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STATE OF WEST BENGAL AND ORS.

v.

SUJIT KUMAR RANA

JANUARY 20, 2004

B

[DORAISWAMY RAJU AND S.B. SINHA, JJ.]

Criminal Procedure Code, 1973: Section 482.

C *Exercise of power under—Jurisdiction of Criminal Court barred under S. 59G of the Forest Act, 1927—However, High Court, exercising jurisdiction under S. 482, in a confiscation proceeding under the Act, ordered interim release of the vehicle—Correctness of—Held: Once a confiscation proceeding was initiated under the act jurisdiction of the criminal court stood excluded—Hence, High Court exceeded its jurisdiction under S. 482—However, High Court could exercise such a power only in exercise of its power of judicial review.*

Exercise of power under—Held: High Court could exercise power under S. 482 in relation to a matter pending before a “court”—Such a “court” in the context of Cr.P.C. would mean a “criminal court” or whence the power was exercised by the court under Cr.P.C.

Forest Act, 1927:

F *Ss. 50A to 59G (inserted by the State amendment)—Seizure and confiscation—Object of provisions—Held: To preserve the forests so as to maintain ecological balance—Such provisions should be liberally construed—Since illegal seizure amounted to deprivation of property and the owner thereof was deprived of the right of property, therefore, the rights of the parties must be delicately balanced—Constitution of India, 1950, Arts. 48A, 51-A(g) and 300.*

G *Section 59-A—Confiscation of vehicle—Used to carry forest produce without valid transit permission—Scope and ambit of—Held: Is discretionary—However, sufficient safeguards existed against arbitrary exercise of power—Is neither a penalty nor a punishment.*

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Section 59-B—Confiscation proceedings—Commencement of—Held: Commenced after issue of notice under S. 59-G. A

Section 59-D(2)—Order of confiscation—Appeal against—Held: Only an order of the appellate court became final and binding—But such an order would not preclude the aggrieved person from moving the High Court in judicial review—Constitution of India, 1950, Art. 226. B

Section 59-B—Issue of notice—Appellate court set aside confiscation proceedings on the ground that notice was invalid—However, the appellate court directed the authorities to decide the matter afresh in accordance with law—Correctness of—Held: Valid proceeding for confiscation of the vehicle could be initiated only upon issuance of a proper notice—Whereafter an order of confiscation could be passed in accordance with law. C

The respondent's truck carrying forest produce without transit permit was confiscated and seized. The District Judge quashed the order of confiscation on the ground that the notice issued to the respondent under Section 59-B (as inserted by the State amendment) of the Forest Act, 1927 was invalid. The High Court allowed the writ petition filed by the respondent under Section 482 of the Code of Criminal Procedure, 1973 and ordered interim release of the respondent's truck. Hence the appeals. On behalf of the appellant, it was contended that the High Court had no jurisdiction to exercise an application under Section 482 Cr.P.C. in view of Section 59-G (as inserted by the State amendment) which excluded the jurisdiction of the High Court in respect of proceedings initiated under the Act. D E

Allowing the appeals, the Court F

HELD: 1.1. The State legislature has inserted Sections 50-A to 50-G in the Forest Act, 1927 with a laudable object. Forest is a national wealth, which is required to be preserved. In most of the cases, the State is the owner of the forests and forest produce. Depletion of forests would lead to ecological imbalance. It is now well-settled that the State is enjoined with a duty to preserve the forests so as to maintain ecological balance and, thus, with a view to achieve the said object forests must be given due protection. Statutes, which provide for protection of forests to maintain ecological balance, should receive liberal construction at the hands of the superior courts. Interpretive exercise of such power should be in consonance with the provisions of such statutes not only having regard to H

A the principle of purposive construction so as to give effect to the aim and object of the legislature; keeping the principles contained in Article 48-A and 51-A(g) of the Constitution of India in mind. The provisions for confiscation have been made as a deterrent object so that felling of trees and deforestation is not made. [881-B-C]

B *Indian Handicrafts Emporium v. Union of India*, [2003] 7 SCC 589; *Balram Kumawat v. Union of India*, [2003] 7 SCC 628 and *State of Bihar v. Kedar Sao*, [2003] 6 SCALE 639, relied on.

