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THE STATE OF BIHAR AND ANR.

v.

KEDAR SAO AND ANR.

AUGUST 25, 2003

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[DORAISWAMY RAJU AND H.K. SEMA, JJ.]

Indian Forest Act, 1927 and Amendments made thereunder by the Bihar Amendment Act 9 of 1990; Section 52/Bihar Forest Produce (Regulation of Trade) Act, 1984; Sections 15 and 32:

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Seizure of illicit forest produce with trucks—Authority ordered confiscation of trucks—Affirmed by the Appellate Authority—On appeal, High Court quashed the order holding that the authorities had no power under the Indian Forest Act to confiscate the vehicle—Exercise of power by the authorities under the Bihar Amendment Act, vis-a-vis the Central Act—Held: The object underlying these Acts are distinct and separate—Nature of offences under Acts are wholly different—Thus, the provisions of law under the Central Act and amendments made thereunder on the one side and Trade Act on the other could co-exist—The provisions contained in Section 32 of the Trade Act are exclusionary in nature rendering the relevant provisions under the Central Act inapplicable to specified forest produce—The provisions under the Trade Act cannot be construed to be destructive of the powers conferred upon the authorities under the Central Act—The State Legislature cannot be denied power to enact different provisions in separate Acts or conferring distinct and separate powers upon more than one authority to meet any exigencies—High Court erred in overlooking the special procedure under the Bihar Amendment Act empowering the authorities with more comprehensive/stringent powers for confiscation of the property to the exclusion of the Courts/Tribunals—The power conferred on the authority cannot be curtailed/circumscribed—Hence, order of the High Court cannot be countenanced—Interpretation of Statutes—Constitution of India, 1950, Seventh Schedule.

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Words and Phrases:

'forest produce', 'confiscation' and 'seizure'—Meaning of—In the context of Indian Forest (Bihar Amendment) Act and Bihar Forest Produce (Regulation of Trade) Act.

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On receipt of information, Forest Officers chased trucks of the respondents and seized illicit forest produce with trucks under Section 52 of the Indian Forest (Bihar Amendment) Act and submitted prosecution reports against the respondents. Authority ordered confiscation of the seized trucks. Appeals by the respondents/private parties were rejected by the Appellate Authority. In the writ petitions filed by the respondents, High Court quashed the order of confiscation holding that the authorities had no power under the Central enactment (Indian Forest Act) to confiscate the vehicle and that the order passed by the authority was without jurisdiction. In another matter, Forest Officers seized 8 trucks with forest woods and submitted a report to the authority. The authority ordered confiscation of the illegal woods with trucks. Appellate authority rejected the appeal. The writ petition and writ appeal were dismissed by the High Court. Hence the present appeals by the State and the private parties.

It was contended for the State that the Bihar Forest Produce (Regulation of Trade) Act was enacted for regulation in public interest and the Indian Forest Act was amended by the Indian Forest (Bihar Amendment) Act for the overall protection, management and to regulate transit of the Forest produce; that the authority did not commit any irregularity in passing the confiscation order; that Section 15 of the Trade Act stood repealed by necessary implication by the Indian Forest (Bihar Amendment) Act, thus, impliedly the authority could apply the provisions of the Indian Forest Act to the specified forest produce.

On behalf of the private parties, it was contended that Section 32 of the Trade Act excluded the applicability of the relevant provisions of the Indian Forest Act in respect of the Forest produce as specified in the Trade Act and thus, Section 15 of the Trade Act was attracted and that the authority could take action under the Trade Act only.

Allowing the appeals of the State and dismissing the appeals of the private parties, the Court

HELD:1.1. The High Court not only misdirected itself as to the nature of offence but also misconstrued the relevant provisions of the Trade Act and ignored certain vitally important provisions contained in the Bihar Amendment Act 9 of 1990. A proper comparison, scrutiny and consideration of the relevant provisions of the respective enactments, the

- A** Central Act (the Indian Forest Act) and the amendment by the State of Bihar in the Central Act on the one side and the Trade Act on the other would go to show that the object underlying them are not only distinct and separate but the essence, import, content and character as well as nature of offences and the essential ingredients to constitute such offences under the respective enactments are wholly different and the offences under these two laws not only can co-exist but one cannot be held to be destructive of the other. [1989-D, E, F]

M. Karunanidhi v. Union of India and Anr., [1979] 3 SCC 431, followed.

- C** *Municipal Corporation of Delhi v. Shiv Shanker*, [1971] 1 SCC 442, relied on.

