IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

W.P. No. 2552/2000

State of MP
V.
Rajesh Sharma

Date of Order : **1.8.2017**

Present : Hon'ble Shri R.S. Jha, &
Hon'ble Smt. Nandita Dubey,JJ

Judgment Delivered by Hon'ble Shri Justice R.S. Jha

Shri Piyush Dharmadhikari, learned G.A. for the petitioner.
Shri V. S. Choudhary, learned counsel for the respondent.

O R D E R
1.8.2017

This petition has been placed before the Division Bench on a reference being made by the learned single Judge vide order dated 2.2.2017 being of the opinion that there is conflict between the judgments in the case of **Sohan lal Keshari Vs. State of M.P.** (W.P. No. 3972/1999 decided on 22.2.2000) and **Umashankar Usrete Vs. State of M.P and Ors,** 2008 (4) M.P.H.T. 393, in respect of the interpretation of the words "order of confiscation" used in Section 52-A of The Indian Forest Act 1927 as amended by M.P.Act No. 25 of 1983.

2. Before we render our opinion to the reference made to us, it is pertinent to note that this petition has been filed by

the State being aggrieved by the order dated 4.4.2000 passed by the Sessions Judge in Criminal Revision No.36/2000 whereby, while setting aside the order passed by the appellate authority in exercise of suo-motu appellate powers under Section 52-A(2) of the Indian Forest Act 1927, (hereinafter referred to as the "Act"), it has held that the power of suo-motu appeal can be exercised only against an order passed by the authorized officer confiscating the vehicle, boat, tools etc and is not available and cannot be invoked in respect of an order releasing the vehicle, boat, tools etc. We do not propose to enter into the facts of the case in detail as they are not necessary for answering the reference and would be appropriately looked into by the Bench concerned, after the reference is answered by us, except for taking note of the fact that in the instant case the authorized officer had passed a composite order on 11.7.1999 by which the forest produce (0.375 Cu.mt.teak wood) was confiscated while the vehicle involved in the commission of the offence, Tempo Trax No. MP19-A-9434 was released without registering an F.I.R. or referring the case for adjudication to the Judicial Magistrate.

3. The records of the case indicates that while the matter was being taken up for hearing by the learned Single Judge,

he noticed that a Single Bench of this Court in the case of **Sohan lal Keshari Vs. State of M.P.** (W.P. No. 3972/1999 decided on 22.2.2000) had specifically considered and interpreted the provision of Section 52-A of the Act and held that the words 'order of confiscation used in section 52-A should actually be read as “order passed in confiscation proceedings” and therefore the appellate authority had the power and authority to initiate suo-motu appeal proceedings under section 52-A(2) of the Act even in cases where a vehicle was not confiscated but was directed to be released by the authorised officer in proceedings under section 52 of the Act. The learned single Judge also noticed that another single Bench of this Court in the case of **Umashankar Usrete Vs. State of M.P and Ors** [2008 (4) M.P.H.T. 393] while interpreting the same words, namely, “order of confiscation” used in the same provision of Section 52-A of the Act, without taking note of the previous decision of the Coordinate Bench in the case of Sohan lal Keshari (Supra), has taken a directly divergent and contrary view by holding that an appeal under section 52-A of the Act can be filed only in a case where there was an order confiscating the vehicle. The learned single Judge was of the view that the words “order of confiscation” whether used in Section 52-A(1) or Section 52-A(2) have to

be given the same meaning and therefore the divergent views taken in the two decisions cannot be reconciled.

4. In view of the apparent conflict between the aforesaid two decisions, the learned single Judge has referred this matter to the larger Bench not just to resolve the conflict between the two judgments but also to decide the scope and extent of the powers of the appellate authority and appellate proceedings under section 52-A of the Act. Though clear and specific questions have not been framed/referred to us by the learned Single Judge for decision, however, for the purposes of arguments and clarity we formulate the questions that are required to be answered by us in the present reference as under :-

(1) Whether there is conflict between the Single Bench decision of this Court in the case of **Sohan lal Keshari Vs. State of M.P.** (W.P. No. 3972/1999 decided on 22.2.2000) and the Single Bench decision in the case of **Umashankar Usrete Vs. State of M.P and Ors [2008 (4) M.P.H.T. 393]** and if the answer is in the affirmative, which of the views is correct ?

