

STATE OF HIMACHAL PRADESH

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v.

DHANWANT SINGH

FEBRUARY 12, 2004

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

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*Code of Criminal Procedure, 1973/Constitution of India, 1950—Sections 482 and 401/Article 227—Exercise of powers under Section 482 and Article 227—Scope of—Order of confiscation of vehicle—Appeal under Section 59(2)—Disposed of holding that Authorised Officer has no jurisdiction to pass order since it was not claimed that property belongs to State—Revision—High Court holding that as finality attached to the order passed in appeal, revision not maintainable and also as order of trial court not wrong there was no scope to exercise powers under Section 482 Cr.P.C. and Article 227—On appeal, held: As finality attached to the order passed in appeal, Section 482 cannot be invoked but it is not an impediment to deal with revision under Article 227 and cannot take away the constitutional right—Furthermore, High Court should examine question of presumption regarding ownership of property by State, available under Section 69—Hence, order of High Court with regard to non-exercise of powers under Article 227 set aside—Forest Act, 1927 (as amended by Himachal Pradesh Second Amendment)—Sections 59(2) and 69.*

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Police intercepted a truck and the person who claimed to be the owner of the articles therein could not produce the necessary export permit. The articles were seized and later on the Forest Officer passed an order of confiscation of the truck. Respondent filed an appeal under Section 59(2) of the Forest Act, 1927 (as amended). Appeal was disposed of holding that since offence was committed in respect of property, which according to the Appellate Judge was not claimed to be State's property despite the statutory presumption that forest produce being the properties of State, Authorized Officer had no jurisdiction to pass the order. Appellant-State filed revision under Sections 397, 401 read with 482 Cr. P.C. High Court accepting the submission that the Amendment Act attached finality to the order passed in appeal under Section 59(2) of the Act held that revision was not maintainable. It further held that as the order of Additional Sessions Judge was not wrong in any manner, there is no scope of exercise of powers under Section 482 Cr.P.C. or Article 227

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A of Constitution. Hence the present appeals.

B Appellant contended that the High Court without even indicating as to why it did not consider this to be a fit case by exercise of power under Section 482 of the Code or Article 227 of the Constitution, in a summary manner held that the order of the trial Court did not suffer from any illegality or irregularity; that the trial Court proceeded on erroneous basis as if there was no dispute or claim made that the property belonged to the State; and that the presumption regarding the ownership of the property by the State available under Section 69 of the Forest Act was completely overlooked.

C Partly allowing the appeals, the Court

D HELD: 1. In the light of the specific stipulation in Section 59(3) of the Forest Act, 1927 (as amended), not only mere finality has been accorded to the order passed under Section 59(2) but the legislative mandate also further stated that "shall not be questioned in any Court of Law", it may not be permissible to invoke Section 482 of the Code, the same cannot be an impediment to deal with the revision as one under Article 227 of the Constitution. [301-E-F]

E 1.2. In so far as the statutes providing for finality of the order or decision passed or rendered in accordance with the provisions of the statutes are concerned, it may be stated that it is well settled that such a statutory provision cannot take away the constitutional right given by Articles 32, 226 and 227 of the Constitution. [301-G]

F *Lila Vati v. State of Bombay*, AIR (1957) SC 521 and *Union of India v. A.V. Narasimhalu*, [1969] 2 SCC 658, referred to.

G 1.3. The question which was required to be adjudicated was whether the presumption under Section 69 of the Act was to be pressed into service. The very action of the Department is on the hypothesis of the property belonging to the Government, in view of the statutory presumptions and there is no need for making any separate claim or claims petition separately. This certainly is not a frivolous question. High Court was required to consider the issue in the proper perspective. It was not justified in the conclusion that no case for examination was made out. [302-F, G]

H 1.4. The judgment of the High Court so far as it relates to non-exercise of powers available under Article 227 of the Constitution is set

aside. High Court shall entertain the proceedings as a petition under Article 227 and consider the question about applicability of Section 69 of the Act. [302-H; 303-A] A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1228 of 1997. B

From the Judgment and dated 7.11.96 of the Himachal Pradesh High Court in Crl. R. No. 30 of 1994.

WITH

Crl.A. No. 217 of 2004. C

J.S. Attri for the Appellant.

