

HIGH COURT OF MADHYA PRADESH, JABALPUR**BENCH AT INDORE****S.B.: Hon'ble Shri Justice Subodh Abhyankar****Miscellaneous Criminal Case No.8820/2022**(Order is passed in open Court on 26th March, 2022)

Counsel for the Parties : Sahil Khan s/o Shaheen Khan,
Age – 25 years, Occupation – Business,
R/o – 12, Pachore Road, Chhapiheda, Rajgarh (MP)

Through Power of Attorney Holder
Mubarik Khan Mansoori s/o Rajjak Khan Mansoori,
Age – 41 years, Occupation – Business,
R/o – Village Mau, Tehsil Sarangpur, Rajgarh (MP)

Versus
The State of Madhya Pradesh
Through Forest Department,
Regional Tiger Strike Force, Indore)

Whether approved for : YES
reporting**Law laid down** : Madhya Pradesh Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969
(herein after referred to as the Act)

10. A perusal of the aforesaid Section 15 (5) in juxtaposition with 15-C of the Act leaves no manner of doubt that bar of jurisdiction to pass the order on an application under Sections 451 and 457 of the Code would operate only on receipt of information by the concerned Magistrate under Sub Section (5) of Section 15 of the Act regarding initiation of proceedings for confiscation of the property. Meaning thereby, if the Magistrate, having jurisdiction to try the offence on account of seizure of the property, which is the subject matter of confiscation, does not receive the information from the authorised officer under S.15(5) of the Act regarding initiation of proceedings for confiscation of the property, the said Magistrate as also any other Court, Tribunal or Authority shall have the jurisdiction to make order with regard to the property in question.

In the present case, admittedly no such intimation is sent by the respondent/authorised officer to the Judicial Magistrate regarding confiscation of the property; and in such circumstances, this Court is of the considered opinion that the Judicial Magistrate was in error in not exercising the jurisdiction vested in it bylaw.

12. So far as Sub-section (3A) of S.15 is concerned, the power is conferred on the Forest Officer only in respect of the vehicle which is liable for confiscation. Admittedly, under Sub Section (4) of Section 15 of the Act, any such tools, vehicles, boats, ropes, chains or other articles which were used in commission of the offence can be confiscated only when it is seized together with forest produce. A harmonious reading of the aforesaid provisions of sub-s.(3A) and sub-s.(4) of the Act clearly reveals that only such tools, vehicles, boats, ropes, chains or

other articles were used in the offence can be released by the Forest officer which are liable for confiscation *together with the forest produce*. In the present case, admittedly, the vehicle has been seized after more than one year of the actual incident on the ground that one of the accused persons was travelling in the said vehicle and admittedly, there was no forest produce recovered from the said vehicle.

Significant paragraph : 10, 12 and 13
numbers

(Subodh Abhyankar)
Judge

High Court of Madhya Pradesh, Jabalpur
Bench at Indore

Miscellaneous Criminal Case No.8820/2022

(Sahil Khan s/o Shaheen Khan,
Age – 25 years, Occupation – Business,
R/o – 12, Pachore Road, Chhapiheda, Rajgarh (MP)

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Versus
The State of Madhya Pradesh
Through Forest Department,
Regional Tiger Strike Force, Indore)

Indore, Dated 26.03.2022

Shri Arpit Singh, learned counsel for the petitioner.

Shri Mukesh Kumawat, learned Government Advocate for the
respondent / State of Madhya Pradesh.

They are heard.

O R D E R

This petition under Section 482 of Criminal Procedure Code, 1973 (herein after referred to as “the Code”) has been filed by the petitioner for quashing order dated 12th January, 2022 (Annexure P/1), passed in Criminal Revision No.10/2022, by learned 14th Additional Sessions Judge, Indore, District Indore (MP) affirming the order dated 2nd December, 2021 (Annexure P/2), in R.C.T. No.1386/2020 (Crime No.28060/2019), passed by the Chief Judicial Magistrate, Indore, District Indore (MP), whereby the petitioner’s application under Sections 451 and 457 of the Code for *supurdagi* of his vehicle bearing registration number MP-04 BC-9991 has been rejected.