(2) What is the scope and meaning of the words "order of confiscation" used in Section 52-A of the Indian Forest Act 1927 ?

(3) Whether the provisions of Section 52-A(1) and the provisions of Section 52-A(2) can be invoked only in a case where there is an order passed by the authorized officer confiscating the property and not against an order passed in confiscation proceeding releasing the property ?

5. Section 52 of the Indian Forest Act as amended by M.P. Act No. 25 of 1983, provides for confiscation and the procedure thereof in respect of the property that is seized by the forest or police officers in cases where they have reason to believe that a forest offence has been committed. Section 52-A of the M.P. Amendment made in the Indian Forest Act relates to the provisions of appeal against an order of confiscation. As the aforesaid section needs to be scrutinized in detail, it is reproduced below for ready reference :-

> "52-A. **Appeal against order of confiscation**.- (1) Any person aggrieved by an order of confiscation may, within thirty days of the order, or if fact of such order has not been communicated to him, within thirty days of date of knowledge of such order, prefer an appeal in writing, accompanied by such fee and payable in such form as may be prescribed, alongwith the certified copy of order of confiscation to the District Magistrate (hereinafter referred to as

the Appellate Authority) of the District in which the forest produce, has been seized.

Explanation. - (1) The time required for obtaining certified copy of order of confiscation shall be excluded while computing period of thirty days referred to in this subsection.

(2) The Appellate Authority referred to in section 52-A, may, where no appeal has been preferred before him, "suo-motu" within thirty days of date of receipt of copy of order of confiscation by him, and shall on presentation of memorandum of appeal issue a notice for hearing of appeal or, as the case may be, or "suo-motu" action to the officer effecting seizure and to any other person (including appellant, if any) who in the opinion of the Appellate Authority, is likely to be adversely affected by the order of confiscation, and may send for record of the case :

Provided that no formal notice of appeal need be issued to such amongst the appellant, officer-effecting seizure and any other person likely to be adversely affected as aforesaid, as may waive the notice or as may be informed in any other manner of date of hearing of appeal by the Appellate Authority.

(3) The Appellate Authority shall send intimation in writing of lodging of appeal or about '*suo-motu'* action, to the authorised officer.

(4) The Appellate Authority may pass such order of *interim nature* for custody, preservation or disposal (if necessary) of the subject-matter of confiscation, as may appear to be just or proper in the circumstances of the case.

(5) The Appellate Authority, having regard to the nature of the case or the complexities involved, may permit parties to the appeal to be represented by respective legal practitioner.

(6) On the date fixed for hearing of the appeal or '*suo motu'* action, or on such date to which the hearing may be adjourned, the Appellate Authority shall peruse the record and hear the parties to the appeal if present in person, or through any agent

duly authorised in writing or through a legal practitioner, and shall thereafter proceed to pass an order of confirmation, reversal or modification of the order of confiscation:

Provided that before passing any final order the Appellate Authority may if it is considered necessary for proper decision of appeal or for proper disposal of *suo-motu* action, make further inquiry itself or cause it to be made by the authorised officer, and may also allow parties to file affidavits for asserting or refuting any fact that may arise for consideration and may allow proof of facts by affidavits.

(7) The Appellate Authority may also pass such order of consequential nature, as it may deem necessary.

(8) Copy of final order or an order of consequential nature, shall be sent to the authorised officer for compliance or for passing any appropriate order of Appellate Authority."

