

**HIGH COURT OF MADHYA PRADESH : JABALPUR**  
**(Division Bench)**

**Writ Petition No. 18818/2017**

Ramkumar Sahu .....PETITIONER

**Versus**

State of Madhya Pradesh & others ..... RESPONDENTS

**Writ Petition No. 19320/2017**

Ayush Namdeo .....PETITIONER

**Versus**

State of Madhya Pradesh & others ..... RESPONDENTS

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**CORAM :**

**Hon'ble Shri Justice Hemant Gupta, Chief Justice**  
**Hon'ble Shri Justice Vijay Kumar Shukla, Judge**

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**Appearance:**

Shri N.N. Tripathi, Advocate for the petitioners.

Shri Sanjay Dwivedi, Deputy Advocate General and Shri Amit Seth, Government Advocate for the respondents/State.

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**Whether Approved for Reporting : Yes**

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**Law Laid Down:**

- \* Section 23C of the Mines and Minerals (Development and Regulation) Act, 1957 empowers the State Government to make rules for preventing illegal mining, transportation and storage of minerals. Rule 53 of M.P. Minor Mineral Rules, 1996, as substituted vide Notification dated 18.5.2017, traces its source to Section 23C of the Act. Such Rule 53 does not substitute the trial for an offence as contemplated under Section 21 of the Act but is in addition to the offence contemplated under Section 21 of the Act to meet the issue of illegal extraction and transportation of minerals, which has attained gigantic proportion.
- Confiscation under Rule 53 of the Rules is not a punishment, which could be imposed in exercise of the powers conferred under Section 21 of the Act. The confiscation

under Rule 53 is independent proceeding and does not affect the legality and validity of the confiscation contemplated under Section 21 of the Act, which also provides for imprisonment.

- The State as an owner of the minerals is protecting its property in the best possible manner by imposing penalties in a graded manner so that repeat violators are imposed higher penalty, which ultimately leads to confiscation of the vessels and tools. The object of such confiscation proceedings is to stop menace of illegal transportation of minerals, therefore, there is no illegality in Notification substituting Rule 53 of the 1996 Rules issued by the State Government in exercise of powers under Sub-section (1) of Section 15 of the 1957 Act.

**Significant Paragraph Nos.:** 7, 11 to 15, 20 to 22, 24 to 26

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Reserved On : 02.02.2018  
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**ORDER**  
**( 15-02-2018)**

**Per : Hemant Gupta, Chief Justice:**

The question of fact and law involved in both these writ petitions being common, they were heard together and are being disposed of by a common order. However, for the sake of convenience, the facts are taken from W.P. No.18818/2017 (*Ramkumar Sahu vs. State of Madhya Pradesh & others*).

2. The challenge in both the writ petitions is to the Notification issued by the State Government in exercise of powers conferred by Sub-section (1) of Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 substituting Rule 53 of Madhya Pradesh Minor Mineral Rules, 1996 (for short “the Rules”) published on 18.05.2017 in Madhya Pradesh Gazette. By such amendment, in case of unauthorized extraction and transportation of minor minerals, the penalty is contemplated to be imposed in a graded

manner as well as the seizure and confiscation of tools, machines and vehicles used. The substituted provisions read as under:-

**"53. (1) Penalty for un-authorized extraction and transportation.-** Whenever any person is found extracting or transporting minerals or on whose behalf such extraction or transportation is being made otherwise than in accordance with these rules, shall be presumed to be a party to the illegal mining/transportation, then the Collector or any officer authorized by him not below the rank of Deputy Collector shall after giving an opportunity of being heard determines that such person has extracted/transported the minerals in contravention of the provisions of these rules, then he shall impose the penalty in the following manner, namely:-

- (a) On first time contravention, a penalty of minimum 30 times of the royalty of illegally extracted/transported minerals, shall be imposed but it shall not be less than ten thousand rupees.
- (b) On second time contravention a penalty of minimum 40 times of the royalty of illegally extracted/transported minerals, shall be imposed but it shall not be less than twenty thousand rupees.
- (c) On third time contravention, a penalty of minimum 50 times of the royalty of illegally extracted/transported minerals shall be imposed but it shall not be less than thirty thousand rupees.
- (d) On third time or subsequent contravention, a penalty of minimum 70 times of the royalty of illegally extracted/transported minerals, shall be imposed but it shall not be less than fifty thousand rupees.

**(2) Forfeiture of minerals in cases of illegal excretion and transportation.-**

In respect of the Forfeiture/discharge of the mineral extracted/transported illegally the Collector or any other officer authorized by him not below the rank of the Deputy Collector shall take an appropriate decision. Provided that seized minerals shall not be discharged till the penalty imposed as above is not paid. In case of forfeiture, the seized mineral shall be disposed of through a transparent auction/tender procedure as prescribed by the State Government.

**(3) Forfeiture/Discharge of the seized tools, machines and vehicles etc. and disposal of forfeited material through Auction/ Tender.-**

- (a) In case of illegal extraction, the Collector or any other officer not below the rank of a Deputy Collector, authorized by him shall take an appropriate decision in respect of forfeiture/discharge of tools, machines and vehicles used. Provided that the tools, machines, vehicles and other material so seized shall not be discharged till the penalty imposed as above is not paid. In case of forfeiture, the seized materials shall be disposed of through a transparent auction/tender procedure as prescribed by the State government.
- (b) In respect of Forfeiture/Discharge of vehicle carrying mineral extracted/transported without any transit pass the Collector or any other officer not below the rank of Deputy Collector authorized by him shall take an appropriate decision. Provided that tools, machines, vehicles and other materials shall not be discharged till the penalty imposed as above is not paid.

