

THE HIGH COURT OF MADHYA PRADESH
W.P. No.605/2019

JABALPUR
18.01.2019

Shri Rajmani Mishra learned counsel for the petitioner.

Smt. J. Pandit, learned Govt. Advocate for the respondent/State.

Heard on the question of admission.

The petitioner has filed this petition being aggrieved by order dated 29.11.2018 passed by the respondent authorities rejecting the application filed by the petitioner for release of the petitioner's Truck bearing registration No.UP 44 AT 3225 which has been seized by the authority concerned for offences committed by the petitioner under the provisions of the Indian Forest Act, Wild Life Protection Act, Minor Mineral Rules, 1996 as well as the Indian Penal Code, as the petitioner was caught excavating and transporting sand and destroying the habitat of alligator/crocodile in the Sone Ghadiyal Sanctuary.

The learned counsel for the petitioner submits that pursuant to the aforesaid registration of the case against the petitioner in respect of the alleged offences committed on 15.06.2018, the respondent authorities have seized the petitioner's truck and, apart from initiating criminal proceedings against the petitioner, are also proceeding with the confiscation proceedings in respect of the truck.

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The learned counsel for the petitioner submits that he had filed an application seeking release of the truck during the pendency of the confiscation proceedings which has been rejected by the authorities by the impugned order on the ground that confiscation proceedings against the petitioner in respect of the offences committed by the petitioner are pending.

The learned counsel for the petitioner submits that the respondent authorities have registered two cases against the petitioner in respect of one crime namely; one proceeding for confiscation and the other, criminal proceedings in respect of the alleged crime committed by the petitioner. It is submitted that in the instant case the authorities are proceeding with the confiscation during the pendency of the criminal proceedings and, therefore, the proceedings for confiscation initiated and registered against the petitioner are contrary to law. It is submitted that as both proceedings cannot run together, the impugned order passed by the authorities rejecting the petitioner's application for release of the vehicle on the ground that the confiscation proceedings are pending in respect of the truck concerned, deserves to be quashed as the same is against the law laid down by the Supreme Court in the case of **State of M.P. vs. Madhukar Rao**, 2008 (1) J.L.J. 427.

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We have heard the learned counsel for the petitioner at length.

The provisions of Section 52 of the Indian Forest Act, lays down the procedure for initiating proceedings for confiscation in respect of the tools, machines and vehicle involved in the commission of the forest offence. The provisions of the said Act also provide for taking up action for criminal prosecution and punishment of the person concerned in respect of the forest offence committed by him. Similar provisions are also contained in the Wild Life Protection Act as well as the M.P. Minor Mineral Rules 1996.

It is settled law that confiscation is not a punishment as has been held by the Supreme Court in the cases of **Yogendra Kumar Jaiswal and others vs. State of Bihar and others**, (2016) 3 SCC 183, **State of M.P. and others vs. Kallo Bai** 2017 (14) SCC 502 and **Maqbool Hussain vs. State of Bombay**, AIR 1953 SC 325, which has also been followed by this Court while interpreting the provisions of Section 53 of the Minor Mineral Rules, in the cases of **Kailash Chand and Another vs. State of M.P. and others**, AIR 1995 MP 1; **Ramkumar Sahu vs. State of M.P and others**, 2018 (4) MPLJ 171, **Biswanath Bhattacharya vs. Union of India and others**, (2014) 4 SCC 392; **Divisional Forest Officer and another vs. G. V.**

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Sudhakar Rao and others, (1985) 4 SCC 573, wherein it has clearly been held that confiscation is not a punishment and that the authorities have a right to initiate both, confiscation and criminal proceedings, against any individual.

In the case of **State (NCT of Delhi) vs. Sanjay**, (2014) 9 SCC 772, the Court has gone on to state that illegal extraction of sand, specifically from river beds has to be prevented and prohibited as such unrestricted destruction of natural resources would lead to disastrous result.

The reliance placed by the learned counsel for the petitioner on the decision of the Supreme Court rendered in the case of **Madhukar Rao** (supra) is misplaced inasmuch as in the said case before the Supreme Court the provisions of Section 39 of the Wild Life Protection Act, were under consideration which provided immediate suo motu and automatic confiscation of the property seized while committing a forest offence without undertaking full fledged proceedings for confiscation. The observations made by the Supreme Court in the said judgment were in relation to the provisions of Section 39 of the Wild Life Protection Act, which are totally different from the provisions of the Indian Forest Act, the other provisions of the Wild Life Protection Act as well as the provisions of the Minor Mineral Rules, 1996. The provisions of Section 52 have also been extensively

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explained and dealt with by this Court in the case of **Kailash Chand and another vs. State of M.P. and others**, AIR 1995 MP 1, wherein the constitutional validity of the provisions of the Indian Forest Act, providing for confiscation has been upheld.

The action taken by the respondent authorities is in consonance with and in accordance with the provisions of the law laid down by the Supreme Court and this Court in the aforementioned cases and in such circumstances, we do not find any substance in the submission of the learned counsel for the petitioner that confiscation proceedings cannot be undertaken simultaneously alongwith criminal proceedings. The said contention is, accordingly, rejected.

As far as the contention of the learned counsel for the petitioner regarding release of the vehicle during the pendency of the confiscation proceedings is concerned, the Supreme Court in the case of **State of Karnataka vs. K. Krishnan**, (2000) 7 SCC 80, has held that a liberal approach for release of vehicles or implements involved in forest offences should not be adopted by the Courts and the same should not normally be returned to a party till the culmination of the proceedings in respect of such offence including confiscatory proceedings except in exceptional cases, in the following terms:-

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“7.The liberal approach in the matter would perpetuate the commission of more offences with respect to the forest and its produce which, if not protected, is surely to affect the mother-earth and the atmosphere surrounding it. The courts cannot shut their eyes and ignore their obligations indicated in the Act enacted for the purposes of protecting and safeguarding both the forests and their produce. The forests are not only the natural wealth of the country but also protector of human life by providing a clean and unpolluted atmosphere. We are of the considered view that when any vehicle is seized on the allegation that it was used for committing a forest offence, the same shall not normally be returned to a party till the culmination of all the proceedings in respect of such offence, including confiscatory proceedings, if any. Nonetheless, if for any exceptional reasons a court is inclined to release the vehicle during such pendency, furnishing a bank guarantee should be the minimum condition. No party shall be under the impression that release of vehicle would be possible on easier terms, when such

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vehicle is alleged to have been involved in commission of a forest offence. Any such easy release would tempt the forest offenders to repeat commission of such offences. Its casualty will be the forests as the same cannot be replenished for years to come.”

The same view has again been reiterated and reaffirmed by the Supreme Court in the cases of **State of W.B vs. Gopal Sarkar**, (2002) 1 SCC 495 and **State of West Bengal and Another vs. Mahua Sarkar**, (2008) 12 SCC 763.

In view of the aforesaid, we do not find any infirmity or illegality in the order passed by the authorities rejecting the application filed by the petitioner on that count. We are also of the considered opinion that there is no perversity or illegality in the impugned order warranting interference by this Court.

The petition, filed by the petitioner, being meritless is, accordingly, dismissed.

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

(SANJAY DWIVEDI)
J U D G E

mms/-