6. Shri Piyush Dharmadhikari, learned Government Advocate appearing for the petitioner/State submits that the decision in the case of **Sohan lal Keshari (Supra)** delineates the correct legal position as far as interpretation of the words "order of confiscation" contained in Section 52-A of the Act, is concerned and states that the learned single Judge in the case of **Sohan lal Keshari (Supra)** has rightly adopted the principle of purposive construction of statutory interpretation rather than the literal rule of construction, taking into consideration the object and reasons for the extensive amendments carried out by the State of Madhya Pradesh in

the Indian Forest Act, namely of curbing forest offences and other nefarious activities relating to forest and to empower responsible forest officers to confiscate the vehicle, tools etc., used in committing the forest offence with the safeguard of judicial review and without prejudice to the power of the criminal court to punish offenders.

7. It is submitted that the very object and purpose of the introduction of the provision was to provide for strict provisions for dealing with persons involved in commission of forest offences and to punish them and for that purpose to empower the responsible forest officers with necessary and adequate powers and to encourage them to exercise the powers conferred upon them without fear. In support of his submission the learned Government Advocate appearing for the petitioner/State has taken us through the statement of object and reasons that were published in the M.P Gazette Extraordinary dated 2.3.1983 at the bottom of the Indian Forest (M.P. Amendment Bill) 1983.

8. The learned counsel appearing for the petitioner State further submits that keeping the aforesaid object and purpose in mind, this court in the case of **Sohan lal Keshari (Supra)** has rightly held that the appellate power is not and cannot be confined to only those orders of confiscation where the

vehicle or tools are ordered to be confiscated but is also available in cases where the authorized officer releases the vehicle otherwise the object and purpose of introducing the deterrent measure of confiscation would be defeated and the mischief and malady sought to be prevented would continue unabated.

9. It is submitted that the single Judge while deciding the case of **Umashankar Usrete** (supra) has not taken note of the decision in the case of **Sohan lal Keshari (Supra)** which is prior in point of time while taking a contrary view and therefore, it is not a binding precedent in view of the law laid down by the Special Bench of this Court in the case of **Jabalpur Bus Operators Vs. State of M.P and others reported in 2003 (1) M.P.L.J. 513,** wherein it has been held that a judgment passed by the Court in ignorance of a prior decision of a coordinate Bench is per-incurium and sub-silentio and is not a binding precedent. It is submitted that the decision rendered in the case of **Umashankar Usrete (Supra)** be overruled and declared not to be a good law.

10. The learned counsel appearing for the respondent on the other hand submits that a bare reading of the provisions of Section 52-A(1) make it abundantly clear that an appeal can be filed only against an order of confiscation and not

against an order releasing the vehicle and in such circumstances as the learned single Judge in the case of **Umashankar Usrete (Supra)** has taken this aspect into consideration and has rightly interpreted the provisions of Section 52-A of the Act, therefore, the view taken in the case of **Umashankar Usrete (Supra)** be upheld and the decision rendered in the case of **Sohanlal Keshari (Supra)** be overruled and be declared not to be a good law. It is submitted by the learned counsel for the respondent that in the case of **Umashankar Usrete (Supra)** the court duly considered both the provisions of Section 52-A(1) as well as 52 A(2) and has given an emphatic interpretation and verdict that the appellate power under sub section (1) of Section 52-A and the exercise of suomoto appellate power under sub section (2) of Section 52-A, can be exercised only in cases where there is an order confiscating the vehicle and cannot be exercised in case where the vehicle, tool etc. has been ordered to be released.

11. It is submitted that in such circumstances the view taken in the case of **Umashankar Usrete (Supra)** be upheld and the judgment rendered in the case of **Sohanlal Keshari (Supra)** be overruled.