C 1.2. This Court, however, is not oblivious of the fact that whereas the courts must give purposive construction to the provisions of such statutes which have been framed in public interest keeping in view the object thereof, but it must also be borne in mind that illegal seizure amounts to deprivation of property and by reason of an order of confiscation, the owner thereof is deprived of his right of property as contained in Article 300-A of the Constitution of India. The rights of the parties are, therefore, required to be delicately balanced. [882-F]

D 2.1. An order of confiscation of forest produce in a proceeding under Section 58-A of the Act would not amount to either penalty or punishment. Such an order, however can be passed only in the event a valid seizure is made and the authorized officer satisfies himself as regard ownership of the forest produce in the State as also commission of a forest offence. An order of confiscation is not to be passed automatically, and in terms of Section 59-A(3) a discretionary power has been conferred upon the authorized officer in relation to a vehicle. Sufficient safeguards both substantive and procedural have, thus, been made against an arbitrary exercise of power. [882-G-H; 883-A-C]

E 2.2. Against an order of confiscation, an appeal is provided and only an order of the appellate court, who is a judicial officer, becomes final and binding but attaching finality to an order of the appellate court would not preclude a person aggrieved to move the High Court in judicial review. [883-C]

G 3.1. The authorized officer under the Act before passing a final order in terms of Section 59-A(3) of the Act is required to issue notice and give opportunity of hearing to the parties concerned. Unless such a notice is issued, the confiscation proceeding cannot be said to have started.

H [883-G-H]

3.2. The District Judge while setting aside the order of confiscation on the ground of invalid notice had directed the authorities to decide the matter afresh in law. Therefore, a valid proceeding for confiscation of the vehicle can be initiated only upon issuance of a proper notice and whereafter an order of confiscation can be passed in accordance with law.

[889-F-G]

4.1. An order of confiscation in respect of a property must be distinguished from an order of forfeiture thereof. Although the effect of both confiscation and forfeiture of a property may be the same, namely that the property would vest in the State but the nature of such an order having regard to the statutory scheme must be held to be different. A proceeding for confiscation can be initiated irrespective of the fact as to whether prosecution for commission of a forest offence has been lodged or not. A confiscation proceeding, therefore, is independent of a criminal proceeding. [886-B, C]

4.2. A confiscation envisages a civil liability whereas an order of forfeiture of the forest produce must be preceded by a judgment of conviction. [889-D]

5.1. Once a confiscation proceeding is initiated in terms of Section 59-G of the Act, the jurisdiction of the criminal court in this behalf stands excluded. The criminal court although indisputably has the jurisdiction to deal with the property which is the subject-matter of offence in terms of the provisions of the Code of Criminal Procedure, 1973 but once a confiscation proceeding is initiated, the said power cannot be exercised by the Magistrate. [883-H; 884-A]

5.2. The High Court, exceeded its jurisdiction in releasing the vehicle in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure. [890-B]

Divisional Forest Officer v. G.V. Sudhakar Rao, [1985] 4 SCC 573; *State of West Bengal v. Gopal Sarkar*, [2002] 1 SCC 495; *State of Karnataka v. K.A. Kunchindammed*, [2002] 9 SCC 90; *Section Forester v. Mansur Ali Khan*, JT (2003) 10 SC 390; *Shambhu Dayal Agarwala v. State of West Bengal*, [1990] 3 SCC 549 and *Deputy Commissioner, Dakshina Kannada District v. Rudolph Fernandes*, [2000] 3 SCC 306, relied on.

Mohd. Yaseen v. Forest Range Officer, (1980) 1 ALT 8 and *State of*

A *Karnataka v. K. Krishnan*, JT (2000) 9 SC 356, referred to.

5.3. From a perusal of Section 482 Cr.P.C., it would be evident that the inherent power of the High Court is saved only in a case where an order has been passed by the criminal court which is required to be set aside to secure the ends of justice or where the proceeding pending before a court amounts to abuse of the process of court. It is, therefore, evident that the power under Section 482 of the Code can be exercised by the High Court in relation to a matter pending before a court; which in the context of the Code of Criminal Procedure would mean 'a criminal court' or whence a power is exercised by the court under the Code of Criminal Procedure. Once it is held that the criminal court had no power to deal with the property seized under the Act, the question of the High Court's exercising its jurisdiction under Section 482 of the Code of Criminal Procedure would not arise. [884-D-E]

6. Once a confiscation proceeding is initiated the jurisdiction of the criminal court in terms of Section 59-G of the Act being barred, the High Court also cannot exercise its jurisdiction under Section 482 of the Code of Criminal Procedure for interim release of the property. The High Court can exercise such a power only in exercise of its power of judicial review. [889-H; 890-A]

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 453 of 1997.

From the Judgment and Order dated 27.6.1996 of the Calcutta High Court in Crl. R.C. No. 2568 of 1996.

F WITH

Crl. A. Nos. 454 to 459 of 1997.

T.C. Ray, Shiv Gupta, H.K. Puri and Ujjwal Banerjee for the Appellants.