In case of forfeiture the seized material shall be disposed off through a transparent auction/tender procedure as prescribed by the State Government:

Provided that the vehicle carrying minerals in excess as mentioned in transit pass, shall not be forfeited on doing so for first three times but the vehicle shall only be discharged on payment of penalty as imposed above. On repetition for the fourth time vehicle shall be liable to be forfeited.

**(4) Action and compounding cases of un-authorized extraction/transportation:**

Whenever any person is found involved extracting/transporting of the minerals in contravention of provisions of these rules, the Collector/Additional Collector/Deputy Collector/Chief Executive Officer of Zilla Panchayat/Chief Executive Officer of Janpad Panchayat/Deputy Director (Mineral Administration)/Officer in charge (Mining Section)/Assistant Mining officer/Mining Inspector/officer in charge (Flying Squad)/Sub Divisional officer (Revenue)/Tehsildar/Naib Tehsildar and any other officer not below the rank of class-III executive authorized by the Collector from time to time shall proceed to act in the following manner:-

- (a) to initiate case of unauthorized extraction/transportation by preparing Panchnama on spot;
- (b) to collect necessary evidences (including video-graphy) relevant to un-authorized extraction/transportation;

- (c) to seize all tools, devices, vehicles and other materials used in excavation of miner mineral in such contravention and to handover all material so seized to the persons or lessee or any other person from whose possession such material was seized on executing an undertaking up to the satisfaction of the officer seizing such material, to this effect that he shall forthwith produce such material as and when may be required to do so:

Provided that where the report is submitted under sub-rule (3) above to the Collector or any other officer not below the rank of a Deputy Collector authorized by him, the seized property shall only be discharged by the order of the Collector or the officer authorized by him.

- (d) officer as mentioned above shall inform the Collector or any other officer not below the rank of Deputy Collector, authorized by him about the incident within 48 hours of coming in to notice of the same.
- (e) officers as mentioned above shall make a request in writing to the concerning police station/seeking police assistance, if necessary and police officer shall provide such assistance as may be necessary to prevent unlawful excavation/transportation of the mineral.

**(5) Rights and powers of the investigating officer.-**

During the investigation of the cases of illegal extraction/transportation of the minerals, in contravention of these rules, the investigation officer shall have the following rights and powers, namely:-

- (a) to call for person concern to record statement;
- (b) to seize record and other material related to the case;
- (c) to enter into place concern and to inspect the same;
- (d) all powers as are vested in an in-charge of a police station while investigation any cognizable offence under Code of Criminal Procedure; and
- (e) all other powers as are vested under Code of Civil Procedure to compel any person to appear or to be examined on oath or to produce any document.

**(6) Submitting application by illegal extractor/ transporter to compound and its disposal.-** Before initiating or during the operation

of the case, if the extractor/transporter is agree to compound the case, he shall have to submit an application of his intention to do so before the Collector/Additional Collector/Deputy Collector/Sub Divisional Officer (Revenue)/ Deputy Director (Mineral Administration)/ Mining officer/Officer-in-charge (Mining Section)/Assistant Mining Officer/ Officer in charge (Flying Squad) and he shall proceed to compound in the case. Provided that to avail the benefit of compounding the violator shall have to deposit the amount as determined here under as fine, namely:-

- (a) For the first time violation 25 time of royalty of unlawfully excavated/transported minerals or rupees 10,000/- (Ten Thousand) whichever is more,
- (b) For the Second time violation 35 time of royalty of unlawfully excavated/ transported minerals or rupees 20,000/- (Twenty thousand) whichever is more.
- (c) For the third time violation 45 time of royalty of unlawfully excavated/ transported minerals or rupees 30,000/- (Thirty Thousand) whichever is more, and
- (d) For the fourth time or subsequent violation minimum 65 time of royalty of unlawfully extracted/transported. Provided that it should not be less than rupees 50,000/- (Fifty thousand).

On being compounded, the seized mineral, tools machinery/and other materials shall be discharged.

**(7) Action against contravention of conditions of extract trade quarry/quarry lease/permit or the provisions of this rules:**

If during the enquiry of any illegal extraction/transportation a fact comes into the knowledge that any lease holder/contractor/permit holder, in order to evade the royalty from any sanctioned quarry lease/trade quarry/permit area is involved in dispatching/selling of minerals in excess quantity by showing less quantity of minerals in transit pass/defective transit permit/blank transit permit, then the Collector of the concerned district may suspend the quarrying operation in such quarry lease/trade quarry permit by issuing show cause notice for violating the conditions of the agreement and after providing an opportunity of being heard may cancel the such lease/trade quarry/ permit. The additional royalty may be recovered after making the assessment of the quantity dispatched or sold in order to evade the royalty:

Provided that during the inspection if it is found that illegal minerals transporter by securing the transit pass from the lease holder in order to evade the royalty has made overwriting or tempered the pass then the officer of the minerals department/Mineral Inspector may registered a case against the person concerned.