12. We have extensively heard the learned counsel for the parties.

13. At the very out set it is apparent from a bare reading of the decision rendered in the case of **Umashankar Usrete (Supra)** that while deciding the issue raised therein, the court had no occasion to consider or take into account the decision rendered in the case of **Sohanlal Keshari (Supra)** perhaps because the decision in the case of **Sohanlal Keshari (Supra)** is unreported and was not placed before the learned Judge deciding the matter. It is also apparent from a bare perusal of the orders passed in the cases of **Sohanlal Keshari (Surpa)** and **Umashankar Usrete (Supra)** in juxtaposition that in both the cases the Court has dealt with, considered and interpreted the words "order of confiscation" contained in Section 52-A of the Act, although the court in **Sohanlal Keshari (Supra)** was considering the exercise of suo-moto appellate powers under section 52-A(2) while the court in **Umashankar Usrete (Supra)** was considering the scope and extent of right to file an appeal under section 52-A(1) of the Act.

14. It is also apparent from a bare reading of both the judgments together that in both the judgments the scope and extent of both Section 52-A(1) and Section 52-A(2) have been

examined,explained and interpreted. A reading of the judgments also make it clear that while in the case of **Sohanlal Keshari (Supra)** the learned single Judge has interpreted and construed the words “order of confiscation” used in the section to mean an “order passed in confiscation proceedings” and has upheld the exercise of suo-moto appellate power against an order releasing the vehicle, on the contrary in the case of **Umashankar Usrete (Supra)** the Court has strictly and rigidly construed the words “order of confiscation” used in the section and has held that an appeal under section 52-A can be filed and the suo-motu appellate powers under section 52-A(2) can be exercised, only against an order confiscating the vehicle or tools, etc. and not against an order releasing the vehicle or the tools etc. as mentioned in Section 52 of the Act, and therefore, there is apparent conflict between the aforesaid two decisions.

15. We are of the considered opinion that in view of the law laid down by the Special Bench in the case of **Jabalpur Bus Operators Association (Supra)** as the judgment in the case of **Umashankar Usrete (Supra)** was delivered without noticing the previous decision in the case of **Sohanlal Keshari (Supra)** which is of a coordinate Bench and takes a totally contrary different view, the decision in the case of

Umashankar Usrete (Supra) is per-incurium and not a binding precedent.

16. As the issue has been referred to us and needs to be resolved and as the learned counsel appearing for the parties have insisted that we give an opinion as to the correct interpretation of Section 52-A of the Act, we proceed to do so.

17. As we have taken note of earlier, the very object and purpose of introducing the M.P. Amendments in the Indian Forest Act was to apprehend those who were committing forest offences to punish them, to confiscate their vehicles and tools and to empower the forest officers to take necessary steps in this regard and to encourage them and embolden them to take prohibitive measures and actions.

18. A bare reading of provisions of Section 52 alongwith the provisions of Section 52-A of the Act also make it clear that any forest produce together with all tools, boats, vehicles, ropes chains or any other article used in committing of any forest offence may be seized by any forest officer or police officer and after giving due opportunity to the offenders, the authorized officer is also empowered to pass an order confiscating the property.

19. Section 52-A(1) of the Act gives the power to any person aggrieved by an order of confiscation to file an appeal before the appellate authority while section 52-A(2) gives powers to the appellate authority to take up suo-motu appellate proceedings in case no such appeal is preferred against an order of confiscation. Sub-section (4) of Section 52-A gives power to the appellate authority to pass any interim order for the custody, preservation or disposal of the subject matter of confiscation and sub-section (6) of Section 52-A gives power to the appellate authority to either confirm, reverse or modify the order of confiscation. Sub-section 7 confers powers on the appellate authority to pass all consequential orders.

20. The object and purpose of the Act and the aforesaid provisions of the Act as it stood in the year 2000 were duly considered and analysed by the learned single Judge in the case of **Sohanlal Keshari (Supra)** and while dong so, the learned single Judge in paragraph 5 has held as under:-