G Sanjoy Kr. Ghosh for D.P. Mukherjee for the Respondents in Crl. A. Nos. 453, 457-58/97.

Uday Umesh Lalit, Satyajit Saha, Dr. Ashok K. Banerjee and Mrs. V.D. Khanna for the Respondent in Crl. A. Nos. 454-456 and 459/97.

H The Judgment of the Court was delivered by

S.B. SINHA, J. INTRODUCTION :

Applicability of Section 482 of the Code of Criminal Procedure, 1973 for quashing a proceeding for confiscation of forest-produce etc. under the provisions of Indian Forest Act, 1927 (hereinafter referred to as 'the Act') as amended by the State of West Bengal is in question in these appeals which arise out of a common judgment and order dated 27.6.1996 passed by the Calcutta High Court.

BACKGROUND FACT

Shortly stated, the fact of the matter is that the forest-produce belonging to the State and/or the vehicles carrying the same were seized by the Forest Officer. The report of such seizure was made to the authorized officer.

Except Criminal Appeal No.453 of 1997—*State of West Bengal and Ors. v. Sujit Kumar Rana*, show cause notices issued by the forest authority purported to be issued under the provision of Section 59-B of the Act, as amended by the State of West Bengal or the seizure of the forest-produce or the vehicles carrying the same, came to be questioned by the respondents before the Calcutta High Court invoking its jurisdiction under Section 482 of the Code of Criminal Procedure. In *Sujit Kumar Rana's* case, however, an order of confiscation was passed by the authorized officer.

The factual matrix, for appreciating the points involved herein is being noticed from Criminal Appeal No. 453 of 1997 :

The truck of the respondent carrying forest-produce and said to be without transit permit was detained and seized. Upon a report of the said seizure, show cause notice was issued to the respondent by the authorized officer as to why vehicle shall not be confiscated. The owner of the truck replied to the said notice, praying for release of the same.

A writ petition was filed by the respondent herein under Article 226 of the Constitution of India before the High Court of Calcutta which was disposed of on or about 15.09.1995 by it directing the Divisional Forest Officer to complete the confiscation proceedings expeditiously and preferably within a period of five weeks from the said date. On or about 5.1.1996, the High Court of Calcutta passed an ex parte order directing that custody of the truck be given to the owner on his executing a bond to the satisfaction of the Divisional Forest Officer; with a further direction that the same would not be

A taken out of the territorial limit of the State of West Bengal. The Divisional Forest Officer filed an application for vacating the said order of the High Court, which was rejected by the High Court.

B Before the High Court, a preliminary question as regard maintainability of an application under Section 482 of the Code of Criminal Procedure was raised. By reason of the impugned judgment the said contention was negated.

SUBMISSION :

C Mr. T.C. Ray, learned senior counsel appearing on behalf of the State of West Bengal, *inter alia*, would contend that having regard to the fact that the proceeding for confiscation of forest-produce and/or vehicles carrying the same is not initiated under the provisions of the Code of Criminal Procedure, the applications filed by the respondent herein purported to be under Section 482 of the Code of Criminal was not maintainable. The learned counsel would submit that the High Court committed a manifest error in placing reliance upon the Division Bench judgments of the said Court, ignoring the binding decision of this Court in *Divisional Forest Officer and Another v. G.V. Sudhakar Rao and Ors.*, [1985] 4 SCC 573 which has been brought to its notice and wherein it has been clearly held that the High Court had no jurisdiction to release the vehicles when a confiscation proceeding is pending before the designated authority in exercise of its power under Section 482 of the Code of Criminal Procedure.

F Mr. Ray would urge that keeping in view the fact that admittedly the decision of this Court in *Sudhakar Rao* (supra) was not brought to the notice of the Division Bench of the Calcutta High Court when the earlier decision, which the learned Single Judge preferred to follow was decided, the learned Judge misdirected himself in ignoring the binding precedent of this Court.

G The learned counsel would contend that in terms of the amendments made by the State of West Bengal in the Forest Act whereby and whereunder Sections 50-A to 59-G were inserted, a complete Code was laid down not only as regard initiation of proceeding but also for confiscation and appeal against an order of confiscation as also ouster jurisdiction of the court. Mr. Ray would argue that a criminal trial before a Magistrate in relation to an offence made under the provisions of the Act stands on a different footing than a proceeding for confiscation before the authorized officer..

