

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(Crl) No.59/2025

Reserved on: 20.07.2026

Pronounced on: 30.07.2026

Uploaded on: 30.07.2026

Whether the operative part or

*Full judgment is pronounced: **Full***

Mymoona (Aged 63 years)

W/O Firdous Ahmad

R/O Village Chersoo, Awantipora,

Pulwama, Kashmir (J&K)

Proprietor M/S Mymoona Sports

.....Petitioner(s)

Through: Mr. Jagpaul Singh, Advocate

Mr. Nikhil Sharma, Advocate

Vs

1. Union Territory of Jammu and Kashmir

through Commissioner-cum-Secretary to Govt.

Forest Government, Civil Secretariat, Jammu.

..... Respondent(s)

2. Principal Chief Conservator of Forests, J&K,

Van Bhawan, Jammu.

3. Divisional Forest Officer, (DFO), Kathua

4. Range Officer, Anti Polythene Check Post,

Lakhanpur, District Kathua.

Through: Ms. Meenakshi Salathia, Dy. AG

WP(C) No. 1985/2025

M/S Jammu Indore Roadways

SIDCO Complex Bari Brahmana Samba

Through Gurdeep Singh (Aged 52 years)

.....Petitioner(s)

Through: Mr. K Nirmal Kotwal, Sr. Adv with

Mr. Savesh Kotwal, Advocate

Mr. Pawan Dev Singh, Advocate

Vs

1. Union Territory of Jammu and Kashmir

through Principal Chief Conservator of Forests,

J&K, Jammu.

2. Divisional Forest Officer, (DFO), Kathua

3. Range Officer, Anti Polythene Check Post,

Lakhanpur, Kathua.

..... Respondent(s)

Through: Ms. Meenakshi Salathia, Dy. AG.

CORAM: HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE

JUDGMENT

- 01.** As both the writ petitions filed against the same order involve identical factual background and legal applications, they are proposed to be decided by this common order.
- 02.** Petitioners, in these petitions, have prayed for quashment of order dated 28.06.2025, passed by respondent No.2, vide which the appeal preferred by the petitioners against the order of confiscation of willow clefts (6150 in numbers), and Truck No.JK-21G/9603, by respondent No.3, under Section 52 of the Indian Forest Act, 1927, was dismissed by respondent No.2; that they have also sought quashment of Order No.KFD/AO/245-250 dated 14.10.2024, passed by respondent No.3, vide which, 6150 willow clefts of the petitioner M/S Mymoona Sports along with vehicle No.JK-21G/9603 of petitioner M/S Jammu Indore Roadways, was confiscated under Section 52 of the Indian Forest Act, 1927 to the extent of willow clefts and the vehicle in question; and for seeking a direction to the respondents to release the same.
- 03.** Facts giving rise to the filing of these petitions, briefly stated, are that the Range Officer, Anti-Polythene Check Post Lakhanpur vide his No.LR/5051 dated 12.12.2023 reported that on 12.12.2023, a Truck No. JK21G/9603 loaded with suspected willow clefts with 6250 Nos. (as per bill and E way bill) was handed over to the Range Officer Anti Polythene Check Post Lakhanpur by SHO Police Station Lakhanpur vide his office No.405/5-1/PSL dated 12.12.2023 that was detained at toll plaza Lakhanpur on

12.12.2023 at around 6.00 AM; that on physical checking of the vehicle by the officials of Anti-Polythene Check Post Lakhanpur in the presence of driver Kuldip Singh, the actual number of clefts were found to be 6150 Nos. of willow species of M/S Mymoona Sports Chersoo, Awantipora Pulwama, J&K, destined to Meerut U.P. (as per bill no. 36 dated 10.12.2023 and E way bill No. 3816 9855 0838 dated 10.12.2023 of M/S Mymoona Sports, Awantipora, J&K); that the petitioner generated NOC for 7000 Nos. of Populus species, whereas the E way bill was for willow clefts; that the driver of the truck was also unable to produce the relevant documents required to export the said 6150 willow clefts outside the UT of J&K, as such, Willow clefts and Truck No.JK21G 9603 were seized.

- 04.** Forest Office Report No.06/2023-24 dated 12.12.2023 got registered under Section 2(b), section 3 and section 4(1) of the Jammu and Kashmir Willow (Prohibition on Export and Movement) Act, 2000 read with Section 52(1), Section 2(4)(a), 2(6), 41 and 42 of the Indian Forest Act, 1927 read with Rule 7(3) of S.O. 81 of 2020, for confiscation proceedings.
- 05.** The Authorized Officer vide its letter No.KFD/AO/2023-24/Court intimation/233-35 dated 13.12.2023, after intimating the Chief Judicial Magistrate, Kathua, initiated confiscation proceedings in respect of the seized truck and willow clefts; that on 31.01.2024, the willow clefts and the vehicle in question were confiscated by the Authorized Officer.
- 06.** Aggrieved of the confiscation ordered by the Authorized Officer, a revision petition was filed before the court of learned Additional Sessions Judge, Kathua, which was disposed of on 28.05.2024 with a direction to the

Authorized Officer to hear the parties afresh, cross-examine the witnesses and record their statements; that the Authorized Officer on 14.10.2024, after affording opportunity of being heard to the parties, ordered confiscation.