- D** 1.2. The provisions contained in Section 32 of the Trade Act are merely exclusionary in nature rendering the provisions contained in the Indian Forest Act, inapplicable to only such of the specified forest produce as defined under the Trade Act, and that too only in respect of matters for which the provisions are contained in the Trade Act. [1990-G]

- E** 1.3. The Indian Forest Act a Central enactment, being a legislation pertaining to an entry in the concurrent list, the State of Bihar has chosen to amend the said law in its application to the State of Bihar by introducing its own sentence by way of punishment and scheme of provisions providing for powers of entry, inspection, search and seizure as well as for confiscation of produce or other properties seized and the procedure therefor in its entirety. The Trade Act is more in the nature of Regulation of Trade in the context of monopoly created in favour of the State and that too with reference to particular notified and enumerated forest produce defined for the purpose of the Act to be 'specified forest produce', cannot be said to be destructive of the powers conferred upon the Authorised officer, the Appellate and Revisional Authorities under the Central Act. Section 32 of the Trade Act, thus, has no effect of effacing the Central Act as amended by the State of Bihar completely so as to disarm the concerned Authorities totally from having recourse to those provisions even in respect of offences which pertain, arise and relating to the provisions contained therein. [1991-A, B; D]

- H** 1.4. The assumption on the part of the High Court that once by virtue

of a notification under Section 1(3) and (4) of the Trade Act, a produce become specified forest produce, any and every offence in respect of such produce, could be dealt with only under the Trade Act only renders meaningless the specific words, "in respect of matters for which provisions have been made in this Act". Section 32 of the Trade Act cannot be viewed merely from the angle of offences and punishments and procedure in respect of offences. The Regulatory measures in the Central Act (The Indian Forest Act) and the rules made thereunder on the one hand and those under the Trade Act and the rules made thereunder on the other differ and consequently, the main object of Section 32 of the Trade Act seems to be to do away with the need to comply with and/or adhere to the rigor of the restrictions in the Central Act, in addition to satisfying the requirements of the stipulations contained in the Trade Act and the rules made thereunder. [991-F, G, H; 992-A]

1.5. The assent of the President to the 1984 Trade Act may help for its survival notwithstanding the Central enactment, the Indian Forest Act in relation to matters provided for under the Trade Act by virtue of Section 32 contained therein, but in view of the subsequent State enactment viz. the Bihar Amendment Act 1990, which had also obtained the assent of the President, the special procedure introduced under the Bihar Amendment Act empowering the designated authorities with more comprehensive and stringent powers to order for the confiscation of the property to the exclusion of the Court, Tribunal or any Authority cannot be curtailed, whittled down or circumscribed, in any manner, by any of the provisions contained in the Trade Act. Section 52-C of the Indian Forest (Bihar Amendment) Act which seems to have been completely overlooked by the High Court, clinches the issue and dissuade any such construction. There is also nothing wrong in more than one enactments conferring the same powers to be exercised in the same or different circumstances upon two different and distinct class of authorities and merely because they may have some overlapping features alone, conflict or inconsistency cannot be attributed to the legislature denying thereby such powers to the category of officers upon whom the legislature has chosen to specifically confer powers with the object of ensuring a deterrent exercise of the same keeping in view the growing attempts to deplete forest wealth. Any such construction which tends to defeat the very purpose of conferring such powers upon the authorities of the department and frustrates completely the object of the legislative amendment itself, is to be meticulously avoided by courts, particularly in the context of overriding

A effect engrafted in Section 52-C of the Indian Forest (Bihar Amendment) Act. Hence, the decision of the High Court cannot be countenanced.
[1992-F, G, H; 1993-A, B, C]

B *Smt. Chandrawati Devi v. State of Bihar and Ors., (1992) Bihar Bar Council Journal 13, held inapplicable.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 231 of 1996.

C From the Judgment and Order dated 3.9.94 of the Patna High Court in CrI. W.J.C. No 201 of 1993.

WITH

CrI. A. No. 232/96, C.A. Nos. 6643-44 of 2003.

D Aamrendra Sharan, Arup Banerjee, Ashok Mathur, S.K. Sinha, Ejaz Maqbool, Gopal Prasad and S.K. Singh for the appearing parties.

The Judgment of the Court was delivered by

E **D. RAJU, J.** Special leave granted in S.L.P. (C) Nos.1140-1141 of 1998.

Common and identical questions of law are involved in these appeals and, therefore, they are dealt with together.

CRIMINAL APPEAL NO.231 OF 1996:

F On receipt of secret information, the Range Officer of Forests, Simariya Range, Chatra South Forest Division, along with a team of forest officials chased a truck bearing Registration No. UPF 7233 and seized about 445 Kgs. of illicit Katha together with the truck in exercise of powers under Section 52 of the Indian Forest (Bihar Amendment) Act, 1990 (hereinafter referred to as "Bihar Amendment Act, 1990") near Danapur, on 5.2.1991. The seizure list was said to have been sent to the Additional Chief Judicial Magistrate, Chatra, by his letter dated 6.2.1991. On 11.3.1991, the Divisional Forest Officer, Chatra South Division, the Authorised officer, as per notification dated 2.1.1991 under Section 5 of the Bihar Amendment Act, 1990, informed the Additional Chief Judicial Magistrate regarding initiation of action. The **H** Range Officer was said to have submitted prosecution report against the

respondents M/s Kedar Sao and Prem Kumar that the investigation in the matter revealed that the katha seized was illegally manufactured after illegal cutting of Khair trees from Delho, Jarhi, Kori, Chardram and Sima protected forest within the Chatra South Forest Division and sought for the confiscation of the seized truck. After hearing the respondents, the Authorised Officer by his order dated 19.1.1992 ordered confiscation of the truck seized, as above, in exercise of the powers under Section 52 of the said Act. The respondents filed an appeal before the Appellate Authority constituted under Section 52A of the said Act, viz., The Deputy Commissioner, Chatra.