2. In rule 68, sub-rule (5) shall be omitted.”

3. The aforesaid Rule 53 is challenged *inter alia* on the ground that it is the Parliament which has power to legislate, which has enacted Mines and Minerals (Development and Regulation) Act, 1957 (for short “the Act”). Such Act provides for offences and penalties for the violations of the provisions of the Act or the Rules framed thereunder but the State Government has conferred power of seizure and confiscation on the officers of the State instead of judicial courts established and governed by the Code of Criminal Procedure. It is contended by the learned counsel for the petitioners that the law contemplates separation of judicial and executive functions. The powers of confiscation vest with the Court in terms of Section 21 of the Act whereas by virtue of the substituted Rule 53, the power of confiscation has been conferred upon the Collector or any other officer authorized by the Collector not below the rank of Deputy Collector. Therefore, such provisions are contrary to the Act as well as for the reason that judicial power of adjudication cannot be entrusted to executive authorities. The petitioner relies upon a Full Bench judgment of this Court reported as **(1995) ILR (MP) 526 (Hanumantsing Kubersing vs. State of M.P. and another)**. In the said case, the conferment of powers for trial of an offence under Section 21 of the Bonded Labour System (Abolition) Act (19 of 1976) on an Executive Magistrate or Sub Divisional Magistrate was set

aside and was ordered to be transferred to the concerned Judicial Magistrates.

4. Learned counsel for the petitioners also relies upon a judgment of the Supreme Court reported as **(1982) 1 SCC 71 (Gulam Abbas and others vs. State of Uttar Pradesh and others)** wherein it has been held that power to impose penalty is a judicial power and could not be entrusted to the Executive Magistrates. Learned counsel for the petitioners has relied upon judgment of the Supreme Court reported as **(2011) 4 SCC 441 (Harjit Singh vs. State of Punjab)** wherein it was held that the Notification dated 18.11.2009 published under Narcotic Drugs and Psychotropic Substances Act, 1985 can be used to enhance the punishment for an offence which was committed subsequently. Learned counsel has also relied upon another judgment of the Supreme Court reported as **(1976) 2 SCC 128 (Hukam Chand Shyam Lal vs. Union of India and others)** to contend that if a statute contemplates that a power is required to be exercised by a certain Authority in a certain way, it should be exercised in that manner or not at all and all other modes of performance are necessarily to be forbidden.

5. On the contrary, in the return filed, the stand of the respondents-State is that the constitutional validity of a provision/statute is open to challenge in the Court of law if the same is in contravention of any fundamental right specified in Part-III of the Constitution of India as held by the Supreme Court in **Special Reference No.1 of 1964** under Article 143 of the Constitution of India reported as **AIR 1965 SC 745**. Further, the constitutional validity of a statute can be challenged if there is contravention of any of the mandatory provisions of the Constitution which impose



limitations upon the powers of a Legislature as laid down in a judgment reported as **AIR 1961 SC 232 (Atiabari Tea Co. Ltd. & another vs. The State of Assam and others)** and also in cases where the Legislature concerned has made an excessive delegation of that power to some other body as held by Supreme Court in a decision reported as **AIR 1960 SC 554 (Hamdard Dawakhana and others vs. Union of India and others)**. Learned counsel for the respondents by placing reliance upon a decision of the Supreme Court reported as **AIR 1957 SC 699 (State of Bombay vs. R.M.D. Chamarbaugwala and another)** to contend that in the case of State Law, the provision/statute will be invalid insofar as it seeks to operate beyond the boundaries of the State.

6. Learned counsel for the respondents-State has further contended that none of the grounds as mentioned above are available to challenge the constitutional validity of the provisions of the Rule 53 of the Rules as substituted on 18.05.2017. It is also stated that Section 15 of the Act empowers the State Government to make rules in respect of regulating the grant of minor mineral and the purpose connected therewith whereas Section 23C of the Act empowers the State Government to make rules for preventing illegal mining, transportation and storage of minerals. It is, thus, contended that in exercise of the powers conferred under Section 15 as well as Section 23C of the Act, the State has formulated Madhya Pradesh Minor Minerals Rules, 1996 for the purposes of regulating the grant of quarry lease, trade quarry, quarry permit etc. But, with the passage of time it was noticed that there has been rampant increase in the instances of illegal mining and transportation of minor minerals and therefore, necessity was thought to

bring out a legislation by suitably amending the existing rules so that strict check on the illegal mining and transportation of minerals can be made. It is also pointed out that similar provisions inserted vide the State amendment by M.P. Amending Act, 1983 in the Indian Forest Act, 1927 conferring the power of confiscation of the vehicles on the authorised officer has been upheld by a Division Bench of this Court in a judgment reported as **AIR 1995 MP 1 (Kailash Chand and another vs. State of Madhya Pradesh and others)**. In view of the said judgment, it is asserted that the argument that by way of the impugned amendment, the judicial powers are sought to be conferred on administrative Authorities, does not hold good.

7. Before advertng to the arguments raised by the learned counsel for the petitioners, certain statutory provisions of the Act need to be reproduced, which read, thus:

**“4. Prospecting or mining operations to be under licence or lease. -**

(1) No person shall undertake any reconnaissance, prospecting or mining operation in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder:

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**1(A)** No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.

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**15. Power of State Governments to make rules in respect of minor minerals.— (1)** The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.



liable to be seized by an officer or authority specially empowered in this behalf.

(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section(1) and shall be disposed of in accordance with the directions of such court.]

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**22. Cognizance of offences.**—No court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government.