> On a fair reading of the aforesaid provision it is apparent that sub section 2 of Section 52 confers a power on the appellate authority to initiate suo motu action within 30 days from the date of receipt of the copy of the order of confiscation by him. He has also been authorized to send for records of the

case. The first limb of submission of Mr. Shrivastava is that such power is vested in the appellate authority if there is an order of confiscation passed by the competent authority and such a base should be regarded as a condition precedent. He has given immense emphasis on the words " the order of confiscation" and contended that the provision relates only to an order of confiscation but does not engulf an order where there has been refusal to confiscate. The aforesaid sub section has to be read conjointly with other provisions. Sub section 4 authorizes the appellate authority to pass such orders of interim nature for custody, reservation or disposal of the subject matter of confiscation. Sub section (6) confers power on the appellate authority to confirm, reverse or modify the order of confiscation and also authorizes him to get an enquiry conducted. Quite apart from the above, sub section 2 provides for issuance of notice to any other person who is likely to be adversely affected by the order of confiscation and this would go a long way to show that the appellate authority has jurisdiction to direct for confiscation. As per sub section 7 the appellate authority has also been given the power to pass such orders of consequential nature. Submission of Mr. Shrivastava is that as the words have used in an unambiguous manner they should be given their plain meaning. I am afraid the aforesaid submission does not

hold good in the present case inasmuch as literal interpretation of the words 'order of confiscation' would not subserve the purpose of the statue and also nullify the concept of suomoto action. Reading the provisions in entirely and keeping in view the object and purpose of the Act, I am of the considered view that the ' order of confiscation' should not be construed to convey that the order by which confiscation has been directed. ' Order of confiscation' should be understood to convey the meaning the order passed in the confiscation proceeding. The aforesaid interpretation would sub serve the purpose of the Act as the provisions have been enacted to curb and control the forest offence. That apart a party aggrieved by the order of confiscation can always prefer an appeal and there is no justification on the part of the appellate authority to initiate suo moto action. The power of initiating a suo moto action has been conferred on the authority where he is of the view that the order passed by the competent authority is unjustified or illegal in the facts and circumstances of the case and an appropriate action is warranted to save the forest wealth".

21. We have carefully examined the aforesaid conclusion recorded by the learned single Judge in the case of **Sohanlal Keshari (Supra)** and also extensively considered the decisions of the Supreme Court rendered in the cases of **Bengal Immunity Co. Ltd. Vs. State of Bihar and others,**

AIR 1955 SC (Paragraph 22), **S. Gumrej Singh Vs. S. Pratap Singh Kairon, AIR 1960 SC 122** (Paragraph 9), **M. Pentiah and others Vs. Muddala Veeramallappa and othes, AIR 1961 SC 1107** (Paragraph 6), **Madanlal Fakirchand Dudhediya Vs. Shree Changdeo Sugar Mills Ltd. And others, AIR 1962 SC 1543** (Paragraph 17), **Commissioner of Income Tax, Bengalore Vs. J.H.Gotla, Yadagiri, (1985) 4 SCC 343** (Paragraph 46), **Utkal Contractors and Joinery Pvt. Ltd. And others Vs. State of Orissa and others, (1987) 3 SCC 279** (Paragraphs 09 to 15), **District Mining Officer and others Vs. Tata Iron and Steel Co. and another, (2001) 7 SCC 358** (Paragraph 18), **Union of India and another Vs. Hansoli Devi and others, (2002) 7 SCC 273** (Paragraph 10), **Zile Singh Vs. State of Haryana and others, (2004) 8 SCC 1** (Paragraphs 8 & 13 to 20) and **Shailesh Dhairyawan Vs. Mohan Balkrishna Lulla, (2016) 3 SCC 619** (Paragraph 33).

22. It is manifest from the law laid down by the Supreme Court in the above mentioned cases that the "golden rule" of interpretation to be normally applied for interpreting the words used in a statute is that they must prima faice be given the normal, literal and ordinary meaning and that this rule should not be departed from, unless it can be shown that the context, object and purpose for which the words have been used

require a different meaning to be given to them and that courts and judges cannot ordinarily give a different meaning to the words in the light of their own views. The aforesaid golden rule of interpretation can be departed from only in cases where understanding or interpreting the words in their ordinary or popular sense would lead to some absurdity or would defeat the object, purpose and context in which the words have been used and would therefore, suggest to the contrary. While examining the aforesaid aspect, the courts are also required to see as to whether reading of the statute or the Section as a whole requires the court to give a different meaning to a word used therein with a view to avoid absurdity or repugnancy and to make the statutory provisions effective in achieving the object and purpose for which it has been introduced in the statute. In this regard we have also profitably referred to the Principles of Statutory Interpretation, by Justice G.P Singh, 13th Edition, dealing with a rule of literal construction (pages 85 to 88).

