correctness of an order, relating to confiscation of the vehicle, involved in a forest offence and after considering [Sections 49-A](#) and [49-B](#) of the Forest Act, it was held that:

"As per [Section 49A](#) of the Act, where a forest offence is believed to have been committed in respect of any schedule timber, which is the property of the Government, the Officer seizing the property under Sub-Section (1) of [Section 41](#), shall, without any unreasonable delay, produce it together with all tools, vehicles, etc., used in committing such offence, before an officer and where the Authorised Officer siezes any schedule timber, which is the property of the Government and if he is satisfied with the Forest offence has been committed in respect of such property, such authorised officer, may, whether or not a prosecution is instituted for committing such forest offence can order confiscation of the property so seized together with

all tools, ropes, vehicles etc., used in committing such offence.

The said Section envisages both the criminal prosecution as well as initiation of confiscation proceedings. Prosecution launched for the purpose of punishing the offenders, whereas, the object of confiscation is to declare that the property, used in the commission of an offence, as the Government property and the two proceedings are entirely different. Authorised officer can initiate criminal proceedings, if there are sufficient information and evidence available on record. If the facts and evidence unearthed by him, during the course of investigation are not sufficient to bring home the culpability of the owner, then trying the owner before the criminal Court would be futile exercise and harassment. Criminal proceedings is for the offence committed by the driver or owner or any person in charge of the owner, provided there is mens rea. Whereas the object of confiscation is to adjudicate with regard to confiscation of the forest produce and means used in the commission of offence. Confiscation proceedings initiated under the Act is a quasi-judicial proceedings initiated on the basis of the satisfaction of the Authorised Officer."

27. In the case of Aswini Kumar Ghose v. Arabinda Bose; reported in AIR 1952 SC 369, a Full Bench of the Supreme Court held that-

"It should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning, and the non obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment."

28. In the case of Union of India v. G.M.Kokil; reported in AIR 1984 SC 1022, the Supreme Court, at Paragraph 10, held as follows:

“It is well-known that a non-obstante clause is a legislative device which is usually employed to give over-riding effect to certain provision over some contrary provision that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions.”

29. [In the case of *Narcotics Control Bureau v. Kishan Lal*](#); reported in AIR 1991 SC 558, the Hon'ble Supreme Court, held as follows:

“[The NDPS Act](#) is a special enactment as already noted it was enacted with a view to make stringent provision for the control and regulation of operations relating to narcotic drugs and psychotropic substances. That being the underlying object and particularly when the provisions of [Section 37](#) of NDPS Act are in negative terms limiting the scope of the applicability of the provisions of Cr. P.C. regarding bail, in our view, it cannot be held that the High Court's powers to grant bail under [Section 439](#) Cr. P.C. are not subject to the limitation mentioned under [Section 37](#) of NDPS Act. The non-obstante clause with which the Section starts should be given its due meaning and clearly it is intended to restrict the powers to grant bail.”

30. In the light of the aforesaid discussions and considering the undisputed facts of the case in hand, that confiscation proceeding has already been initiated by the authority and guidelines issued in the aforesaid cases, this Court is of the view that the impugned order dated 28.09.2022, passed by the learned Additional CJM, Lakhimpur, North Lakhimpur in CR(Forest) Case No. 13/2022, in dismissing the petition for return of the vehicle alleged to have been involved for the offences under Assam Forest Regulations, 1891, cannot be said to be manifestly illegal, warranting interference.



31. In the result, the revision petition stands dismissed.
32. There is no order as to cost(s).

JUDGE

Comparing Assistant