H Mr. U.U. Lalit, learned counsel appearing on behalf of the respondents

in Criminal Appeal No.459 of 1997 and Mr. Sanjoy Kr. Ghosh, learned counsel appearing on behalf of the respondents in Criminal Appeal No.453, 457 and 458 of 1997 would contend that in the facts and circumstances obtaining in these cases, this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India. The learned counsel would contend that it may be true that the High Court should not interfere with the proceeding for confiscation when merely a show cause notice was issued but having regard to the fact that subsequently a criminal court arrived at a finding that no forest offence has been made out, it would be futile to remit the matter back to the authorized Officer.

Mr. Ghosh would also submit that in Criminal Appeal No.453 of 1997, the appellate court has arrived at a finding that the notice issued by the authorized officer was wholly illegal and bad in law and in that view of the matter there does not exist any order of confiscation at present.

STATUTORY PROVISIONS :

Section 2(3) of the Act reads thus :

“(3)“forest-offence” means an offence punishable under this Act or under any rule made thereunder;”

Sub-Section (2) of Section 52 of the Act provides as under :

“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, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

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 official superior.”

Sub-section (2) of Section 52 of the Act has been amended by the State of West Bengal in terms whereof the proviso thereto has been amended in the following terms :

“Provided that it will not be necessary to make a report of such seizure to the Magistrate in the following cases, namely :-

- A (i) when the forest-produce with respect to which each offence is believed to have been committed is the property of the State Government and the offender is unknown, it shall be sufficient to make a report of the circumstances to the official superior;
- (ii) when the offence falls under the purview of Section 59-A;
- B (iii) when the offender agrees in writing to get the offence compounded;”

Section 55 of the Act reads as under :

C “Forest-produce, tools, etc., when liable to confiscation.—(1) All timber or forest-produce which is not the property of Government and in respect of which a forest-offence has been committed, and all tools, boats, carts and cattle used in committing any forest-offence, shall be liable to confiscation.

D (2) Such confiscation may be in addition to any other punishment prescribed for such offence.”

The State of West Bengal inserted Sections 59-A to 59-G in the Principal Act. Sub-section (1) of Section 59-A reads thus :

E “59-A. Confiscation by Forest Officer of forest produce in the case of forest offence believed to have been committed. - (1) Notwithstanding anything contained in the foregoing provisions of this Chapter or in any other law for the time being in force, where a forest offence is believed to have been committed in respect of the timber or other forest produce which is the property of the State Government, the Forest Officer or the Police Officer seizing the timber or other forest produce under sub-section (1) of Section 52, shall, without any unreasonable delay, produce the same, together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence, before an officer of a rank not inferior to that of an Assistant Conservator of Forests, authorized by the State Government in this behalf by notification in the official Gazette (hereinafter referred to as the authorized officer).”

G Sub-section (3) of Section 59-A provides that if the authorized officer is satisfied that a forest offence has been committed irrespective of the fact whether a prosecution has been instituted for the commission of such offence

H or not, he may direct confiscation of the property together with all tools,

ropes, chains, boats, vehicles and cattle used in committing the offence. Sub-section 4 (a) of Section 59-A empowers the authorized officer to sell such confiscated property or any part thereof by public auction. Clause (b) of sub-section (4) of Section 59-A, however, provides for refund of the amount fixed in the auction in the event, the order of confiscation of such property or tools etc. is set aside or annulled under Section 59-C or Section 59-D thereof.

Section 59-B postulates issue of notice to the owner of the property which is sought to be confiscated. The proviso appended thereto provides that no order of confiscation shall be made except after giving a notice in writing to the registered owner thereof, if in the opinion of the authorized officer, it is practicable to do so and considering his objections, if any. Sub-section (2) of Section 59-B provides that in the event a person against whom an order of confiscation has been initiated proves to the satisfaction of the authorized officer that tool, rope or vehicle etc. was used in carrying the timber or other forest-produce without the knowledge or connivance of the owner himself or his agent, if any, or the person in charge thereof and that each of them had taken all reasonable and necessary precautions against such use, no order confiscating the same shall be made. Section 59-C provides for a revision. Section 59-D provides for an appeal against such order to the District Judge having jurisdiction over the area in which the property and the tools etc. have been seized against an order of confiscation. The District Judge after giving the appellant and the officer who passed the order an opportunity of being heard, may pass an order confirming, modifying or annulling the order appeal against. Sub-section (2) of Section 59-D attaches finality to the order passed by the District Judge and further provides that the same shall not be called in question in any court. Section 59-F provides that the confiscated property and proceeds of sale shall vest in the Government. Section 59-G of the Act creates a bar on the jurisdiction of court in certain cases, which is in the following terms :

“59-G. Bar of jurisdiction in certain cases. - Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, the officer authorized under Section 59-A or the Forest officer specially empowered under Section 59-C or the District Judge to whom an appeal may be preferred under Section 59-D shall have and any other officer or Forest Officer or court, tribunal or authority shall not have jurisdiction to make orders with regard to the custody,

A possession, delivery, disposal or distribution of any property or tools, ropes, chains, boats, vehicles or cattle seized under Section 52”

Sections 67 and 68 read as under :-

B “67. Power to try offences summarily. - The District Magistrate or any Magistrate of the first class specially empowered in this behalf by the State Government may try summarily, under the Code of Criminal Procedure, 1898 (5 of 1898), any forest-offence punishable with imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or both.