23. The Supreme Court has also held that the words used in a statute should be interpreted in a manner which furthers the object and purpose for which the statue has been introduced and that such an interpretation should be in furtherance of suppressing the mischief or for curing the defect

or malady for which the statute has been introduced in the Act and that such an interpretation should, in appropriate cases, be bold and broad and should be made with a view to bring about the desired result of the statute rather than one which would result in its failure and would be against the very object and purpose for introducing the same. The Supreme Court in the aforesaid decisions has also held that words in a statute should be interpreted to avoid absurdity and repugnancy and should be interpreted keeping in mind the context and purpose for which it has been used in the statute.

24. In the case of **Grid Corporation of Orissa Limited and others Vs. Eastern Metals and Ferro Alloys and others** (2011) 11 SCC 334, the law in this regard has been summarized by the Supreme Court in the following terms :

> "25. This takes us to the correct interpretation of clause 9.1. The golden rule of interpretation is that the words of a statute have to be read and understood in their natural, ordinary and popular sense. Where however the words used are capable of bearing two or more constructions, it is necessary to adopt purposive construction, to identify the construction to be preferred, by posing the following questions: (i) What is the purpose for which the provision is made? (ii) What was the position before making the provision? (iii) Whether any of the constructions proposed would lead to an absurd result or would render any part of the provision redundant? (iv) Which of the interpretations will advance the object of the provision? The answers to these questions will enable the court to identify the purposive interpretation to be preferred while

> excluding others. Such an exercise involving ascertainment of the object of the provision and choosing the interpretation that will advance the object of the provision can be undertaken, only where the language of the provision is capable of more than one construction. (See Bengal Immunity Co. v. State of Bihar - 1955 (2) SCR 603 and Kanailal Sur v. Paramnidhi Sadhukhan - 1958 SCR 360 and generally Justice G.P.Singh's Principles of Statutory Interpretation, 12th Edition, published by Lexis Nexis - Pages 124 to 131, dealing with the rule in Haydon's case)."

25. In the case of **Shailesh Dhairyawan Vs. Mohan Balkrishna Lulla** (2016) 3 SCC 619, while analyzing several decisions on this issue has held as under :

> "31. The aforesaid two reasons given by me, in addition to the reasons already indicated in the judgment of my learned Brother, would clearly demonstrate that provisions of Section 15(2) of the Act require purposive interpretation so that the aforesaid objective/ purpose of such a provision is achieved thereby. The principle of 'purposive interpretation' or 'purposive construction' is based on the understanding that the Court is supposed to attach that meaning to the provisions which serve the 'purpose' behind such a provision. The basic approach is to ascertain what is it designed to accomplish? To put it otherwise, by interpretative process the Court is supposed to realise the goal that the legal text is designed to realise. As Aharan Barak puts it:
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> > "Purposive interpretation is based on three components: language, purpose, and discretion. Language shapes the range of semantic possibilities within which the interpreter acts as a linguist. Once the interpreter defines the range, he or she chooses the legal meaning of the text from among the (express or implied) semantic possibilities. The semantic component thus

> sets the limits of interpretation by restricting the interpreter to a legal meaning that the text can bear in its (public or private) language."
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> 32. Of the aforesaid three components, namely, language, purpose and discretion 'of the Court', insofar as purposive component is concerned, this is the ratio juris, the purpose at the core of the text. This purpose is the values, goals, interests, policies and aims that the text is designed to actualize. It is the function that the text is designed to fulfil.
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> 33. We may also emphasize that the statutory interpretation of a provision is never static but is always dynamic. Though literal rule of interpretation, till some time ago, was treated as the 'golden rule', it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced. Not only legal process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered purposivism, this principle is now widely applied by the Courts not only in this country but in many other legal systems as well."

