



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 5472/2022

Sahun S/o Sh. Jameel Khan, Aged About 27 Years, B/c
Mohammedan R/o Nibhana Vill. Gwalda Tehsil Tijara P.S.
Chaupanki Bhiwadi Dist. Alwar Raj.

-----Petitioner

Versus

State Of Rajasthan, Through Public Prosecutor.

-----Respondent

For Petitioner(s) : Mr. Dinesh Kumar

For Respondent(s) : Mr. S.K. Bhati, Public Prosecutor

JUSTICE DINESH MEHTA

Order

27/09/2022

Reportable

1. By way of the present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') the petitioner has challenged order dated 29.04.2022 (hereinafter referred to as the 'Impugned Order'), passed by learned Special Judge (SC/ST (Prevention of Atrocities Cases), Udaipur, (hereinafter referred to as the 'Revisional Authority') whereby, the order dated 08.03.2022, passed by the Divisional Chief Conservator of Forest, Udaipur (hereinafter referred to as the 'Appellate Authority'), dismissing petitioner's appeal against the order of confiscation dated 29.11.2021 passed by learned Assistant Conservator of Forest, Udaipur (hereinafter referred to as the 'Authorised Officer') has been upheld.

2. Precisely narrated the facts appertain are that on 29.04.2021, at or around 8:15 am, the Police Authority was



informed that a truck bearing number RJ-14-GG-7655 (hereinafter referred to as the 'Confiscated Truck') is carrying Khair wood illetally from Kherwada to Udaipur. Accordingly, the Police intercepted and seized the truck which was being driven by one Shabbir s/o Bashir Khan. An FIR bearing number 70/2021 dated 29.04.2021, alleging offences under sections 41 and 42 of the Rajasthan Forest Act, 1953 (hereinafter referred to as the 'Act of 1953') and section 379 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') came to be registered.

3. On receipt of information about said FIR, a case bearing no. 09/2021 came to be registered by the Authorised Officer for taking up proceedings of confiscation of the truck and goods. The learned Special Additional Judge and Judicial Magistrate (P.C.P.N.D.T.) Sarada, Udaipur was sent an intimation vide letter No.115 dated 25.08.2021 about initiation of confiscation proceedings.

4. In the proceedings for confiscation, the accused and driver of the Confiscated Truck, deposed that while he was having his food at a Dhaba on Gujarat-Rajasthan Border, a man approached him and requested to transport timber to Haryana from his field for transportation charges of Rs. 70,000/-. He informed that he was totally unaware of the nature of wood/timber and that it required a license to transport the same.

5. The driver admitted his fault of carrying the timber without the requisite license but not of offences under the Act of 1953. The owner of the Confiscated Truck stated that he was unaware that the transportation of the Khair wood was illegal and came to know of the alleged crime, when the police seized the truck.



6. The Authorised Officer however, passed an order for confiscation of the vehicle noting therein that though the Confiscated Truck was used for commission of offences under sections 41 and 42 of the Act of 1953, but the same was without the knowledge or connivance of the registered owner of the vehicle. Notwithstanding such conclusion, the seized timber and the subject vehicle carrying it came to be confiscated by way of order dated 29.11.2021. The reason for such confiscation as indicated in the order dated 29.11.2021 was, that number of commission of such offences are increasing and such illegal transportation/trade of wood is adversely affecting environment.

7. The registered owner of the vehicle preferred an appeal before the Chief Conservator of Forest - the Appellate Authority which dismissed the appeal the Authorised Officer. Against the order of the Appellate Authority a revision under Section 52 B of the Act of 1953 was preferred before the Revisional Authority, which too dismissed the revision petition holding that no error of law has been pointed out by the petitioner and that the factual submissions made before the Revisional Authority are to be scrutinised by the Court in the main case.

8. Hence, the present petition.

9. Learned Counsel for the petitioner submitted that the order for confiscation has been passed without conclusion of the trial of the offence or conviction of the accused, hence, the same be set aside.

10. Per contra, learned Public Prosecutor submitted that the present petition is not maintainable in light of the statutory bar contained in section 52B(5) of the Act of 1953. In a bid to lend



support to such contention, learned public Prosecutor cited the judgment rendered by Hon'ble the Supreme Court in the case of ***State of Madhya Pradesh vs. Uday Singh*** being ***Criminal Appeal No. 524 of 2019 @ SLP (Crl) No. 2001 of 2012***.

11. Heard rival counsel and perused the material available on record.

12. Before delving into the legality and propriety of the Impugned Order it would be appropriate to outline the scheme of the Act of 1953, for which, the relevant sections thereof are reproduced hereinunder:

"42. Penalty for breach of rules made under Section 41. - (1) Any person who contravenes the provisions of the rules made under Section 41 of this Act shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to twenty five thousand rupees or with both.

(2) In case where the offence under sub-section (1) is committed after sunset and before sunrise or after preparation for resistance to lawful authority or where the offender has been previously convicted of a like offence, the penalties shall be double of those mentioned in sub-section (1).