2. In brief, the facts giving rise to the present petition are that on 21.01.2020, a truck bearing registration number HR-63 A-9596 was apprehended by the Forest Department and was found carrying forest produce, woods (*Kher Van-upaj*).

3. The story of the prosecution is that one Ashique Khan @ Banti s/o Jalil Khan, the co-accused was to dispose of the aforesaid forest produce, after its delivery to him. This fact has been disclosed by the main accused persons viz., Bhupendra Singh S/o Bhagwan Singh (Truck Driver) and Sunny @ Rajveer Singh S/o Bhupendra Singh (Cleaner of the Truck) in their memos prepared under Section 27 of the Evidence Act,1872, however, Ashique Khan @ Banti could not be arrested at that time and subsequently he could be arrested only on 22.11.2021, while he was travelling in a Toyota Innova bearing registration number MP-04 BC-9991 (the vehicle in question) which belonged to the petitioner Sahil Khan.

4. Admittedly, the aforesaid vehicle has already been seized, but there are no confiscation proceedings initiated by the Forest Department.

5. An application under Sections 451 and 457 of the Code was filed by the petitioner. However, the same was dismissed by the Chief Judicial Magistrate, Indore, District Indore (MP) vide order dated 02.12.2021 on merits and criminal revision preferred against the aforesaid order also came to be dismissed vide order dated

12.01.2022, on the ground that it was not maintainable which are under challenge in the present petition before this Court.

6. Learned counsel for the petitioner has submitted that the vehicle in question was seized on 22.11.2021, in which the co-accused Ashique Khan @ Banti s/o Jalil Khan (who was earlier absconding) was travelling, and admittedly, it is not the case of the prosecution that in the said vehicle any forest produce was being transported; and in fact, the vehicle in which the forest produce was being transported was a truck bearing registration number HR-63 A-9596 which was seized on 21.01.2020. Thus, it is submitted that the Judicial Magistrate had the power to release the vehicle on *Supradgi*, whereas the Revisional Court has wrongly held that under the provisions of the Act no such jurisdiction is vested with the judicial magistrate.

7. Learned counsel for the petitioner has submitted that a perusal of Section 15 of the Act clearly reveals that the Judicial Magistrate shall have no such jurisdiction to pass any order in respect of the vehicle which is the subject matter of confiscation proceedings but as no confiscation proceedings have been initiated against the vehicle in question, it ought to have been released by the Judicial Magistrate only.

8. Learned Government Advocate for the respondent / State, on the other hand, has admitted that the Forest Department has not

initiated any confiscation proceedings in respect of the vehicle in question. It is submitted that even though the vehicle has not yet been confiscated, the petitioner ought to have approached the Forest Officer only under Section 15 (3A) of the Madhya Pradesh Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 (herein after referred to as the Act).

9. Heard. On due consideration of the rival submissions and on perusal of the case diary as also the documents placed on record by the petitioner, it is found that so far as the order dated 02.12.2021 (Annexure P/2) passed by the Chief Judicial Magistrate is concerned, it has dismissed the application filed by the petitioner without even referring to Section 15-C of the Act and on the ground that u/s.39 (1) (d) of the Wild Life (Protection) Act, 1972 the vehicle would become the Government property, hence, it cannot allow the application for *Supurdagi*. However, in the Revision Court's order dated 12.01.2022 (Annexure P/1), the entire Section 15 of the Act has been quoted; and after referring to the decisions rendered by this Court as also by the Supreme Court, it is held that such vehicle can be released only by the Officer of the Forest Department.

10. So far as Section 15 and 15C of the Act are concerned, which are also relevant for the purposes of this case, the same read as under:-

“15. Search and seizure of property liable to

confiscation and procedure therefor. - (1) Any Forest Officer as may be notified by the State Government or any Police Officer not below the rank of an Assistant Sub-Inspector or any other person authorised by the State Government may, with a view to securing compliance with the provisions of this Act or the rules made thereunder or to satisfying himself that the said provisions have been complied with,-

- (i) stop and search any person, boat, vehicle or receptacle used or intended to be used for the transport of specified forest produce;
- (ii) enter and search any place.