26. When the provisions of sections 52 and 52-A of the Indian Forest Act as amended in the State of M.P. are read as a whole, it is apparent that the words 'order of confiscation' used in Section 52-A are capable of more than one construction as is evident from the two different interpretations given to them by the two different Benches of this Court in the case of **Umashankar Usrete (Supra) and Sohan lal Keshari (Supra)**.

27. It is also evident that in case a very strict and literal construction is given to the words 'order of confiscation' in section 52-A (1), it would result in conflict between several other sub-sections of section 52-A and would also defeat the purpose and object of introducing the entire series of amendments by the M.P. Amendment Act, 1983 as an order passed by the authorized officer would not be subject to judicial review and would be treated as final thereby encouraging forest offenders to commit forest offences with impunity and therefore, it is necessary for this Court to depart from the rule of literal construction i.e. the golden rule and take recourse to the rule of purposive construction and interpret the meaning of the words 'order of confiscation' keeping in mind the context in which they have been used and the purpose and object of the enactment so as to avoid any absurdity, repugnancy and redundancy.

28. We therefore, propose to consider the meaning of the words 'order of confiscation' used in Section 52-A(1) by posing the four questions which have been spelt out by the Supreme Court in paragraph 5 of the decision rendered in the case of **Grid Corporation of Orissa Limited and others** (Supra) which has been quoted above and in the facts of the

present case record our answer and conclusion to the aforesaid four questions as under:

(a) that the object and purpose of introducing amendments in section 52 and inserting the new provision of Section 52-A to Section 52-C in the Principal Act by the Indian Forest M.P. Amendment Act No. 25 of 1983 is to curb illicit trade of forest produce which has assumed alarming proportions and is generally carried out by influential persons who prefer to keep themselves in the back ground while getting the forest offences committed by hirelings and those who are poor and are therefore prepared to work for them and with that object and purpose and to achieve the same has introduced provisions to confiscate the property including boats, tools etc. used for committing the forest offence and to provide sufficient immunity to the responsible forest officers to encourage them to exercise their powers without fear by granting protection to them for all acts done by them in good faith.

(b) The position before introducing the amended provision by M.P. Act No. 25 of 1983 was that there was no provision empowering forest officers to confiscate the vehicle, tools, goods etc. used in the commission of the forest offence nor was their any power or authority vested in the forest authorities to register and investigate into a forest offence and take a decision in that regard,

as a result of which illicit trade of forest produce had assumed alarming proportions in view of the faster means of transportation, high profile and influential offenders and the high price of the forest produce.

(c) On examining the interpretation and construction given to the words 'order of confiscation' in the light of the third question as formulated by the Supreme Court, it is apparent that giving a literal construction to the words 'order of confiscation' and thereby confining the right to appeal against the same or confining the exercise of powers of suo-motu appeal only to orders passed by the authorized officer confiscating the vehicle or goods would lead to an absurd result and situation where the forest officer who has registered the forest offence, investigated the same and presented the case before the authorized officer, even though aggrieved by his order of releasing the seized property, would be left remediless as the order of release of the seized property would, strangely, acquire finality on account of the literal construction of the words 'order of confiscation'. It would also lead to an anomalous situation where an order of the appellate authority reversing an order of confiscation of the property in appeal would be amenable to revision before the court of law and all other subsequent forums whereas the order of release by the original

authorized officer would be immune from any such challenge. It is also observed that in most cases, as in the present one, the order of confiscation passed by the authorised officer is usually a composite one where the forest produce seized from the vehicle etc. is directed to be confiscated while the vehicle, tools etc. are directed to be released and in such cases, literal construction of the words would result in an anomalous and absurd situation where, though the appellate authority would have the power to examine the correctness of that part of the order whereby the forest produce has been confiscated but it would be powerless to interfere with that part of the order relating to release of the vehicle, tools etc. inspite of the statutory powers vested in it under Section 52-A(4), (6) and (7) to vary, modify or reverse any order of the authorised officer and to pass consequential orders thereby leading to repugnancy and rendering the provisions of Section 52-A(4), (6) and (7) of the Act, otiose and redundant as a literal construction of the words would wrongly make the order of release final and immune to challenge.