C 68. Power to compound offences.-(1) The State Government may, by notification in the Official Gazette, empower a Forest Officer -

D (a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than an offence specified in Section 62 or Section 63, a sum of money by way of compensation for the offence which such person is suspected to have committed, and

(b) when any property has been sized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

E (2) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

F (3) A Forest Officer shall not be empowered under this section unless he is a Forest Officer of a rank not inferior to that of a Ranger and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the sum of fifty rupees.”

G ANALYSIS :

H The provisions of law referred to hereinbefore leave no manner of doubt that upon seizure of forest produce, timber or vehicles etc. the concerned authority has an option to report the factum of such seizure both to the concerned Magistrate as also the authorized officer, save and except in the cases which would fall within the purview of the proviso appended to sub-

section (2) of Section 52 of the Act, as amended by the State of West Bengal. A
The report in relation to such seizure is required to be made either for : (1)
confiscation of the seized property; (2) prosecution of the offender; or (3) for
both.

The legislature has inserted the aforementioned provisions with a B
laudable object. Forest is a national wealth which is required to be preserved.
In most of the cases, the State is the owner of the forests and forest-produce.
Depletion of forests would lead to ecological imbalance. It is now well-
settled that the State is enjoined with a duty to preserve the forests so as to
maintain ecological balance and, thus, with a view to achieve the said object
forests must be given due protection. Statutes which provide for protection C
of forests to maintain ecological balance should receive liberal construction
at the hands of the superior courts. Interpretive exercise of such power should
be in consonance with the provisions of such statutes not only having regard
to the principle of purposive construction so as to give effect to the aim and
object of the legislature; keeping the principles contained in Article 48-A and
51-A(g) of the Constitution of India in mind. The provisions for confiscation D
have been made as a deterrent object so that felling of trees and deforestation
is not made.

In *Indian Handicrafts Emporium and Ors. v. Union of India and Ors.*, E
[2003] 7 SCC 589, this Court was dealing with a situation where initially
'ivory' was legally imported, but the trade or possession thereof became
subsequently barred by amendment made in the Wild Life (Protection) Act
except for *bona fide* personal use. By reason of the provisions of the said
Act, however, such imported ivory did not vest in the Government. This
Court despite aforementioned situation applying the rule of purposive
construction so as to give effect to the intent and purport of the statute held: F

"A trader in terms of a statute is prohibited from carrying on trade.
He also cannot remain in control over the animal article. The logical
consequence wherefor would be that he must be deprived of the
possession thereof. The possession of the animal article including G
imported ivory must, therefore, be handed over to the competent
authority. In a case of this nature where a statute has been enacted in
public interest, restriction in the matter of possession of the property
must be held to be implicit. If Section 49(7) is not so construed, it
cannot be given effect to.

We, therefore, are of the opinion that the appellants have no right H

A to possess the articles in question. Keeping in view of the fact that the provisions of the statute have been held to be *intra vires* the question of compensating the appellants would not arise as vesting of possession thereof in the State must be inferred by necessary implication.”

B In *Balram Kumawat v. Union of India and Ors.*, [2003] 7 SCC 628, this Court applied the dictionary meaning to the term ‘ivory’ to hold that even ‘mammoth ivory’ will come within the purview thereof holding that the ‘rule of strict construction’ of a regulatory/penal statute may not be adhered to, if thereby the plain intention of the Parliament to combat crimes of special nature would be defeated.

C Recently, a Division Bench of this Court (of which one of us Raju, J. is a member) in *The State of Bihar and Anr. v. Kedar Sao and Anr.*, [2003] 6 SCALE 639] observed that the provision of seizure and its procedure for the property liable for confiscation as contained in Section 52 of the Indian Forest Act as amended by Bihar Amendment Act No.9 of 1990 were made
D having regard to the fact that not only the commission of forest offences are on the increase but rampant acts 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, were taking place and the States, therefore, had to take such drastic legislative measures with a view to prevent commission of such
E offences.