The respondents seem to have also filed CrI. Writ jurisdiction case No.201 of 1993 (R) seeking to quash the order dated 19.1.92 and also for the release of the truck in the meantime. A Division Bench of the Patna High Court (Ranchi Bench) by an order dated 3.9.94 allowed the writ petition on the ground that the order dated 19.1.92 was totally without jurisdiction and the power to order for confiscation or forfeiture of the vehicle involved in the offence was with the court and not the Divisional Forest Officer. The High Court while accepting the stand of the private party held that the provisions of Bihar Forest Produce (Regulation of Trade) Act, 1984 (hereinafter referred to as "Trade Act"), alone applied to the case by virtue of Section 32 of the said Act and the provisions of the Indian Forest Act, 1927 stood excluded and consequently the Authorities under the central enactment had no powers to confiscate the vehicle and the order passed was wholly without jurisdiction. The matter was left for the decision of the competent court as to whether the respondents have committed any offence and observing further that it was for that Court to pass any such orders. Hence, this appeal by the State of Bihar and the Divisional Forest Officer.

CRIMINAL APPEAL NO. 232 of 1996:

The seizure effected on 27.3.1993, which is the subject matter of this appeal, by the Forest Officials at Hunterganj was of the truck bearing Registration No. BRM-9615 while it was found carrying illicit forest produce like Harra, Gond, and Katha and the seizure list prepared therefor appears to have been sent forthwith to the Chief Judicial Magistrate concerned. The Range Officer of forest was said to have moved on 29.3.1993 the Authorised Officer to confiscate the seized forest produce and the truck and the said Authority appears to have initiated action as in the other case, and informed the Chief Judicial Magistrate, Chatra, of the said move. Notice of such proceedings was said to have been issued to the owner of the vehicle Mohan

- A** Lal Vaidya to show cause against the proposals and on the said person informing that the vehicle was under an agreement with the respondent Sri Kant Prasad Pradhan, he was also issued with a notice to show cause. After hearing the respondent, by an order dated 3.5.1993, the request for release of the truck came to be rejected since the respondent could not prove his ownership of the same. While so, the respondent filed Criminal W.J.C. No.227 of 1993 (R) seeking to quash the confiscation proceedings and for the release of the truck. The Division Bench of the Patna High Court (Ranchi Bench) by an order dated 3.9.94 allowed the writ petition of the respondent on similar grounds as in the other writ petition, passing a similar nature of order. Hence, this appeal.

C **Civil Appeals arising out of SLP (C) Nos.1140-1141 of 1998:**

- On 26.1.1995, the District Forest Officer, Gaya, Bihar, along with a team of forest officials seized eight trucks including those of the two of the appellants at Upwan Hotel near Mohaniya within Bhabhna District loaded with Khair wood (Acacia Catechu). The report of the said seizure was said to have been also sent to the Chief Judicial Magistrate, Bhabhna. The District Forest Officer seems to have also moved on 27.1.1995 the Divisional Forest Officer, Shahbad at Sasaram, Bihar, for initiation of confiscation proceedings in respect of all those trucks and the illegal Khair wood, which they were found to carry. On 28.1.1995, the Divisional Forest Officer, who is the
- E** Authorised Officer for the purpose, initiated proceedings to show cause against the confiscation and forfeiture of the seized trucks and goods. After hearing the respondents and others, by an order dated 25.9.1995, the Authorised Officer ordered confiscation of the illegal Khair wood as well as the trucks used for its transportation. The appeal filed before the Appellate Authority viz., The District Magistrate-cum-Collector, Kaimur, Bhabhna, was also
- F** dismissed on 24.1.1996. Further Revision filed thereon also came to be rejected on 21.6.1997. At this stage, the respondents filed CWJC Nos.6542 and 6543 of 1997 seeking to quash the above orders and for release of their trucks. A learned Single Judge of the Patna High Court by an order dated 28.8.1997 dismissed the Writ Petitions. Thereupon, L.P.A. Nos. 1206 and 1207 of 1997
- G** came to be filed and a Division Bench of the High Court dismissed the appeals on 20.10.1997. The Division Bench held that having regard to the magnitude of the offence, in appropriate cases confiscation has to be resorted to as is provided in law. Hence, these appeals, taking advantage of the other appeals already pending before this Court.