07. Thereafter, the petitioners assailed the confiscatory order 14.10.2024 passed by the Authorized Officer, Kathua Forest Division, Kathua, by way of filing two separate appeals before the Principal Chief Conservator of Forests, J&K, Jammu (Appellate Authority) but much to the dismay of the petitioners, the appellate authority vide its order dated 28.06.2025, upheld the confiscation order dated 14.10.2024 passed by the Authorized Officer and dismissed the appeals filed by the petitioners-appellants.

08. Being aggrieved of the order dated 28.06.2025 passed by the Appellate Authority, whereby order dated 14.10.2024 passed by the Authorized Officer, confiscating the Willow Clefts and Truck, both the petitioners filed both these petitions separately, which were clubbed together by this court. Petitioners have assailed both the orders passed by the Authorized Officer and Appellate Authority, with regard to confiscation, mainly on the grounds:

- (i) *that no criminal case under the J&K Willow (Prohibition on Export and Movement) Act, 2000 was registered by the police or the Forest Department;*
- (ii) *that under Section 55 of the Indian Forest Act, 1927, confiscation could be ordered only after conviction of the accused;*
- (iii) *that the Appellate Court lacked jurisdiction to entertain and decide the appeals against an order passed under Section 52 of the Indian Forest Act, 1927;*

- (iv) *that in exercise of the powers under Section 8 of the J&K Willow (Prohibition on Export and Movement) Act, 2000 issued under SRO 308 dated 12.09.2003, whereby, provided that the confiscation procedure as prescribed under J&K Forest Act, 1987 would mutandis apply to the confiscation proceedings under SRO 308 dated 12.09.2023, however, after abrogation of Article 370 of Constitution of India and enactment of the J&K Reorganization Act 2019, J&K Forest Act, 1987 was repealed and the same was substituted with Indian Forest Act 1927, however, no notification was issued by the UT Government, in exercise of its power under Section 8 of the J&K Willow (Prohibition on Export and Movement) Act, 2000; and*
- (v) *that the confiscation order and the appellate order are alleged to be illegal, arbitrary and without jurisdiction.*

09. Pursuant to notices, objections on behalf of respondents stand filed, inter alia, contending that the petitioners have raised disputed questions of fact, which cannot be decided in a writ petition, therefore, the writ petitions are not maintainable and deserve to be dismissed; that the seizure of the truck along with willow clefts being illegally transported in the aforesaid vehicle and subsequent proceedings are legal and valid and in accordance with law; that no procedural or jurisdictional error has been committed, either by the Authorized Officer or Appellate Authority, as well reasoned order was passed by the Authorized Officer which was upheld by the Appellate Authority; that this court cannot sit in appeal to decide the issue raised in the instant writ petitions; and that the petitioners have approached this court with unclean hands suppressing material facts. Lastly, it is prayed that the writ petitions be dismissed being devoid of any merit and substance.

SUBMISSIONS ON BEHALF OF PETITIONER IN WP(Crl)

NO.59/2025

10. Mr. Jagpaul Singh, learned counsel appearing for the petitioner in WP(Crl) No. 59/2025 argued that no criminal case under the J&K Willow (Prohibition on Export and Movement) Act, 2000 was registered by the police or the forest department; that under Section 55 of the Indian Forest Act, 1927, confiscation could be ordered, only, upon conviction of the accused; that the appellate authority lacked jurisdiction to entertain and decide the appeals against an order passed under Section 52 of the Indian Forest Act, 1927. He further argued that in exercise of power under Section 8 of the J&K Willow (Prohibition on Export and Movement) Act, 2000, SRO 308 dated 12.09.2003 was issued, providing that confiscation procedure as prescribed under J&K Forest Act, 1987 would mutandis apply to the confiscation proceedings, however, after enactment of J&K Re-organization Act, 2019, J&K Forest Act, 1987 was repealed and the same was substituted with Indian Forest Act, 1927; that no notification was issued by the UT Government, in exercise of its power under Section 8 of the J&K Willow (Prohibition on Export and Movement) Act, 2000 by providing that confiscation procedure provided under Indian Forest Act shall apply; that there is nothing on record to suggest that the willow clefts in question were being transported either with the knowledge or with the consent of the petitioner, which is an important ingredient required for confiscation of the truck; that the willow clefts were seized within the jurisdiction of UT of J&K, therefore, there was no export of the willow

clefts outside the UT of J&K and for the sake of argument, even if it is assumed that the willow clefts were intended to be transported outside the UT of J&K, the alleged act of the driver then would only constitute preparation and not commission of the offence of exporting of the willow clefts, in violation of the J&K Willow (Prohibition on Export and Movement) Act, 2000; that the Authorized Officer is not competent to pass confiscation order with regard to reported seized property in respect of forest offence, in case of non government property, until and unless conviction of the offender is recorded by the Magistrate. In support of his contentions, learned counsel for the petitioner has placed reliance upon the judgment passed by this court in the case titled 'Mohd. Ashraf Dar & Ors. V. State (now UT) of J&K & Ors' reported as **2026 SCC OnLine J&K 162**.