The Judgment of Court was delivered by

**ARIJIT PASAYAT, J.** The State of Himachal Pradesh questions legality of the judgment rendered by learned Single Judge of the Himachal Pradesh High Court holding that the petition filed by the State for revision under Section 397, 401 read with Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') was not maintainable. The said petition was directed against judgment dated 13.12.1993 of learned Additional Sessions Judge, Solan, in an appeal under Section 59(2) of the Indian Forest Act, 1927 (in short the 'Act') as amended by the Indian Forest Act (Himachal Pradesh Second Amendment) Act, 1991, (hereinafter referred to as 'Amendment Act') as applicable to the State of Himachal Pradesh. The High Court by the impugned judgment held that the revision was not maintainable. Additionally, it was held that whether powers under Section 482 of the Code and Article 227 of the Constitution of India, 1950 (in short 'the Constitution'), could be exercised need not be gone into as this is not a fit case where the power required to be so exercised. D E F

Background facts giving rise to the present dispute essentially are as follows: G

On 12.10.1992, the Station House Officer, Nalagarh intercepted a truck bearing No. HIA-6947 at about 7.45 a.m. near the sale depot of Himachal Pradesh Forest Corporation on Nalagarh Ram Shehar road. On search being carried out, 252 tins of resin were found being transported in the said truck. Out of the quantity found on search, 186 tins of resin bore the mark "MR- H

A 92" while 56 tins bore the mark "X". One Mast Ram who was traveling in the truck claimed that the tins belonged to him. On being required to produce the necessary export permit with regard to the articles, he failed to do so. Consequently, 252 tins of resin along with the truck were seized. Since forest offence was believed to have been committed in respect of the seized articles, which was considered to be the property of the State Government, a report

B to the Forest Officer Nalagarh was made. On receipt of the report, the Authorised Officer issued notice to Mast Ram who claimed to be the owner of articles and Harcharan Singh, and Dhanwant Singh driver and owner of the truck respectively. The owner of the truck i.e. the present respondent submitted that no resin was carried and transported in his truck. In view of

C the materials on record and evidence led by the parties the Authorised Officer passed an order directing confiscation of the truck. The said order was assailed before the Additional Sessions Judge, Solan by way of an appeal. The appeal was disposed of by judgment dated 13.12.1993. It was held that order of the Authorised Officer was without jurisdiction. For arriving at such conclusion,

D learned Additional Sessions Judge was of the view that since offence was committed in respect of property, which according to the Appellate Judge was not claimed to be State's property despite the indisputable fact that there is a statutory presumption, as to such properties - forest produce being the properties of the State, the Authorized Officer had no jurisdiction to pass the order. A revision was filed before the High Court. The respondent took

E preliminary objection to the maintainability of the revision application on the ground that the order passed by learned Additional Sessions Judge in appeal under Section 59(2) was final in terms of the Amendment Act. It was pointed out that by Amendment Act certain amendments were carried out in the Act in its application to the State of Himachal Pradesh. By virtue of the Amendment

F Act Sections 52 (A) and (B) were inserted in the Act, so far as its application to the State of Himachal Pradesh are concerned w.e.f 9.7.1991. Section 59 of the Act was also amended by insertion of sub-sections (2) and (3) thereto. Two new Sections, namely, 59 (A) and (B) were also inserted. With reference to these provisions, more particularly, with reference to Section 59(B) it was submitted that the Amendment Act attached finality to the order passed by

G the Sessions Judge in appeal under Section 59(2). The High Court accepted the submission and held that the revision application was not maintainable. An alternative plea appears to have been advanced before the High Court which was to the effect that even if it is conceded for the sake of argument that revision was not maintainable, yet inherent powers under Section 482 of the Code and/or power of superintendence under Article 227 of the Constitution

H was available. The High Court held that these powers though could be

exercised, as no case is made out therefor there is no scope to do so in the case. It was further held that the order of learned Additional Sessions Judge was not wrong in any manner and did not suffer from any material illegality or irregularity to warrant exercise of jurisdiction under Section 482 of the Code or Article 227 of the Constitution. A