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**23C. Power of State Government to make rules for preventing illegal mining, transportation and storage of minerals.**—(1) The

State Government may, by notification in the Official Gazette, make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) establishment of check-posts for checking of minerals under transit;
- (b) establishment of weigh-bridges to measure the quantity of mineral being transported;
- (c) regulation of mineral being transported from the area granted under a prospecting licence or a mining lease or a quarrying licence or a permit, in whatever name the permission to excavate minerals, has been given;
- (d) inspection, checking and search of minerals at the place of excavation or storage or during transit;
- (e) maintenance of registers and forms for the purposes of these rules;
- (f) the period within which and the authority to which applications for revision of any order passed by any authority be preferred under any rule made under this section and the fees to be paid therefor and powers of such authority for disposing of such applications; and

(g) any other matter which is required to be, or may be, prescribed for the purpose of prevention of illegal mining, transportation and storage of minerals.

(emphasis supplied)”

8. The Rule 57 of the Rules provides an appeal where any power is exercisable by the Collector/Additional Collector under these rules to the Director; to State Government, if an order is passed by the Director whereas, in case an order is passed by the State Government, the review is provided for in Rule 58. Such Rule provide that the State Government and Director may at any time, on its own motion for the purpose of satisfying itself as to the legality or propriety of any order passed by or as to the regularity of the proceedings of any officer subordinate to it call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit. Therefore, there is adequate remedy provided under the Act against the orders passed by the authorities in terms of Rule 53 of the Act.

9. In a judgment reported as **(2014) 9 SCC 772 [State (NCT of Delhi) vs. Sanjay]**, the Supreme Court held that the Court cannot lose sight of the fact that adverse and destructive environmental impact of sand mining has been discussed in the UNEP Global Environmental Alert Service report. As per the report, lack of proper scientific methodology for river and mining has led to indiscriminate sand mining while weak governance and corruption have led to widespread illegal mining. It was stated that sand trading is a lucrative business and there is evidence of illegal trading such as the case of the influential *Mafia* in our country. Considering the doctrine of public trust,

which extends to natural resources including sand, the Court quoted from earlier judgment reported as **(1997) 1 SCC 388 (M.C. Mehta vs. Kamal Nath and others)** that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. Such resources are a gift of nature and they should be made freely available to everyone irrespective of their status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. The relevant extract of the judgment in **State (NCT of Delhi) (supra)** is reproduced as under:-

“60. There cannot be any two opinions that natural resources are the assets of the nation and its citizens. It is the obligation of all concerned, including the Central and the State Governments, to conserve and not waste such valuable resources. Article 48-A of the Constitution requires that the State shall endeavour to protect and improve the environment and safeguard the forests and wild life of the country. Similarly, Article 51-A enjoins a duty upon every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for all the living creatures. In view of the Constitutional provisions, the Doctrine of Public Trust has become the law of the land. The said doctrine rests on the principle that certain resources like air, sea, waters and forests are of such great importance to the people as a whole that it would be highly unjustifiable to make them a subject of private ownership.”

**10.** In **State (NCT of Delhi) (supra)** proceedings for illegal extraction of mining for an offence under Section 379 and 114 of the Indian Penal Code was lodged against the offenders. The argument raised was that in view of the provisions contained in the Act, the accused can be prosecuted

only under the Act and not under the Indian Penal Code. It was held that Section 22 of the Act is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand and riverbed. The Court held as under:-

“69. Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the river bed. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the ecosystem of the rivers and safety of bridges. It also weakens river beds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the ground water levels.”

11. This Court in **Kailash Chand's** case (**supra**) examined somewhat similar provisions, which were inserted by amending Indian Forest Act, 1927 by Indian Forest (M.P. Amendment) Act, 1983 (Act No.25 of 1983) wherein the Amending Act has enabled the authorised officer to confiscate forest produce or the tools, vehicles etc. seized by Forest Officer or Police Officer if it is intended to launch criminal proceedings, report of the seizure has to be made to the Magistrate concerned. The authorised officer may order confiscation of the forest produce and tools, vehicles etc. after sending an intimation in the prescribed proforma about the initiation of confiscation proceedings to the Magistrate concerned, issuing notice in writing to the offender, granting opportunity of making representation to the offender and persons having interest in the property and giving all concerned an opportunity of hearing. Thereafter, the order of confiscation passed by an

authorised officer can be challenged in appeal before the Conservator of Forests, which could be further challenged in revision before the Sessions Court.

**12.** In the aforesaid case, the following submissions were put-forth by the petitioners for consideration of the Division Bench:-

- (i) Section 52(3) of the central Act, as amended in M.P., is unjust, unfair and arbitrary and violates Article 14 of the Constitution.
- (ii) Conferral of power of confiscation on authorised officer is arbitrary. He is made Judge in his own cause which violates principles of natural justice. There is violation of Articles 14, 19(1)(g) and 21 of the Constitution.
- (iii) Section 52(3) of the said Act which provides for confiscation of the vehicle, is arbitrary, unjust and unfair. It leaves no discretion to the Forest Officer to impose any penalty less than that of confiscation.
- (iv) Section 52C of the said Act which bars jurisdiction of Courts in regard to disposal of property, is arbitrary and violates Articles 14, 19(1)(g) and 21 of the Constitution. Legislative encroachment into judicial powers is bad in law.
- (v) Absence of provision for interim release of vehicles or time limit for keeping vehicles in custody renders the scheme of the Act arbitrary.
- (vi) There is repugnancy between Sections 52(3) and 55(1) of the said Act.
- (vii) Section 15 of the 1969 Act, as amended, is violative of Article 14 of the Constitution.
- (viii) In cases governed by 1969 Act, as amended by Act 15 of 1987, release of vehicles cannot be refused on the basis of Section 52C of Central Act, as amended by 1983 Act in view of Section 22 of the 1969 Act.
- (ix) Amendments to 1969 Act, introduced by Amending Act of 1987 have no retrospective effect.