(d) In the light of the aforesaid answers given by us to the first three questions, the answer to the fourth question is that the restrictive and literal construction and understanding of the words 'order of confiscation' would be against the very object and purpose of introducing the

amendment in the Act and would in fact result in the failure of the very purpose for which it was made, namely to curb and prevent forest offences and to take stringent deterrent measures by strictly and severely dealing with forest offenders and their property.

29. On applying the rule of purposive construction to the conclusion and answers recorded by us to the aforesaid four questions and contextually reading the provisions of section 52-A as a whole, it is apparent that the words “order of confiscation” used in Section 52-A have to be understood to mean and include any order passed in confiscation proceedings including an order releasing the vehicle tools etc as confining and restricting the meaning of the words “order of confiscation” to only those orders where the vehicle, tool etc has been confiscated would defeat and be an antithesis to the very object and purpose for which the amendments have been introduced in the statute book and the mischief and forest offences would continue undeterred without the fear of penal consequences.

30. In view of the aforesaid analysis made in the light of the law laid down by the Supreme Court, we are of the considered opinion that the decision in the case of **Sohanlal Keshari**

(Supra) lays down the correct law and the same is accordingly upheld and affirmed while the decision rendered in the case of **Umashankar Usrete (Supra)** taking a contrary view does not lay down the correct interpretation of the provisions of Section 52-A of the Act and is hereby overruled.

31. At this stage, we may take note of the fact that the provisions of Section 52-A(2) have been amended subsequent to the decision rendered in the case of **Sohanlal Keshari (Supra)** and **Umashanker Usrete (Supra)** and in line of the decision rendered in the case of **Sohanlal Keshari (Supra)** a clarificatory amendment has been made by substituting the words 'order of confiscation' by the words 'order of the authorized officer' in Section 52-A(2) by M.P. Act No.7 of 2010 published in the M.P. Gazette (Extraordinary) on 27.3.2010.

32. In view of the aforesaid analysis we are of the considered opinion that the words 'order of confiscation' used in Section 52 A have to be construed as any order passed in the confiscation proceedings and that Section 52-A(1) of the Act or section 52-A (2) of the Act, can be invoked against an order confiscating the vehicle etc. as well as against an order releasing the same.

33. For the purpose of clarity we delineate the answer given by us to the reference made by the learned single judge chronologically as under:

1. the judgment passed in the case of **Umashankar Usrete (Supra)** is hereby overruled as no longer a good law.

2. the judgment in the case of **Sohanlal Keshari (Supra)** is hereby affirmed and confirmed.

3. it is held that the words 'order of confiscation' used in Section 52-A(1) as well as Section 52-A(2) would mean and include not just an order confiscating the forest produce, vehicle and other tools involved in commission of the forest offence but would also include an order directing release of the same.

4. that an appeal can be filed under section 52-A(1) not just against an order confiscating the vehicle but also against an order releasing the vehicle etc. as such orders are orders passed in confiscation proceedings.

5. that the suo-motu appellate powers conferred on the appellate authority under section 52-A(2) can be exercised by the appellate authority even against an order directing release of the vehicle goods etc. by the authorized officer.

34. Having answered the issues referred to us as above, the matter is directed to be listed before the learned single Judge for decision on merits of the case.

(R. S. JHA)
J U D G E
1.8.2017

(NANDITA DUBEY)
J U D G E
1.8.2017

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