This Court, however, is not oblivious of the fact that whereas the courts must give purposive construction to the provisions of such statutes which have been framed in public interest keeping in view the object thereof, but it must also be borne in mind that illegal seizure amounts to deprivation of
F property and by reason of an order of confiscation, the owner thereof is deprived of his right of property as contained in Article 300-A of the Constitution of India. The rights of the parties are, therefore, required to be delicately balanced.

G An order of confiscation of forest-produce in a proceeding under Section 59-A of the Act would not amount either to penalty or punishment. Such an order, however, can be passed only in the event a valid seizure is made and the authorized officer satisfies himself as regard ownership of the forest-produce in the State as also commission of a forest-offence. An order of confiscation is not to be passed automatically, and in terms of sub-section (3)
H of Section 59-A a discretionary power has been conferred upon the authorized

officer in relation to a vehicle. Apart from the ingredients which are required to be proved in terms of sub-section (3) of Section 59-A by reason of the proviso appended to Section 59-B, a notice is also required to be issued to the owner of the vehicle and furthermore in terms of sub-section (2) thereof an opportunity has to be granted to the owner of the vehicle so as to enable him to show that the same has been used in carrying forest- produce without his knowledge or connivance and by necessary implication precautions therefor has been taken.

Against an order of confiscation, an appeal is provided and only an order of the appellate court, who is a judicial officer becomes final and binding but attaching finality to an order of the appellate court would not preclude a person aggrieved to move the High Court in judicial review.

Sufficient safeguards both substantive and procedural have, thus, been made against an arbitrary exercise of power.

The question as regard the power of the High Court to release a vehicle in exercise of its power under Section 482 of the Code of Criminal Procedure is required to be considered having regard to the aforementioned aspects in view.

Authorized officers under the Act have been granted a wide discretion as regard choosing any of the three courses of action but exercise thereof would have a direct bearing to the nature of offence. The provisions of the Indian Forest Act and the amendments carried out in the provisions thereof by the State of West Bengal, as noticed hereinbefore, point out to the said discretionary power conferred upon the concerned authorities in this behalf. Only in a case where the forest authorities intend to proceed against an offender both for confiscation of the property as also for his prosecution; except in the cases which are covered by the proviso appended to sub-section (2) of Section 52 of the Act, report of seizure is required to be made both to the Magistrate as also to the authorised officer.

The said authority before passing a final order in terms of Section 59-A (3) of the Act is required to issue notice and give opportunity of hearing to the parties concerned. Unless such a notice is issued, the confiscation proceeding cannot be said to have started. Once, however, a confiscation proceeding is initiated; in terms of Section 59-G of the Act, the jurisdiction of the criminal court in this behalf stands excluded. The criminal court although

A indisputably has the jurisdiction to deal with the property which is the subject-matter of offence in terms of the provisions of the Code of Criminal Procedure but once a confiscation proceeding is initiated, the said power cannot be exercised by the Magistrate.

B The High Court cannot, thus, in such a situation exercise its jurisdiction under Section 482 of the Code of Criminal Procedure. The said provisions reads thus :

C “482. Saving of inherent power of High Court. - Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

D From a bare perusal of the aforementioned provision, it would be evident that the inherent power of the High Court is saved only in a case where an order has been passed by the criminal court which is required to be set aside to secure the ends of justice or where the proceeding pending before a court amounts to abuse of the process of court. It is, therefore, evident that power under Section 482 of the Code can be exercised by the High Court in relation to a matter pending before a court; which in the context of Code of Criminal Procedure would mean ‘a criminal court’ or whence a power is exercised by the court under the Code of Criminal procedure. Once it is held that the criminal court had no power to deal with the property seized under the Act, the question of the High Court’s exercising its jurisdiction under Section 482 of the Code of Criminal Procedure would not arise.

F The amendments carried out by the State of West Bengal by reason of Sections 59-A to 59-G in the Indian Forests Act provide for a complete Code. The validity or otherwise of the said provisions is not in question before us. An order of confiscation in respect of a property must be distinguished from an order of forfeiture thereof. Although the effect of both confiscation and forfeiture of a property may be the same, namely that the property would vest in the State but the nature of such order having regard to the statutory scheme must be held to be different. A proceeding for confiscation can be initiated irrespective of the fact that as to whether prosecution for commission of a forest offence has been lodged or not. A confiscation proceeding, therefore, is independent of a criminal proceeding. We may also notice that the State has been made liable to refund the amount which has been deposited pursuant

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to an auction held in respect of the confiscated property only in the event the order of confiscation is set aside or annulled under Section 59-A(4)(b) thereof. No provision has been made in the statute unlike Section 6-C of the Essential Commodities Act, 1955 to the effect that the confiscated property or the amount deposited in the treasury pursuant to the auction of the confiscated goods would be returned to the owner thereof in the event, the criminal trial ends in an acquittal.