12.1 This court held that the broad scheme of the Central Act is to secure punishment of the offender at the hands of the criminal court, the power of confiscation being incidental and ancillary to conviction. The relevant extract from the said judgment is reproduced as under:-

“9. The broad scheme of the Central Act is to secure punishment of the offender at the hands of the criminal court, the power of confiscation being incidental and ancillary to conviction. The scheme of the amended provisions partially separates the process of confiscation from the process of prosecution. On receipt of the property or report of the seizure from the Forest Officer or Police Officer, the authorised officer can initiate confiscation proceedings. The production or report is to be made before the authorised officer and if immediate launching of criminal proceedings is intended the report is to be sent to the Magistrate concerned. The power of the criminal court regarding disposal of property is made subject to the jurisdiction of the authorised officer with regard to that aspect, the jurisdiction of criminal court in regard to arrest and trial of the offender is unaffected. It is affected only in regard to disposal of property.”

13. This Court considered an argument that the confiscation proceedings by the authorised officer are more disadvantageous to the persons proceeded against than the procedure of trial of the offender, which may result in confiscation, therefore, the provisions are arbitrary. This Court held that there are two modes of confiscation prescribed; one through the instrumentality of the authorised officer and another through the Magistrate and the choice of the mode is left to the Forest Officer or Police Officer. This Court referred to the judgment of the Supreme Court reported as **AIR 1986 SC 328 (Divisional Forest Officer and another vs. G.V. Sudhakar Rao and others)** considering the similar provision contained in the Andhra Pradesh Forest Act, 1967 and held as under:-

“14. It is thus, clear that there could be parallel proceedings before the authorised officer and the Magistrate and where there is confiscation proceeding, the authorised officer has power to pass order in regard to confiscation and conviction or acquitted by the Magistrate has no bearing on the sustainability of such an order. It may be said that where confiscation proceeding does not result in order of confiscation, the Magistrate could, in case of conviction, order confiscation, though such contingencies may be rare.

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20. Considering the provisions involved in the case in the light of the principles referred to above, we are not satisfied that there is any arbitrariness involved, We have already indicated that in the generality of cases, confiscation proceedings are to be initiated by the authorised officer. Criminal prosecution is not an alternative to confiscation proceedings. The two proceedings are parallel proceedings, each having a distinct purpose and object. The object of confiscation proceeding is to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence. The object of the prosecution is to punish the offender. Thus, the contention that two procedures are prescribed for the same purpose and to cover the same area is not tenable. The contention that the procedure for confiscation is more drastic than the procedure for prosecution is equally untenable. In one case, confiscation may result if the authorised officer is satisfied that a forest offence has been committed. In the other, the Magistrate must be satisfied that the charge has been established beyond reasonable doubt. It cannot be said that there is no safeguard for the persons subjected to confiscation procedure. The Magistrate is informed about the confiscation proceeding. Show cause notice is given inviting representation. Hearing is given. The expression 'hearing' is one of broad import. It includes opportunity to adduce evidence also. Appeal lies to a Superior Officer, namely, Conservator of Forests. Revision lies to the Sessions Court whose decision is final. The existence of these substantial safeguards negatives any possibility of denial of justice. We, therefore, repel the contention of the petitioners and hold that the provision in Section 52(3) is not arbitrary. We are fortified in this view by the observations in *Sharad Kumar v. State of Orissa, AIR 1992 Orissa 128.*”

14. Before the Division Bench in **Kailash Chand's** case (**supra**) another argument was raised that Section 52(3) of the Forest Act contemplated only confiscation of the produce, tools, vehicles etc. as mandatory and no discretion is vested with the authorised officer to impose a lesser penalty commensurate with the gravity of the offence and, therefore, the provision is arbitrary. The said argument was also negated when the Division Bench held as under:-

“27. Order of confiscation is not mandatory in all cases where the Authorised Officer is satisfied about commission of the forest offence and use of the vehicle in the commission of the offence. There may be circumstances which justify the order of confiscation; at the same time, there may be circumstances which do not justify the order of confiscation. The failure to provide for imposition of fine by the Authorised Officer does not create any infirmity in the statutory provision.

28. Confiscation proceeding is quasi-judicial proceeding and not a criminal proceeding. Proof beyond reasonable doubt and proof of mens rea are foreign to the scope of the confiscation proceeding. Confiscation proceeds on the basis of the 'satisfaction' of the Authorised Officer in regard to the commission of forest offence. This of course does not mean that innocent owner of the vehicle will be subjected to unjust action. Sub-section (5) of Section 52 protects owners of tools, boats, ropes, chains, vehicles etc. If the person concerned proves to the satisfaction of the Authorised Officer that such tools, vehicles, etc. 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 the use of objects aforesaid for commission of forest offence. This is a safeguard against arbitrary action. Absence of power in the Authorised Officer to impose fine as an alternative to confiscate does not render Section 52(3) unjust or unfair or arbitrary. Point answered accordingly.”