(2) When there is reason to believe that any offence under this Act has been committed in respect of any specified forest produce, any Forest Officer as may be notified by the State Government or any Police Officer not below the rank of an Assistant Sub-Inspector or any person authorised by the State Government in this behalf may, seize such specified forest produce along with all tools, boats, vehicles, ropes, chains or any other articles used in committing such offence under the provisions of this Act.

(3) Any officer or person seizing any property under this section shall place on all such property a mark indicating that the same has been so seized and shall, as soon as may be, either produce the property seized before the officer not below the rank of an Assistant Conservator of Forest authorised by the State Government in this behalf, by notification (hereinafter referred to as the authorised officer) or where it is having regard to quantity or bulk or other genuine difficulty, not practicable to produce the property seized before the authorised officer, make a report about the seizure to the authorised officer, or where it is intended to launch criminal proceedings against the offender immediately make report of such seizure to the Magistrate having jurisdiction to try the offence on account of which seizure has been made:

Provided that, when the specified 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.

(3A) Any forest officer of a rank not interior to that of a Ranger, who or whose subordinate, has seized any tools, boats, vehicles, ropes, claims or any other article as liable for confiscation, may release the same on the execution by the owner thereof, of a security in a form as may the

prescribed, of an amount equal to double the value of such property, as estimated by such officer, of the production of the property so released, when so required, before the officer authorized to order the confiscation or the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

(4) Subject to the provisions of sub-section (6), where the authorised officer upon production before him of the specified forest produce or upon receipt of report about the seizure, as the case may be, is satisfied that offence has been committed in respect thereof, he may, by order in writing and for reasons to be recorded confiscate the specified forest produce so seized together with all tools, vehicles, boats, ropes, chains or any other articles used in committing such offence. A copy of order of confiscation shall be forwarded without any undue delay to the [Officer-in-charge of Forest Circle] in which the specified forest produce has been seized.

(5) No order confiscating any property shall be made under subsection (4) unless the authorised officer,-

- (a) sends an intimation in forms prescribed about initiation of proceedings for confiscation of property to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made;
- (b) issues 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;
- (c) affords an opportunity to the persons referred to in clause (b) 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 or person effecting the seizure and the person or persons to whom notice has been issued under clause (b), a hearing on the date to be fixed for such purpose.

(5A) When the authorised officer having the jurisdiction over the case is himself involved in the seizure of investigation, the next higher authority may transfer the case to any other officer of the same rank for conducting proceedings under this section.

(6) No order of confiscation under sub-section (4) of any tools, vehicles, boats, ropes, chains or any other articles (other than specified forest produce seized) shall be made if any person referred to in clause (b) of sub-section (5) proves to the satisfaction of authorised officer that any

such tools, vehicles, boats, ropes, chains or other articles were used without his knowledge or connivance or as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of objects aforesaid for commission of an offence under this Act.

(6A) The seized forest produce or any other property, if ordered to be released by the authorised officer, shall continue to be under custody until confirmation of the order of the authorised officer by the Appellate Authority or until the expiry of the period for initiating "*suo motu*" action by him, whichever is earlier, as specified under Section 15-A.

(7) The provisions of Sections 102 and 103 of the Code of Criminal Procedure, 1973 (No. 2 of 1974) relating to search and seizures shall so far as may be apply to searches and seizures under this section.”