Emphasis Supplied

52. Seizure of property liable to 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 machinery, arms, tools, boats, cattle, vehicle, ropes, chains or any other article used in committing any such offence, may be seized by any Forest Officer or a Police Officer not below the rank of a head constable.

...
(3) Subject to sub-section (5), where the authorised 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 with all machinery, arms, tools, boats, cattle, vehicle, ropes, chains or any other article used in committing such offence. A copy of order of confiscation shall be forwarded without any undue delay to the Chief Conservator of Forests of the region in which the forest produce has been seized.

(4) No order confiscating any property shall be made under sub-section (3) unless the authorised officer-

(a) sends an intimation in prescribed form 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 is seized, and to any other person who may appear to the authorised 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

(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 purpose.





(5) No order of confiscation under sub-section (3) of any machinery, arms, tools, boats, cattle, vehicle, ropes, chains or any other article (other than timber or forest produce seized) shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorised officer that any such machinery, arms, tools, boats, cattle, vehicle, ropes, chains or any other article were used without his knowledge or connivance or as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of objects aforesaid for commission of forest offence.

Emphasis Supplied

52A. Appeal against order of confiscation. - (1) Any person aggrieved by an order of confiscation may, within thirty days of the order, or if fact of such order has not been communicated to him, within thirty days of date of knowledge of such order, prefer an appeal in writing, accompanied by such fee and payable in such form as may be prescribed and by certified copy of order of confiscation, to the Chief Conservator of Forests (hereinafter in this Chapter referred to as the Appellate Authority) of the forest region in which the forest produce has been seized....

Emphasis Supplied

52B. Revision before Court of Sessions against order of Appellate Authority. - (1) Any party to the appeal, aggrieved by final order or by order of consequential nature passed by the Appellate Authority, may within thirty days of the order sought to be impugned, submit a petition for revision to the Court of Sessions within the Sessions division whereof the headquarters of the Appellate Authority are situate.

...

(4) For entertaining, hearing and deciding a revision under this section, the Court of Sessions shall, as far as may be, exercise the same powers and follow the same procedure as it exercises and follows while entertaining, hearing and deciding a revision under the Code of Criminal Procedure, 1973 (Central Act No. 2 of 1974).

(5) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (Central Act No. 2 of 1974), the order of the Court of Sessions passed under this section shall be final and shall not be called in question before any Court.

Emphasis Supplied

52C. Bar to jurisdiction of Court, etc. under 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 authorised officer, the Appellate Authority and the Court of Sessions referred to in Secs. 52, 52-A and 52-B), 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 under Section 52, notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force.

...

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

Emphasis Supplied

55. Forest produce, tools etc. when liable to confiscation. - (1) All timber or forest produce which is not the property of State Government and in respect of which a forest offence has been committed, and all machinery, arms, tools, boats, cattle, vehicle, ropes, chains or any other article used in committing any forest offence, shall, subject to the provisions of Sections 52, 52-A, 52-B and 52-C be liable to confiscation upon conviction of the offender for such forest offence.





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

Emphasis Supplied "

13. A perusal of the provisions aforesaid reveals that where an offence under the Act of 1953 is found to be committed, then the Court of competent jurisdiction upon a verdict of conviction, may sentence the convict to 6 months' imprisonment with fine. In addition to the sentence, the produce and items used in commission of the offence under the Act of 1953 can be confiscated and disposed of in the manner provided by the Act of 1953 by an officer authorised under the Act of 1953. It is noteworthy that the authority to determine the guilt of the accused is Magistrate of First Class whereas the authority ordering the confiscation is a duly authorised forest officer.

14. The order of confiscation at the very first instance is passed by the Authorised officer, the appeal whereof lies before the Appellate Authority and then, a revision can be preferred against such order of the Appellate Authority. The order of the Revisional Authority is final notwithstanding anything to the contrary contained under the Code.

15. Before dialating upon the merits of the instant petition it is apt to deal with the objection of the learned Public Prosecutor regarding maintainability of the instant petition.

16. Reliance was placed on sub-clause (5) of section 52B of the Act of 1953, to argue that an order passed by the Revisional Authority cannot be called in question before any Court and also upon the decision of Hon'ble the Supreme Court rendered in the case of **State of Madhya Pradesh vs. Uday Singh** (supra).



17. If the facts of the case of **State of Madhya Pradesh vs. Uday Singh** (supra) are examined carefully, it transpires that the respondent therein had preferred an application under section 451 of the Code for interim release of the vehicle which was seized for the involvement in the offences under the provisions of the MP Act 25 of 1983 (hereinafter referred to as 'Act of 1983'). The said application was allowed by the High Court whereagainst an appeal was preferred by the State of Madhya Pradesh before Hon'ble the Supreme Court on the ground that an order passed by the Revisional Authority cannot be challenged before any Court, including the High Court.