15. While considering the point No.(iv) that Section 52-C of the Forest Act which bars jurisdiction of Courts in regard to disposal of property, is

arbitrary and violates Articles 14, 19(1)(g) and 21 of the Constitution and is legislative encroachment into judicial powers and thus, bad. The Court observed that Section 5 of the Criminal Procedure Code states that nothing contained in the Code shall, in the absence of specific provision to the contrary, affect any special law or local law for the time being in force or any special jurisdiction or power conferred, or any special form of procedure prescribed by any other law for the time being in force. It was found that the Forest Act is a special law within the meaning of Section 5 of the Code, therefore, Sections 451 and 457 of the Code can have no application to the impugned provisions of the said Act, except to the extent permitted under those provisions. The relevant extract of the Division Bench judgment is reproduced as under:-

“29. Point No. (iv) : The scheme of the Central Act, as amended by the 1983 Act ensures that in the generality of cases, confiscation can be ordered by the Authorised Officer, subject of course to the result of the appeal and revision. Section 52C involving bar of jurisdiction under certain circumstances has been incorporated by the 1983 Act. According to Sub-section (1), on receipt of intimation by the Magistrate under Section 52(4) of the Act about initiation of proceedings of confiscation, no Court, Tribunal or Authority other than the Authorised Officer, Appellate Authority or Court of Session referred to in Sections 52, 52A and 52B shall have jurisdiction to make orders with regard to possession, delivery or disposal or distribution of the property which is subject matter of confiscation proceedings notwithstanding anything to the contrary in the Act or any other law. Sub-section (2) saves the power of empowered officer under Section 61 to direct immediate release of any property seized under Section 52. According to the learned counsel for the petitioners, Section 52C encroaches into the judicial power of the Magistrate and is unconstitutional as it renders the power of the Magistrate subject to that of the Authorised Officer, a mere departmental officer. The provision is said to encroach on the power of Magistrate under Sections 451 and 457 of the Code; Section 5 of the

Cr.P.C. states that nothing contained in the Code shall, in the absence of specific provision to the contrary, affect any special law or local law for the time being in force or any special jurisdiction or power conferred, or any special form of procedure prescribed by any other law for the time being in force. The Forest Act is certainly a special law within the meaning of Section 5 of the Code. It necessarily follows that Sections 451 and 457 of the Code can have no application in the face of the impugned provisions of the Act, except to the extent permitted under those provisions.”

16. In respect of point No.(v) that there is absence of provision for interim release of vehicles or time limit for keeping vehicles in custody which renders the scheme of the said Act arbitrary, the Court has negated the said argument as well. In respect of point No.(viii) that release of vehicles cannot be refused by the Magistrate on the basis of Section 52-C of the Forest Act as amended by the local Act in 1983, the Court held that the Magistrate cannot invoke his power under the Code of Criminal Procedure on account of Section 15C of the Amended Act, 1969 i.e. M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam (Act No.9 of 1969).

17. The Supreme Court in a judgment reported as **(2002) 1 SCC 495 (State of W.B. vs. Gopal Sarkar)** examined somewhat similar amendments carried out in the Forest Act, 1927 by the West Bengal (Act 22 of 1988). The Court held that the power of confiscation is independent of any proceeding of prosecution for the forest offence committed. The relevant extract is as under:-

“10. 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. This position is manifest from the Statute and has also been held by this Court in *Divisional Forest Officer and another v. G. V. Sudhakar Rao and others*, (1985) 4 SCC 573. Therein this Court elucidating the provision held as follows :

"The conferral of power of confiscation of seized timber or forest produce and the implements, etc., on the Authorised Officer under sub-section (2A) of Section 44 of the Act on his being satisfied that a forest offence had been committed in respect thereof, is not dependent upon whether a criminal prosecution for commission of a forest offence has been launched against the offender or not. It is a separate and distinct proceeding from that of a trial before the Court for commission of an offence. Under sub-section (2A) of Section 44 of the Act, where a Forest Officer makes report of seizure of any timber or forest produce and produces the seized timber before the Authorised Officer along with a report under Section 44(2), the Authorised Officer can direct confiscation to Government of such timber or forest produce and the implements etc. if he is satisfied that a forest offence has been committed, irrespective of the fact whether the accused is facing a trial before a Magistrate for the commission of a forest offence under section 20 or 29 of the Act."

18. In a judgment reported as **(2004) 4 SCC 448 (State of M.P. vs. S.P. Sales Agencies and others)**, the Supreme Court was considering as to whether *Kattha* and *cutch* are the forest produce or not. The Court further examined as to whether confiscation can be initiated under Section 52 of the Forest Act, 1927 only after launching of criminal prosecution or it is open to the Forest Authority upon seizure of forest produce to initiate both or either. It was held that the power of confiscation, exercisable under Section 52 of the Act, cannot be said to be in any manner dependent upon launching of criminal prosecution as it has nowhere been provided therein that the forest produce seized can be confiscated only after criminal prosecution is launched, but the condition precedent for initiating a confiscation proceeding

is commission of forest offence. It was held that that the two proceedings are quite separate and distinct and initiation of confiscation proceeding is not dependent upon launching of criminal prosecution. The relevant extract of the said decision read as under:-

“10. In the present case, the allegations are that by committing breach of rule 3 a forest offence within the meaning of Section 2(3) of the Act has been committed for which a criminal prosecution under rule 29 of the Transit Rules as well as a confiscation proceeding under Section 52 of the Act could be initiated. From the scheme of the Act, it would appear that for contravention of rule 3, two independent actions are postulated one criminal prosecution and the other confiscation proceeding. The power of confiscation, exercisable under Section 52 of the Act, cannot be said to be in any manner dependent upon launching of criminal prosecution as it has nowhere been provided therein that the forest produce seized can be confiscated only after criminal prosecution is launched, but the condition precedent for initiating a confiscation proceeding is commission of forest offence, which, in the case on hand, is alleged to have been committed. Reference in this connection may be made to a decision of this Court in the case of *Divisional Forest Officer & another vs. G.V. Sudhakar Rao and others*, (1985) 4 SCC 573, wherein it has been clearly laid down that the two proceedings are quite separate and distinct and initiation of confiscation proceeding is not dependent upon launching of criminal prosecution.....