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“15C. Bar of jurisdiction of Court etc. under certain circumstances. -

(1) On receipt of intimation under sub-section (5) of Section 15 about initiation of proceedings for confiscation of property by the Magistrate having jurisdiction to try the offence on account of which the seizure of property which is subject matter of confiscation, has been made, no Court, Tribunal or Authority (other than the authorised officer, Appellate Authority and Court of Sessions referred to in Sections 15,15-A and 15-B as the case may be), shall have jurisdiction to make orders with regard to which proceedings for confiscation are initiated under Section 15, notwithstanding anything contained in this Act, or any other law for the time being in force:

Provided that before passing any order for disposal of property, the Magistrate shall satisfy himself that no intimation under sub-section (5) of Section 15 has been received by his Court or by any other Court having jurisdiction to try the offence on account of which the seizure of property has been made.

Explanation.- Where under any law for the time being in force, two or more Courts have jurisdiction to try offence under this Act, then receipt of intimation under sub-section (5) of Section 15 by one of the Court of Magistrate having such jurisdiction shall be construed to be receipt of intimation under that provision by all the Courts and the bar to exercise jurisdiction shall operate on all such Courts.

(2) Nothing herein before contained shall be deemed to prevent any officer authorised in this behalf by the State Government from directing at any time the immediate release of any property seized under Section 15.”

(Emphasis supplied)

A perusal of the aforesaid Section 15 (5) in juxtaposition with 15-C of the Act leaves no manner of doubt that bar of jurisdiction to pass the order on an application under Sections 451 and 457 of the Code would operate only on receipt of information by the concerned Magistrate under Sub Section (5) of Section 15 of the Act regarding initiation of proceedings for confiscation of the property. Meaning thereby, if the Magistrate, having jurisdiction to try the offence on account of seizure of the property, which is the subject matter of confiscation, does not receive the information from the authorised officer under S.15(5) of the Act regarding initiation of proceedings for confiscation of the property, the said Magistrate as also any other Court, Tribunal or Authority shall have the jurisdiction to make order with regard to the property in question.

11. In the present case, admittedly no such intimation is sent by the respondent/authorised officer to the Judicial Magistrate regarding confiscation of the property; and in such circumstances, this Court is of the considered opinion that the Judicial Magistrate was in error in not exercising the jurisdiction vested in it bylaw.

12. So far as Sub-section (3A) of S.15 is concerned, the power is conferred on the Forest Officer only in respect of the vehicle which

is liable for confiscation. Admittedly, under Sub Section (4) of Section 15 of the Act, any such tools, vehicles, boats, ropes, chains or other articles which were used in commission of the offence can be confiscated only when it is seized together with forest produce. A harmonious reading of the aforesaid provisions of sub-s.(3A) and sub-s.(4) of the Act clearly reveals that only such tools, vehicles, boats, ropes, chains or other articles were used in the offence can be released by the Forest officer which are liable for confiscation *together with the forest produce*. In the present case, admittedly, the vehicle has been seized after more than one year of the actual incident on the ground that one of the accused persons was travelling in the said vehicle and admittedly, there was no forest produce recovered from the said vehicle.

13. In such circumstances, when the vehicle is not liable for confiscation under Section 15 of the Act; and even otherwise, as already observed, no such intimation as provided under s.15C has been given to the Judicial Magistrate by the concerned, Forest Officer.

14. Thus, the impugned orders dated 12th January, 2022 (Annexure P/1) passed in Criminal Revision No.10/2022 by learned 14th Additional Sessions Judge, Indore, District Indore (MP) as well as order dated 2nd December, 2021 (Annexure P/2) passed in R.C.T. No.1386/2020 (Crime No.28060/2019) by the Chief Judicial

Magistrate, Indore, District Indore (MP) are hereby quashed and the petition stands **allowed**.

15. It is directed that upon his furnishing adequate surety to the satisfaction of the authorised officer of the Forest Department, subject to the condition that the petitioner shall not alienate this vehicle in any manner and shall produce the vehicle whenever and wherever he is directed to do so by the Court / Competent Authority, the respondents are directed to release the petitioner's vehicle Toyota Innova bearing registration number MP-04 BC-9991 forthwith. Breach of any of the conditions would entail cancellation of this order automatically.

16. Accordingly, Miscellaneous Criminal Case No.8820/2022 stands ***allowed and disposed of***.

(Subodh Abhyankar)
Judge