- H** Heard Shri Amarendra Sharan, learned Senior Counsel for the State,

and Shri S.K. Sinha for private respondent in CrI. Appeal No.231 of 1996 and the appellants in two appeals filed by the private parties and other counsel. The stand taken on behalf of the State in these appeals, as before the High Court, was that the Bihar Forest Produce (Regulation of Trade) Act, 1984 was enacted only to provide for regulation in public interest the Trade and related matters of certain forest produce notified thereunder by creation of the State Monopoly in such trade in the State of Bihar and it is the Indian Forest Act, 1927, as amended by the State by the Indian Forest (Bihar Amendment) Act (Bihar Act 9 of 1990) which was enacted for the overall protection and management of forests and forest produce and regulate the transit of such forest produce and the rules made and notifications issued thereunder that applied to the cases on hand and consequently the impugned orders of confiscation are quite legal and well within the competency of the Authorised Officer. In support of such stand reliance was placed upon the relevant provisions of the Indian Forest Act, 1927, the Bihar Timber and other Forest Produce Regulation of Transit Rules, 1973, the provisions of the Bihar Amendment Act (Act 9 of 1990) and the Trade Act. It is further urged that cutting, felling, girdling, lopping and tapping, etc. of forest trees and forest produce and/or manufacture of forest produce, as notified therein, are squarely covered under the Indian Forest Act, 1927 as amended by Bihar Act 9 of 1990 and by virtue of Section 52 (3), as amended by the Bihar Amendment Act (Act 9 of 1990), power to confiscate inhere in the forest officials notified for the purpose and, therefore, no exception could be taken to the orders passed in all these cases. Section 15 of the Trade Act, according to the stand of the State, stood repealed by necessary implication by Bihar Amendment Act 9 of 1990 and, in any event, Section 15 cannot be claimed to exclude the Indian Forest Act even in respect of matters not dealt with or provided for under the Trade Act. The forest produce seized in all these cases, viz., Katha, Gond, Harra, was said to have been illegally collected from the trees unlawfully felled and by unlawful tapping and collection of such produce and, therefore, the provisions of the Indian Forest Act, as amended by the Bihar Amendment Act and the Rules made thereunder, alone are attracted to these cases and rightly applied, too. The decision of the High Court, taking a contra view, would, according to the State, defeat the very object of the Indian Forest Act, as amended by Bihar Act 9 of 1990, to conserve and protect the forest wealth and arrest and curb large scale of illegal falling and exploitation of forest wealth, said to be rampant of late, in the State.

Per contra, the learned counsel for the private parties, while drawing inspiration from and adopting the reasoning of the High Court, contended

A that Section 32 of the Trade Act excluded the applicability of the Indian Forest Act, 1927 to forest produce specified in the Trade Act, that therefore it is only Section 15 etc. of the Trade Act which would be attracted and any action could be taken under the said Act only. Reliance has also been placed on yet another decision of a Division Bench reported in *Smt. Chandrawati Devi v. State of Bihar & Ors.*, 1992, Bihar Bar Council Journal 13, taking an identical view as in these cases under what is claimed to be a similar situation arising with reference to the Indian Forest Act and the Bihar Kendu Leaves (Control of Trade) Act, 1973.

C So far as Criminal Appeal No.231 of 1996 is concerned, the vehicle in question was found unlawfully carrying 445 Kg. illegal Katha biscuits, which were concealed in a specially designed secret chamber built inside the truck behind the driving seat and the seizure could be effected after a long chase of the fleeing vehicle for contravention of Sections 33(1), 41(1) and 42(1) of Indian Forest (Bihar Amendment) Act and Section 20 of the Trade Act. Our attention was drawn to show from the Schedule of the Trade Act that Khair (Acacia Catechu) alone is notified and a manufactured product from the said Khair like Katha biscuits seized and confiscated are not covered by the Trade Act. Katha biscuits are said to be prepared from the heartwood of Khair by boiling and once again after reboiling, the thick liquid and by pouring it into moulds to suit the needs of the manufacturer. On the other hand, the notification issued by the State Government on 19.10.1959, under Section 30 of the Indian Forest Act, 1927, not only declared the species of trees enumerated therein as reserved in the protected forest of Chatra Forest Division for purposes of Section 29 (2) but also prohibited the doing or commission of certain kind of activities including the collection or subjection to any manufacturing process and removal of any forest produce. This would, as claimed for the State, go to show, at any rate, by the very nature of the commodity itself, the inapplicability of Trade Act.