11. In the case of *State of W.B. vs. Gopal Sarkar*, (2002) 1 SCC 495, while noticing the view taken in the case of *G.V. Sudhakar Rao (supra)*, this Court has reiterated that the power of confiscation is independent of any criminal prosecution for the forest offence committed. This being the position, in our view, the High Court has committed an error in holding that initiation of confiscation proceeding relating to kattha was unwarranted as no criminal prosecution was launched.”

19. In a recent judgment of the Supreme Court reported as **(2016) 3 SCC 183 (Yogendra Kumar Jaiswal and others vs. State of Bihar and others)**, the Supreme Court was considering the legality and validity of

Orissa Special Courts Act, 2006 as also the Bihar Special Courts Act, 2009, which provided for confiscation of property of persons holding high public offices facing trial under the Prevention of Corruption Act, 1988. The Court upheld the validity holding that confiscation of the property at pre-trial stage is not a punishment. The relevant extracts of the judgment read as under:-

“146. In the case at hand, the entire proceeding is meant to arrive at the conclusion whether on the basis of the application preferred by the Public Prosecutor and the material brought on record, the whole or any other money or some of the property in question has been acquired illegally and further any money or property or both have been acquired by the means of the offence. After arriving at the said conclusion, the order of confiscation is passed. The order of confiscation is subject to appeal under Section 17 of the Orissa Act. That apart, it is provided under Section 19 where an order of confiscation made under Section 15 is modified or annulled by the High Court in appeal or where the person affected is acquitted by the Special Court, the money or property or both shall be returned to the person affected. Thus, it is basically a confiscation which is interim in nature. Therefore, it is not a punishment as envisaged in law and hence, it is difficult to accept the submission that it is a pre-trial punishment and, accordingly, we repel the said submission.

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149. We have already held that confiscation is not a punishment and hence, Article 20(1) is not violated. The learned counsel for the State would lay stress on the decision in *State of A.P. v. Gandhi*, (2013) 5 SCC 111. In that case, the issue that arose for consideration was: when the disciplinary proceeding was initiated, one type of punishment was imposable and when the punishment was imposed due to amendment of rule, a different punishment, which was a greater one, was imposed. The High Court opined that the punishment imposed under the amended rule amounted to imposition of two major penalties which was not there in the old rule. Dealing with the issue the Court referred to the rule that dealt with major penalties and the rule-making power. Reference was made to the decision in *Pyare Lal Sharma v. J & K*



Industries Ltd., (1989) 3 SCC 448 wherein it has been stated that no one can be penalised on the ground of a conduct which was not penal on the date it was committed Thereafter, the two-Judge Bench referred to the authority K. Satwant Singh v. State of Punjab, AIR 1960 SC 266 wherein it has been held thus (Gandhi case, SCC pp. 133-34, para 46):-

"46.....'28. .... In the present case a sentence of imprisonment was, in fact, imposed and the total of fines imposed, whether described as 'ordinary' or 'compulsory', was not less than the amount of money procured by the appellant by means of his offence. Under Section 420 of the Penal Code an unlimited amount of fine could be imposed. Article 20(1) of the Constitution is in two parts. The first part prohibits a conviction of any person for any offence except for violation of law in force at the time of the commission of the act charged as an offence. The latter part of the article prohibited the imposing of a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. The offence with which the appellant had been charged was cheating punishable under Section 420 of the Penal Code which was certainly a law in force at the time of the commission of the offence. The sentence of imprisonment which was imposed upon the appellant was certainly not greater than that permitted by Section 420. The sentence of fine also was not greater than that which might have been inflicted under the law which had been in force at the time of the commission of the offence, as a fine unlimited in extent could be imposed under the section.' "(K. Satwant Singh case, AIR 1960 SC 266 p. 275, para 28).

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152. The legislature has thought it proper to change the nature and character of the interim measure. The property obtained by ill-gotten gains, if prima facie found to be such by the authorised officer, is to be confiscated. An accused has no vested right as regards the interim measure. He is not protected by any constitutional right to advance the plea that he cannot be made liable to face confiscation proceedings of the property which has been accumulated by illegal means. That being the litmus test, the filament of reasoning has to rest in favour of confiscation and not against it. Therefore, we are of the considered view that the provision does not violate any constitutional assurance.”

20. In **Yogendra Kumar Jaiswal (supra)**, the Court held that confiscation of the property at pre-trial stage is not a punishment. In **Gopal Sarkar's case (supra)**, the Supreme Court has held that power of

confiscation under the Forest Act is independent of any proceeding of the prosecution for the forest offence committed. Such view has been again reiterated in **S.P. Sales Agencies** (supra).