In support of the appeal, learned counsel appearing for the State of Himachal Pradesh submitted that the approach of the High Court was wrong. The statutory presumption regarding the ownership of the property by the State was available in terms of Section 69 of the Act. The Trial Court proceeded on erroneous basis as if there was no dispute or claim made that the property belonged to the State. The presumption available under Section 69 was completely overlooked. In any event, this is a matter which required to be examined and the High Court without even indicting as to why it did not consider this to be a fit case by exercise of power under Section 482 of the Code or Article 227 of the Constitution, in a summary manner held that the order of the Trial Court did not suffer from any illegality or irregularity. There is no response on behalf of respondent in spite of the service of notice. Since learned counsel for the appellant did not question the conclusion of the High Court that the revision before it was not maintainable, we need not consider this aspect, though on a reading of the relevant provisions the view of the High Court appears to be correct. B C D

The only question which needs to be adjudicated is whether the High Court could have exercised power under Section 482 of the Code or Article 227 of the Constitution. It is to be noted that the High Court did not specifically examine whether it could exercise the powers under the aforesaid provisions, but did not do so on the ground that case for interference was not made out. Though in the light of the specific stipulation in Section 59(3), not only mere finality has been accorded to the order passed under Section 59(2) but the legislative mandate also further stated that "shall not be questioned in any Court of Law", it may not be permissible to invoke Section 482 of the Code, the same cannot be an impediment to deal with the revision as one under Article 227 of the Constitution of India. E F

In so far as the statutes providing for finality of the order or decision passed or rendered in accordance with the provisions of the statutes are concerned, it may be stated that it is well settled that such a statutory provision cannot take away the constitutional right given by Articles 32, 226 and 227 of the Constitution. In this connection, reference may be made to what was G H

A observed in para 10 of *Lila Vati v. State of Bombay*, AIR (1957) SC 521. After referring to the provision in Sections 5 and 6 of the concerned Act stating that the determination in question by the State Government shall be conclusive evidence of the declaration so made, it was stated that it did not mean that the jurisdiction of the High Court under Article 226 or of the Supreme Court under Article 32 or on appeal had been impaired. It was also pointed out that in a proper case these Courts in the exercise of their special jurisdiction under the Constitution have the power to determine how far the provisions of the statutes have or have not been complied with in arriving at the determination in question.

C The following view expressed in *Union of India v. A.V. Narasimhalu*, [1969] 2 SCC 658 at p. 662 may also be noted:

D “But the exclusion of the jurisdiction of the civil court to entertain a suit does not exclude the jurisdiction of the High Court to issue high prerogative writs against illegal exercise of authority by administrative or quasi judicial tribunals. The finality which may be declared by the statute *qua* certain liability either by express exclusion of the jurisdiction of the civil court or by clear implication does not affect the jurisdiction of the High Court to issue high prerogative writs.”

E The High Court did not examine the various submissions made, more particularly, with regard to the presumption available to be drawn under Section 69 of the Act. The omission on the part of the Appellate Judge under the Act is a serious error at least necessitating the High Court to consider the correctness or otherwise of the stand taken for the department on merits. The Trial Court proceeded on the basis that there was no claim that the property belonged to the State. On a bare reading of the judgment itself shows that when the articles were seized, the person who accompanied the goods and was traveling in the truck was required to produce permit to show legitimacy of his possession. He could not do it. In that background, the question which was required to be adjudicated was whether the presumption under Section 69 was to be pressed into service. The very action of the Department is on the hypothesis of the property belonging to the Government, in view of the statutory presumptions and there is no need for making any separate claim or claims petition separately. This certainly is not a frivolous question and the High Court was required to consider the issue in the proper perspective. The High Court was not justified in its conclusion that no case for examination was made out.

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Accordingly, we set aside the judgment of the High Court so far as it relates to non-exercise of powers available under Article 227 of the Constitution. The High Court shall entertain the proceedings as a petition under Article 227 of the Constitution of India and consider the question in the background of stand taken by the State about applicability of Section 69 of the Act, and record its findings objectively on merits and in accordance with law after hearing both parties. A B

Appeal is partly allowed to the aforesaid extent.

Criminal Appeal No. 217 of 2004.

Arijit Pasayat, J. Leave granted. C

The judgment delivered in Criminal Appeal No. 1228 of 1997 shall govern this appeal also and the directions therein shall operate so far as this appeal is concerned.

Appeal is disposed of accordingly.

N.J.

Appeals partly allowed.