G In order to appreciate the claims on behalf of the parties on either side as to whether recourse to provisions of the Indian Forest Act, 1927 as amended in Bihar Act 9 of 1990 was permissible in these cases or that it is only the Trade Act that applied as claimed for private parties, a reference to some of the provisions in both of the two enactments would become necessary. The Indian Forest Act, 1927 is a central enactment, to consolidate the law relating to forests, the transit of forest produce and the duty leviable on timber and other forest produce. Section 2(3) defines forest offence to mean an offence punishable under the Act or under any Rule made thereunder. The inclusive

definition of 'forest produce' in Section 2(4) encompass within its fold 'catechu' as well as the trees and leaves, flowers and fruits and all other parts or produce not mentioned in the earlier part. Section 41 provides for the State Governments making their own rules to regulate the transit of all timber and other forest produce. Section 42 provides for penalty for breach of rules made under Section 41. Section 52 provided for seizure of property liable to confiscation and while the subsequently following provisions deal with further course of action to be followed, Section 55 enables the Court to even confiscate the forest produce as well as the vehicle etc. used in the commission of the forest offence, in addition to any other punishment prescribed for such offence.

Finding that not only the commission of forest offences are on the increase but rampant involving large scale pilferage and depletion of forest wealth not only causing serious onslaught on the nature and environment causing ecological imbalance and irreparable loss and damage to public property - the State Government has chosen to introduce certain drastic legislative measures to arrest, control and strongly put down their recurrence as well, by enacting the Indian Forest (Bihar Amendment) Act No. 9 of 1990, which came into force on 10.9.1990 after obtaining the required assent of the President of India, for the same. Section 52, which was inserted by Section 5 of the Amendment Act, reads as follows:-

"52. Seizure and its Procedure for the property liable for confiscation.

(1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, arms, boats, vehicles, ropes, chains or any other article used in committing any such offence may be seized by any Forest Officer or Police Officer.

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

- A** Provided that when the forest produce with respect to which such offence is believed to have been committed is the property of Government and the offender is unknown, it shall be sufficient if the Officer makes, as soon as may be, a report of the circumstances to his immediate superior.
- B** (3) Subject to sub-section (5), where the authorized officer upon production before him of property seized or upon receipt of report about seizure, as the case may be, is satisfied that a forest offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded confiscate forest produce so seized together
- C** with all tools, arms, boats, vehicles, ropes, chains or any other article used in committing such offence. The Magistrate having jurisdiction to try the offence concerned may, on the basis of the report of the authorized confiscating officer, cancel the registration of a vehicle used in committing the offence, the licence of the vehicle driver and the licence of the arms. A copy of order on confiscation shall be
- D** forwarded without undue delay to the Conservators of Forests of the forest-circle in which the Forest produce as the case may be, has been seized.
- (4) No order confiscating any property shall be made under sub-section (3) unless the authorized officer—
- E** (a) sends an intimation about initiation of proceedings for confiscation of property to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made;
- (b) issues a notice in writing to the person from whom the property
- F** is seized, and to any other person who may appear to the authorized officer to have some interest in such property;
- (c) affords an opportunity to the persons referred to in clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation, and
- G** (d) gives to the officer effecting the seizure and the person or persons to whom notice has been issued under clause (b), a hearing on date to be fixed for such purposes.
- (5) No order of confiscation under sub-section (3) of any tools, arms,
- H** boats, vehicles, ropes, chains or any other article (other than the

forest produce seized shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorized officer that any such tools, arms, boats, ropes, chains or other articles were used without his knowledge or convenience or as the case may be, without the knowledge or convenience of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission of forest offence.”

Section 6 of the Amendment Act inserted Section 52A, which provided for an appeal against the order of confiscation, while Section 52-B provided for revision by the person aggrieved. Section 52-C also inserted by Section 6 of the Bihar Amendment Act reads as hereunder:-

“52-C Bar of Jurisdiction of Courts etc. in certain circumstances.—

(1) On receipt of intimation under sub-section (4) of section 52 about initiation of proceedings for confiscation of property by the magistrate having jurisdiction to try the offence on account of which the seizure of property which is subject matter of confiscation, has been made, no Court, Tribunal or Authority (other than the authorized officer, Appellate Authority and Revision Authority referred to in sections 52, 52A and 52B) shall have jurisdiction to make orders with regard to possession, delivery, disposal or distribution of the property in regard to which proceedings for confiscation are initiated in this Act, or any other law for the time being in force.

*Explanation.—*Where under any law for the time being in force, two or more courts have jurisdiction to try forest offence, then on receipt of intimation under sub-section (4) of section 52 by one of the Courts of Magistrates having such jurisdiction shall be construed to be receipt of intimation under that provision by all the Courts and the bar to exercise jurisdiction shall operate on all such Courts.

(2) Nothing in sub-section (1) shall affect the power saved under section 61.

Section 52-D, inserted by Section 6 of the Amendment Act, empowers the Officers enumerated therein to enter, inspect, search and seize in the following terms:-

*“52-D. Power of entry, inspection, search and seizure.—*Notwithstanding anything contained in any other law for the time being in force any Forest Officer not below the rank of a Range

A Officer of Forests or any Police Officer not below the rank of a Sub-Inspector, may, if he has reasonable grounds to believe that any forest offence has been committed in contravention of this Act enter upon, inspect and search any place, premises, appurtenances thereto, land, vehicle or boat and seize any illegal forest produce and all tools, arms, boats, vehicles, ropes, chains or any other article used in committing such offence".