This Court, in this case, is not concerned with the effect of acquittal *vis-à-vis* a confiscation proceeding. There may be a case where a judgment of acquittal has been rendered not on merit of the matter but by way of giving benefit of doubt or for certain reasons unrelated to the adjudication on merits as for example dropping of the proceeding as the prosecution witnesses did not turn up despite service of summons.

This court in *Sudhakar Rao* (supra), we may note, however, approved the decision of a Division Bench of the Andhra Pradesh High Court in *Mohd. Yaseen v. Forest Range Officer, Flying Squad, Rayachoti*, (1980) 1 ALT 8 stating :

“14. We find that a later Division Bench consisting of Kondaiah, C.J. and Punnayya, J. in *Mohd. Yaseen v. Forest Range Officer, Flying Squad, Rayachoti*, (1980) 1 Andh LT 8 approved of the view expressed by Jeewan Reddy, J. in *P.K. Mohammad's* case, (supra), and held that the Act contemplates two procedures, one for confiscation of goods forming the subject-matter of the offence by the Authorized Officer under sub-s. (2A) of S. 44 of the Act, and the other for trial of the person accused of the offence so committed under S. 20 or 29 of the Act. The learned Judges held that the Act provides for a special machinery for confiscation of illicitly felled timber or forest produce by the Authorized Officer under sub-s. (2A) of S. 44 enacted in the general public interest to suppress the mischief of ruthless exploitation of Government forests by illicit felling and removal of teak and other valuable forest produce. They further held that merely because there was an acquittal of the accused in the trial before the Magistrate due to paucity of evidence or otherwise did not necessarily entail in nullifying the order of confiscation of the seized timber or forest produce by the Authorized Officer under sub-s. (2A) of S. 44 of the Act based on his satisfaction that a forest offence had been committed in respect thereof. We affirm the view expressed by Jeewan Reddy,

A J. in *P.K. Mohammad's case* and by Kondaiah, C.J. and Punnayya, J. in *Mohd. Yaseen's case*.”

In *State of West Bengal v. Gopal Sarkar*, [2002] 1 SCC 495, this Court followed *Sudhakar Rao* (supra) and on construction of sub-section (3) of Section 59-A held :

B “On a fair reading of the provision it is clear that in a case where any
C 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.....*”

[Emphasis supplied]

D Yet again, in *State of Karnataka v. K.A. Kunchindammed*, [2002] 9
SCC 90, this Court observed that even the expression ‘sandalwood’ as
contained in the Karnataka Forest Act, 1963 would include ‘sandalwood oil’.
This court in no uncertain terms held :

E “The Karnataka Forest Act is a special statute enacted for the
purpose of preserving the forests and the forest produce in the State.
F The Scheme of the Act, as expressed in the Sections, is to vest power
in the authorised officers of the Forest Department for proper
implementation/enforcement of the statutory provisions and for
enabling them to take effective steps for preserving the forests and
forest produce. For this purpose certain powers including the power
of seizure, confiscation and forfeiture of the forest produce illegally
removed from the forests have been vested exclusively in them. The
G position is made clear by the *non obstante* clause in the relevant
provisions giving overriding effect to the provisions in the Act over
other statutes and laws. The necessary corollary of such provisions is
that in a case where the authorised officer is empowered to confiscate
the seized forest produce on being satisfied that an offence under the
Act has been committed thereof the general power vested in the
Magistrate for dealing with interim custody/release of the seized
H materials under the Cr. P.C. has to give way. The Magistrate while

dealing with a case of any seizure of forest produce under the Act should examine whether the power to confiscate the seized forest produce is vested in the authorised officer under the Act and if he finds that such power is vested in the authorised officer then he has no power to pass an order dealing with interim custody/release of the seized material. This, in our view, will help in proper implementation of provisions of the special Act and will help in advancing the purpose and object of the statute. If in such cases power to grant interim custody/release of the seized forest produce is vested in the Magistrate then it will be defeating the very scheme of the Act. Such a consequence is to be avoided.

From the statutory provisions and the analysis made in the foregoing paragraphs the position that emerges is that the learned Magistrate and the learned Sessions Judge were right in holding that on facts and in the circumstances of the case it is the authorised officer who is vested with the power to pass order of interim custody of the vehicle and not the Magistrate. The High Court was in error in taking a view to the contrary and in setting aside the orders passed by the Magistrate and the Sessions Judge on that basis.”