18. In the aforementioned factual matrix Hon'ble the Supreme Court held that the High Court could not have passed an order for interim release of the vehicle in respect of which confiscation proceedings have been initiated by the competent authority under the Act of 1983, since the Courts are bereft of jurisdiction for interim release of the vehicle in respect of which confiscation proceedings have been initiated. It was also held that the proceedings for confiscation are distinct from those for conviction of the accused; while the former are for summarily determining commission of offence to deter and restrict environmental degradation the latter are for criminal prosecution. Accordingly, Hon'ble the Supreme Court held that the High Court could not have passed an order for interim release of the vehicle in the face of the statutory bar contained under the Act of 1983.

19. The facts of the instant case are clearly distinguishable from that of **State of Madhya Pradesh vs. Uday Singh** (supra) as in the present case the petitioner had preferred an appeal against



the order of confiscation passed by the Authorised Officer and not against an order of dismissal of an application under section 451 of the Code. There is a clear distinction in an application for interim release and an appeal against confiscation.

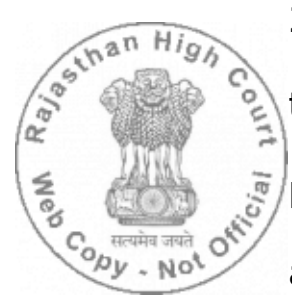
20. A perusal of sections 52C and 53 of the Act of 1983 reveals that interim release of the vehicle in respect of which confiscation proceedings have been initiated can only be ordered by the authority prescribed under section 53. Therefore, an application for interim release of vehicle could not be entertained by any authority save as one prescribed by the aforesaid provisions. On this basis Hon'ble the Supreme Court held as under in the case of

State of Madhya Pradesh vs. Uday Singh (supra):

"61. ...The scheme contained in the amendments enacted to the Indian Forest Act 1927 in relation to the State of Madhya Pradesh, makes it abundantly clear that the direction which was issued by the High Court in the present case, in a petition under Section 482 of the CrPC, to the Magistrate to direct the interim release of the vehicle, which had been seized, was contrary to law. The jurisdiction under Section 451 of the CrPC was not available to the Magistrate, once the Authorised Officer initiated confiscation proceedings."

21. In the case of Uday Singh (supra) the High Court while invoking its powers under Section 482 of the Code exercised the powers available to the Court under Section 451 of the Code. Whereas, in the case in hands this Court is examining the correctness of the order passed by the authorised officer as affirmed by Revisional Court.

22. The petitioner has challenged the order of confiscation on the ground that the order for confiscation has been passed without there being an order of conviction of the petitioner. This Court does not find any substance in this argument as the confiscation proceedings provided under the Act of 1953 run parallel to the





trial or the proceedings for conviction. By virtue of section 52(3) the competent authority can pass an order for confiscation summarily in the absence of any order of conviction. Reliance upon section 55 of the Act of 1953 is of no avail. True it is that section 55 makes order of confiscation contingent upon an order of conviction, however, section 55 itself is subject to provisions of section 52. Therefore, order of confiscation can be passed without waiting for the conclusion of trial or the conviction.

23. Be that as it may.

24. It is noteworthy that section 52(3) of the Act of 1953 which grants the power to the Authorised Officer to pass an order of confiscation makes exercise of such power subject to section 52(5) of the Act of 1953 which provides that no order for confiscation can be passed where the vehicle was used without the knowledge or connivance of the owner of the vehicle.

25. A perusal of the order dated 29.11.2021 reveals that the Authorised Officer has recorded a categorical finding that the commission of offence under the Act of 1953 was incidental and the same was without the knowledge or connivance of the owner.

26. A question may then arise, does section 52B(5) of the Act of 1953 create a fetter on this Court's power to exercise its inherent jurisdiction under section 482 of the Code?

27. Section 482 of the Code is a repository of inherent powers of the High Court. In order to prevent abuse of the process or to secure the ends of justice, the High Court can take recourse to its powers under Section 482 of the Code.

28. A perusal of the order of confiscation dated 29.11.2021 passed by the appropriate Authority shows that he has recorded a



clear finding that the offence was committed without the knowledge or connivance of the driver/owner of the vehicle. Having reached to such conclusion the authorised officer could not have confiscated the vehicle in the teeth of express provision contained in Sub-Section 5 of Section 52 of the Act of 1953.

29. The order of confiscation is thus fundamentally void and manifestly illegal. The fact that Forest offences are increasing cannot be a reason to confiscate a truck, when the owner/driver is not involved in its offence under the Forest Act. Confiscation of the vehicle cannot be used as a scarecrow or deterrent particularly without the guilt of the owner.

30. Hence, it is a fit case where this Court would exercise its inherent powers conferred upon it by Section 482 of the Code, in order to correct the apparent error of facts and law and to set aside an absolutely illegal confiscation. Therefore, while exercising its inherent jurisdiction under section 482 of the Code, to secure the ends of justice, this Court sets aside the order of confiscation dated 29.11.2021 and corresponding order of appellate and revisional authority dated 08.03.2022 and 29.04.2022 respectively.

31. The present petition so also stay petition stand disposed of accordingly.

(DINESH MEHTA),J

125-Ramesh/-