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C So far as the Bihar Forest Produce (Regulation of Trade) Act, 1984 (Bihar Act 12 of 1984) is concerned, the same was enacted to provide for regulating in public interest the trade and other related matter of certain produce by creation of a State Monopoly in such trade in the State of Bihar and made applicable to such forest produce and on such date(s) as the Government may by notification specify in this behalf. Forest produce has been defined in Section 2(4) to mean any forest product as specified in the Schedule and thereby called to be specified forest produce. Section 5 provides that on the issue of a notification under Section 1(3) & (4), no person other than the Government, an Officer of Government authorized in writing in this behalf and an Agent in respect of the unit in which the specified forest produce is grown or found, shall purchase or transport or import or export such specified produce in and from such area. What constituted a purchase not in contravention of the Act or what other shall be deemed to have been purchased in contravention of the provisions of the Act has also been explained therein, with exceptions indicated relating thereto. Consequently, the bar or restrictions and regulations envisaged in respect of any area or unit, in respect of the specified forest produce, comes into play only when it is shown that a notification under Section 1(4) has been issued and published. Equally so would be the point of time when the enforcement of penal provisions provided under this Act would arise. This Act also contains provisions enabling the Government to fix prices for purchase, opening of depots and display of pricelist, registration of manufacturers, traders and industrialists, disposal of forest produce, retail sale of specified produce etc. Section 14 provides that every Forest Officer and Police Officer shall prevent and may interfere for the purposes of preventing commission of any offence under this Act. Section 15, on which reliance is sought to be placed for the private parties reads as follows:-

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H "15. Power to entry, search, seizure, etc. - (1) Any Forest Officer not below the rank of a Range Officer of Forest or Police Officer not below the rank of a Sub-Inspector, or any other person authorized by

the Government in this behalf may with a view to securing compliance with the provision of this Act or the rule made thereunder, or to satisfying himself that the said provisions have been complied with

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

(ii) enter and search any place;

(iii) seize the specified forest produce in respect of which he suspects that any provision of this Act or the rules made thereunder has been, is being or is about to be contravened along with the receptacles containing such produce and all tools, ropes, chains, boats or/and vehicles used in committing any such offence.

(2) The provisions of sections 102 and 103 of Code of Criminal Procedure, 1973 (II of 1974) relating to search and seizure shall so far as may be, apply to searches and seizure under this section.

(3) Every Officer seizing specified forest produce and other property under clause (iii) of sub-section (1) above shall place on such produce, if physically possible, a property mark indicating that the same has been seized and shall, except when the offender agrees in writing forthwith to get the offence compounded in the manner prescribed, make a report of such seizure to the Magistrate.

(4) Any Forest Officer not below the rank of a Range Officer of Forest, who or whose subordinate has seized any property other than the specified forest produce under clause (iii) of sub-section (1) may release the same on the execution by the owner thereof of a bond for the production of the property so released, if and when so required before the Magistrate."

Sections 20 and 21 of this Act read as hereunder:-

"20. *Penalty.*—If any person contravenes any of the provisions of this Act or rules made thereunder-

(1) he shall be punished with imprisonment which may extend to one year or fine which may extend to two thousand rupees, or both :

Provided that penalties which are double of those mentioned above may be inflicted in case where the offence is committed after preparation for resistance to lawful authority or where the offender

A has been previously convicted of a like offence;

(2) the specified forest produce in respect of which such contravention has been made or such part thereof as the Court may deem fit, and any boat, tools, vehicle, animal, vessel, or other conveyance or any other articles used in committing such offence shall be forfeited to Government and shall vest in Government free from all encumbrances:

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Provided that if the Court is of the opinion that it is not necessary to direct confiscation in respect of whole, or as the case may be, any part of the specified forest produce or other property, it may, for the reasons to be recorded refrain from doing so.

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(3) such forfeiture may be in addition to any other punishment prescribed for such offence.

21. Disposal of produce and other seized property on conclusion of trial. - On the conclusion of the trial of the offence any specified forest produce in respect of which such offence has been committed, if it is the property of Government or has been confiscated and other forfeited property shall be taken charge of by a Forest Officer, and in any other case, may be disposed of in such manner as the Court may direct.”

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Section 28 provides that when in any proceeding taken under this Act, a question arises as to whether any specified forest produce is the property of the Government such produce shall be presumed to be the property of the Government until the contrary is proved.

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Section 32, on which strong reliance has been placed and which seems to have weighed with the High Court, in countenancing the claim of the private parties, reads as follows:-

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“32. Limitation of applicability of Indian Forest Act, 1927 and any other law or order. - (1) Nothing contained in the Indian Forest Act, 1927 (XVI of 1927) shall apply to specified forest produce in respect of matters for which provisions are contained in this Act.

(2) Nothing contained in any other thing having force of law in any region of the State shall apply to the specified forests produce in respect of matters for which provisions have been made in this Act.”