We may notice that despite the fact that under the Karnataka Act, the criminal court is not denuded of its power to pass an order releasing the property as would be evident in *K.A. Kunchindammed* (supra), this Court in *Section Forester and Anr. v. Mansur Ali Khan*, JT (2003) 10 SC 390, following the decision in *State of Karnataka v. K. Krishnan*, JT (2000) 9 SC 356, held:

“6. While in regard to the power of the High Court to release the vehicle in a given set of facts cannot be disputed, this Court as noticed by the High Court itself has laid down that such power can be exercised for good reasons and in exceptional cases only. In the instant case, the only reason given by the High Court for the release of the vehicle is on the ground that same was in the custody of the officers for more than one year and there was no likelihood of immediate disposal of the pending case. This by itself, in our opinion would not be a ground for the release of the vehicle because this would be the case in almost all such cases involving forest offence. In exceptional cases the Act itself has made a provision for interim release of the vehicle on the existence of certain conditions mentioned therein. In the absence of such conditions being fulfilled, we do not think that the High Court as a matter of course could pass mechanical orders releasing such

A vehicles.

7. Taking into consideration the object of the Forest Act and other relevant considerations, this Court in the above said case of *State of Karnataka v. K. Krishnan* (supra) while allowing the said appeal held:

B “The courts cannot shut their eyes and ignore their obligations
C indicated in the Act enacted for the purpose of protecting and
D safeguarding both the forests and their produce. The forests are
E 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
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.”

F 8. From the above dictum of this Court, we find when a vehicle is
involved in a forest offence the same is not to be released to the
offender or the claimant as a matter of routine till the culmination of
the proceedings which may include confiscation of such vehicle.”

G In *Shambhu Dayal Agarwala v. State of West Bengal and Anr.*, [1990]
3 SCC 549, this Court interpreting sub-section (2) of Section 6A of the
Essential Commodities Act *vis-à-vis* Section 6E thereof, held that there could
be no question of releasing the commodity in the sense of returning it to the
owner or person from whom it was seized even before the proceeding for
confiscation stood completed and before the termination of the prosecution
in the acquittal of the offender. This Court observed that such a view would
render clause (b) of Section 7(1) totally nugatory. It was opined :

H “...It seems to us that Section 6-E is intended to serve a dual purpose,
namely (i) to prevent interference by courts, etc., and (ii) to effectuate

the sale of the essential commodity under sub-section (2) and the return of the animal, vehicle, etc., under the second proviso to sub section (1) of Section 6-A. In that sense Section 6-E is complementary in nature..."

[See also *Deputy Commissioner, Dakshina Kannada District v. Rudolph Fernandes*, [2000] 3 SCC 306.

In view of the aforementioned binding precedents, we are of the opinion that the High Court exceeded its jurisdiction in releasing the vehicles in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure.

In view of our findings aforementioned, the contention of the learned counsel that this Court may not exercise its jurisdiction under Article 136 of the Constitution of India having regard to the purported findings of the criminal court, will have to be judged. As indicated hereinbefore, there exists a distinction between confiscation and conviction.

A confiscation envisages a civil liability whereas an order of forfeiture of the forest-produce must be preceded by a judgment of conviction. Although indisputably having regard to the phraseology used in sub-section (2) of Section 59-A, there cannot be any doubt whatsoever that commission of a forest offence is one of the requisite ingredients for passing an order of confiscation; but the question as to whether the order of acquittal has been passed on that ground and what weight should be attached thereto is a matter which, in our opinion, should not be gone into at this stage.

So far as the submission of Mr. Ghosh in Criminal Appeal No.453 of 1997 is concerned, it appears, the District Judge while exercising his appellate power had set aside the order of confiscation on the ground that the notice issued to the respondent herein was invalid in law, leaving at the same time and directing also the Authorized Officer and Divisional Forest Officer West Midnapore Division to decide the matter afresh in accordance with law. Consequently, the right of the Authorized Officer is not foreclosed to claim for the respondent that no action can be taken further in this regard.

Yet again a valid proceeding for confiscation of the vehicle can be initiated only upon issuance of a proper notice and whereafter an order of confiscation can be passed in accordance with law.

A The upshot of our aforementioned discussion is that once a confiscation proceeding is initiated the jurisdiction of the criminal court in terms of Section 59-G of the Act being barred, the High Court also cannot exercise its jurisdiction under Section 482 of the Code of Criminal Procedure for interim release of the property. The High Court can exercise such a power only in exercise of its power of judicial review.

B For the foregoing reasons, the impugned judgment cannot be sustained which is set aside accordingly. It, however, goes without saying that it will be open to the parties to take such objections in the proceedings relating to confiscation as are permissible in law. These appeals are allowed.

C V.S.S. Appeals allowed.