Therefore, the penalty as contemplated under Section 21 of the Act is a punishment whereas confiscation under Rule 53 of the Rules cannot be termed to be a punishment. Thus, the prosecution as contemplated under Section 21 of the Act is a separate and distinct offence than confiscation of the extracted minerals and the vehicles which is not punishment, which provisions are with the view to ensure that the vehicles which are frequently put to use of illegally transporting mineral are kept out of circulation.

21. On the other hand, in **Hanumantsing's case** (supra), this Court was considering the constitutional validity of Section 21 of the Bonded Labour System (Abolition) Act (19 of 1976) (for short "the Bonded Labour Act"). Section 21 of the said Act authorised the State Government to confer on Executive Magistrates the power of Judicial Magistrate of the First Class or Second Class for trial of the offences under the said Act and on conferment of power, the Executive Magistrate on whom the powers are conferred, shall be deemed for the purposes of the Code to be a Judicial Magistrate of the First Class or Second Class, as the case may be. In view of the provisions, whether the State Government could confer powers on the Executive Magistrates, the power of the Judicial Magistrate, this Court has set aside the Section 21 of the said Act. The Court held as under:-

"12. .... From the set up of the classes of Criminal Courts, it is apparent that the scheme of separation of the Judiciary from the Executive has been implemented. All Judicial Magistrates are under the

control of the Sessions Judge and the Executive Magistrates who are very few in number, under the control of the District Magistrate, which would be evident from Section 15 of the Code. On enforcement of the Code, there has been complete separation of Judiciary from the Executive in whole of the country. This has been done to implement the mandate under Article 50 of the Constitution which requires that State shall take steps to separate the Judiciary from Executive. By merging the judicial function in the executive, the basic structure of the Constitution is affected; justice and fair trial cannot be ensured by the Executive Magistrates in as much as they are not required to be legally qualified and trained persons and in actual practice are required to perform various other functions. Their powers under the Code are limited for the purposes of maintenance of law and order or dealing with the cases of the nature as provided in Chapter VIII to Chapter X of the Code; while the Judicial Magistrate, who remains under the exclusive control of the Court of Session and the High Court has to conduct judicial inquiry and trial of cases of various offences by recording judicial decisions. In fact the functions of the Judiciary and Executive are quite different. In other words it is clear that the Executive Magistrate has no role to play in conducting judicial trial and recording judicial decisions. However, in spite of the separation of Judiciary from Executive, Section 21 of the Act enables the State Government to confer judicial power on an Executive Magistrate or the S.D.M. to try offences judicially and to render judicial decisions and by virtue of the conferment of such power on Executive Magistrate, such Executive Magistrate for the purposes of the Code, for the trial of the offences under the Act is deemed to be Judicial Magistrate of first class or second class as the case may be. This is opposed to the policy of separation of Judiciary from the Executive and is against the 'conscience of the Constitution' contained in Article 50 of the Constitution."

**22.** The said judgment has no applicability to the facts of the present case as in the reported judgment, the trial for an offence under Section 21 of the Bonded Labour Act could be entrusted to the Executive Magistrate whereas, in the Act in question, the trial for an offence under Section 21 of

the Act, which contemplates imposition of penalty and sentence are distinct and separate procedure than confiscation of vehicle for the reason of repeated indulgence in illegal transportation of the minerals. The provisions of Rule 53 are to ensure that there is no unauthorised extraction and transportation of the minerals. Such confiscation is not a punishment, which is imposable in exercise of the powers conferred under Section 21 of the Act. The confiscation under Rule 53 is independent proceeding but does not affect the legality and validity of the confiscation contemplated under Section 21 of the Act, which provides for imprisonment as well.

23. The judgment of the Supreme Court in **Hukam Chand Shyam Lal's** case (**supra**) has no applicability to the facts of the present case as there is possibly no dispute with the proposition that wherever a power is required to be exercised by certain authority in a certain way, it should be exercised in that manner or not at all.

24. Section 15 of the Act empowers the State Government to make Rules in respect of minor minerals including the terms on which and the conditions subject to which and the authority by which the quarry leases, mining leases or other mineral concessions may be granted or renewed and fixing and collection of rent, royalty, fees, dead rent, fines etc. or any other matter which is to be, or may be prescribed. Section 23C of the Act specifically empowers the State Government to make rules for preventing illegal mining, transportation and storage of minerals. Therefore, Rule 53, as substituted, traces its source to Section 23C of the Act. Such Rule does not substitute the trial for an offence as contemplated under Section 21 of the

Act but is in addition to the offence contemplated under Section 21 of the Act to meet the problem of illegal extraction and transportation of minerals.

25. All natural resources vest with the State. The State as an owner of the minerals is protecting its property in the best possible manner by imposing penalties in a graded manner so that repeat violators are imposed higher penalty, which ultimately leads to confiscation of the vessels and tools. The object of such confiscation proceedings is to stop menace of illegal transportation of minerals which have attained gigantic proportion. Such provisions are applicable in non-discriminatory and in non-arbitrary manner.

26. In view of the above, we find that Rule 53 of the Rules enacted by the State falls within the legislative competence of the State Government in terms of Sections 15 and 23C of the Act. Still further, such provisions are distinct from the provisions of imposition of penalty including confiscation and imprisonment in terms of Section 21 of the Act, as the confiscation of the tools and vehicles in terms of Rule 53 is not a punishment.

27. In view of the foregoing reasons, we do not find any merit in the present writ petitions and accordingly, the same are **dismissed**.

(HEMANT GUPTA)  
Chief Justice

(VIJAY KUMAR SHUKLA)  
Judge

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