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The High Court seems to have very much relied upon Section 32 of the

Trade Act to arrive at the conclusion that the Indian Forest Act, 1927 which in its opinion was a general provision has no application with regard to trade and other related matters concerning forest produce notified to be specified forest produce under the Trade Act and that for dealing with any contravention in respect of any transaction in specified forest produce one has to refer to only the Trade Act and if any violation is actually found then the offence will be under the Trade Act and not under the Indian Forest Act, 1927. The High Court on that premise appears to have held that if there is any provision for confiscation of vehicle in the Trade Act, that would only apply for the reason that any violation in respect of transaction of specified forest produce can amount to offence only under the Trade Act and in respect of specified forest produce there cannot be a forest offence within the meaning of the Indian Forest Act, 1927 so as to confer jurisdiction on an Officer authorized under the said Act to confiscate either specified forest produce or the vehicle connected therewith. It may be pointed out at this stage that the High Court in the course of its judgment noticed specifically that on the admitted position of fact proceedings in question have been initiated under the relevant provisions of the Indian Forest Act, 1927.

The High Court appears to have not only misdirected itself as to the nature of offence but also misconstrued the relevant provisions of the Trade Act and ignored as well certain vitally important provisions contained in the Bihar Amendment Act 9 of 1990. A proper comparison, scrutiny and consideration of the relevant provisions of the respective enactments Central Act and the state amendment by Bihar Act 9 of 1990 on the one side and the Trade Act on the other would go to show that the object underlying them are not only distinct and separate but the essence, import, content and character as well as nature of offence and the essential ingredients to constitute such offences under the respective enactments are wholly different and the offences under these two laws not only can co-exist but one cannot also be held to be destructive of the other. In *Municipal Corporation of Delhi v. Shiv Shanker* [1971] 1 SCC 442, while dealing with the Prevention of Food Adulteration Act, 1954 and Fruit Products Order 1955 and the case of a prosecution under the former enactment of a licensee selling an adulterated goods while dealing with such goods under a licence granted under order issued under the Essential Commodities Act, 1955, this Court held that despite the patent differences in their main objects of these laws merely because it may in certain respects or aspects cover the same field also one can be said to be inconsistent or repugnant with the other.

A As to how a non-obstante clause has to be construed and considered in cases of alleged inconsistency or repugnancy between the two legislations, a Constitution Bench of this Court in *M. Karunanidhi v. Union of India & Anr.*, [1979] 3 SCC 431 observed as follows:-

B “35. On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge :

C 1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

D 2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

E 3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.

F 4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.”

Reference has also been made therein to a passage from Craies in his Statute Law 6th Edition, Page 369, which reads as hereunder:-

G “Many earlier statutes contain clauses similar in effect to the general rule, but without the confusing words as to contrary intention. These statutes, of some of which a list is given below, seem not to be affected by the above rule, save so far as it enables the revisers of the statute book to excise the particular clauses. In accordance with this rule, penalties imposed by statute for offence already punishable under a prior statute are regarded as cumulative or alternative and not as replacing the penalty to which the offender was previously liable.”

H The provisions contained in Section 32 of the Trade Act are merely exclusionary in nature rendering the provisions contained in the Indian Forest Act, 1927 inapplicable to only such of the specified forest produce as defined under the Trade Act, and that too only in respect of matters for which the provisions are contained in the Trade Act. Likewise the application of any

other thing having force of law in any region of the State is excluded in respect of such produce and such matters as are provided for in the Trade Act. Though the Indian Forest Act, 1927 is a central enactment being a legislation pertaining to an entry in the concurrent list, the State of Bihar has chosen to amend the said law in its application to the State of Bihar by the Bihar Amendment Act 9 of 1990, by introducing its own sentence by way of punishment and scheme of provisions providing for powers of entry, inspection, search and seizure as well as for confiscation of produce or other properties seized and the procedure therefor in its entirety. As noticed supra, the Bihar State Legislature has chosen to enact by the Amendment Act, 1990 more comprehensive and stringent provisions by providing for enhanced and deterrent punishments to deal with the forest offences found to be rampant and on steep rise within the State providing its own class of officers to deal with such situations, the manner and procedure to be adopted in dealing with such offences and the nature, content and width of powers, they should be armed with to make it onerous and impossible for violators by dealing them with an iron hand by visiting upon such offenders with a drastic and severe punishment for anyone guilty of such forest offences. The Trade Act, apart from being a legislation of the year 1984 and strictly confined to the nature, class and category of offences pertaining to violation of the provisions in the said Act more in the nature of Regulation of Trade in the context of monopoly created in favour of the State and that too with reference to particular notified and enumerated forest produce defined for the purpose of the said Act to be 'specified forest produce', cannot be said to be destructive of the powers conferred upon the Authorised officer, the Appellate and Revisional Authorities. Section 32 of the Trade Act, thus, has no effect of effacing the Central Act as amended by Bihar Amendment Act, 1990 completely so as to disarm the concerned Authorities totally from having recourse to those provisions even in respect of offences which pertain, arise and relating to the provisions contained therein. The assumption on the part of the High Court that once by virtue of a notification under Section 1(3) and (4) of the Trade Act, a produce become specified forest produce, any and every offence in respect of such produce, could be dealt with only under the Trade Act only renders meaningless the specific words, "in respect of matters for which provisions have been made in this Act". Section 32 cannot be viewed merely from the angle of offences and punishments and procedure in respect of offences. The Regulatory measures in the Central Act and the rules made thereunder on the one hand and those under the Trade Act and the rules made thereunder on the other differ and consequently, the main object of Section 32 of the Trade Act seems to be to do away with the need to comply with

- A** and/or adhere to the rigor of the restrictions in the Central Act, in addition to satisfying the requirements of the stipulations contained in the Trade Act and the rules made thereunder. There is nothing as a matter of any general principle for denying the very same legislature - the legislature of the Bihar State, the power to enact different provisions in either separate Acts or in one and the same Act conferring distinct and separate powers upon more than one authority to deal with a particular situation arising, as it may deem fit, or as the exigencies of the situation may warrant. All the more so, in our view, in this case, having regard to Section 53-C inserted by the Bihar Amendment Act 9 of 1990 in the Indian Forest Act, 1927, which in unmistakable language of a mandatory nature, ordaining that on receipt of intimation under sub-section (4) of Section 52 about initiation of proceedings for confiscation of property, by the Magistrate having jurisdiction to try the offence on account of which the seizure of property, which is subject matter of confiscation, has been made, no Court, Tribunal or Authority (other than the Authorized Officer, Appellate Authority and Revision Authority referred to in Sections 52, 52A and 52B) shall have jurisdiction under the said Act or any other law for the time being in force to make orders with regard to possession, delivery, disposal or distribution of the property in regard to which proceedings for confiscation are initiated. That apart, it must also be kept in consideration unlike the position under the Central Act in view of Section 17 of the Trade Act, no court shall take cognizance of any offence punishable under the said Act except on report in writing from the authority specified therein. Further, being a latter law, which has also obtained the assent of the President of India on 5.3.1990, the same will apply notwithstanding the Trade Act of the year 1984 and notwithstanding the fact that the said law had also obtained the assent of the President. The assent of the President to the 1984 Trade Act may help for its survival notwithstanding the Central Enactment / Indian Forest Act, 1927 in relation to matters provided for under the Trade Act by virtue of Section 32 contained therein, but in view of the subsequent State enactment the Bihar Amendment Act 9 of 1990, which had also obtained the assent of the President, the special procedure introduced under the Bihar Amendment Act 1990 empowering the designated authorities with more comprehensive and stringent powers to order for the confiscation of the property to the exclusion of the Court, Tribunal or any Authority cannot be curtailed, whittled down or circumscribed, in any manner, by any of the provisions contained in the Trade Act of the year 1984. Section 52-C, which seems to have been completely overlooked by the High Court, clinches the issue and dissuade any such construction. There is also nothing wrong in more than one enactments conferring the same powers to be exercised

in the same or different circumstances upon two different and distinct class of authorities and merely because they may have some overlapping features alone, conflict or inconsistency cannot be attributed to the legislature deny thereby such powers to the category of officers upon whom the legislature has chosen to specifically confer powers with the object of ensuring a deterrent exercise of the same keeping in view the growing attempts to deplete forest wealth. Any such construction which tends to defeat the very purpose of conferring such powers upon the authorities of the Department and frustrates completely the object of the legislative amendment itself, is to be meticulously avoided by courts, particularly in the context of overriding effect engrafted in Section 52-C, stipulating that on receipt of a communication by the Magistrate concerned from the specified officer of the Forest Department of the intention of the specified authority to invoke powers under Section 52 to confiscate or forfeit the property, which is subject matter of the offence, no Court, Tribunal or authority other than the Authorized Officer, Appellate Authority and Revision Authority shall have jurisdiction over the said matter. Consequently, we are unable to agree with the decision of the High Court or approve of the reasoning given in the judgment in support of its conclusion. The decision reported in *Smt. Chandrawati Devi*, (supra) said to have been rendered by a Division Bench of the Patna High Court in the context of similar claims *vis-a-vis* Bihar Kendu Leaves (Control of Trade) Act, 1973 and the Indian Forest Act, 1927 cannot also be considered to lay down the correct position of law, in the light of what has been held by us in this judgment.

For all the reasons stated above, Criminal Appeal Nos. 231 and 232 of 1996 shall stand allowed and the other two Civil Appeals shall stand dismissed. No costs.

The concerned and competent authorities shall be at liberty to pursue further course of action as a consequence of our decision and to this extent, the interim orders already passed shall no longer stand in their way.

S.K.S.

Appeals allowed/dismissed.