Submissions on behalf of petitioner in WP(C) No. 1985/2025

11. Mr. K Nirmal Kotwal, learned Sr. Counsel appearing for the petitioner-M/S Jammu Indore Roadways in the instant petition, argued that the petitioner has no knowledge about the fact that the consignment being transported through its truck was banned or contraband and there was any mala fide intention on the part of transport company as they have issued clear instructions to the driver of the vehicle in question for not loading or transporting any contraband in it and has bona fide taken the assignment in good faith. It is finally prayed that the writ petition be allowed and petitioner's truck be ordered to be released.

SUBMISSIONS ON BEHALF OF RESPONDENTS

12. Ms. Meenakshi Slathia Learned Dy.AG appearing on behalf of the respondents, *ex adverso*, strongly opposed the pleas raised in the petitions by the petitioners; that the petitioners have raised disputed questions of facts, which cannot be decided in a writ petition; that the petitioners' reliance on Section 55 of the Indian Forest Act, 1927, is misplaced and misconceived; that no procedural or jurisdictional error has been committed either by the Authorized Officer or Appellate Authority, as well reasoned order was passed by the Authorized Officer which was upheld by the appellate authority. She further argued that no impropriety much less an illegality, in the impugned orders, so as to warrant interference of this court invoking writ jurisdiction.
13. Relying upon the judgment of the Supreme Court in a case 'State of Madhya Pradesh V. Kallo Bai' reported as **(2017) 14 SCC 502**, she has argued that the criminal proceedings and confiscatory proceedings are independent and parallel to each other, as such, confiscatory proceedings as conducted in the case, not being dependent upon registration, prosecution or conviction in a criminal case, cannot be questioned, particularly, in an admitted case that willow clefts were being transported, without any valid permit from Kashmir to UP, in contravention of the Willow Act, 2000. Finally, it is prayed that the writ petitions be dismissed and the impugned orders be upheld.
14. Heard learned counsel for the parties, perused the record and considered.

DISCUSSION / ANALYSIS

15. Section 3 of the Jammu & Kashmir Willow (Prohibition of Export and Movement) Act, 2000 provides for prohibition on the carriage and export of willow. Section 4 of the Act deals with seizure and confiscation. It will be convenient to extract the same for reference as under:

3. Prohibition on the carriage and export of willow-

Notwithstanding any provision to the contrary contained in any other law for the time being in force in the State and also notwithstanding any order decree and judgment of any court and any contract, practice or usage to the contrary, willow of any species in any form shall not be carried or exported to any place outside the State, [except under general or specific orders of the govt. or of any authority designated by it for the purpose and subject to such condition as the govt. may specify.]

4. Seizure and confiscation.

(1) Any forest officer as such in the Jammu and Kashmir Forest Act, Samvat 1987, any police officer not below the rank of Assistant Sub-Inspector and any officer not the rank of Manager of the District Industries Center designated for the purpose by the prescribed authority or any other person specially empowered in this behalf by the Government may seize the willow and the carrier in which it is being carried, if he finds or has reasons to believe that the willow is being carried for export or attempted to be carried for export in violation of the provisions of Section 3 of this Act.

(2) The willow and the carrier seized under sub-section (1) shall be liable to confiscation in the manner and in accordance with the procedure to be prescribed by the Government.

16. Section 52 of the Indian Forest Act, 1927 provides for seizure of property liable to confiscation and procedure thereof. Section 52A of the Act, provides

for revision before Court of Sessions against order of confiscation and Section 52B of the Act bars the courts etc to exercise jurisdiction in certain circumstances.

17. The J&K Willow Act 2000 provided for the confiscation in terms of Section 4 of the Act, regarding which SRO 308 of 2003 had been issued by the Government of Jammu & Kashmir on 12.09.2003 providing the procedure to be followed for confiscation of the seized forest property or the other articles including conveyance used, as per the provisions contained under J&K Forest Act, 1987. On a harmonious construction of Sections 3 and 4 of the Willow (Prohibition on Export) Act 2000 read with SRO 308/2003 dated 12.09.2003 and Sections 26 and 28 of the J&K Forest Act, it crystallizes that the confiscatory jurisdiction can be exercised by the Authorized Officer, upon conviction of the offender and not earlier to it or without it. The provisions of the Act do not permit Specified Officer to deal with the property seized for commission of the offence until and unless final decision in the criminal proceedings is not taken.

18. The legislative intent must have been to confiscate the vehicle after trial in respect of offence committed under the Act is over. Before that, confiscation may prejudicially affect the property and its owner. If, as contended in the impugned order, seizure of property merely on accusation would make the property confiscated, it would have the result of depriving an accused of his property without proof of his guilt. This interpretation would mean that a specified officer under the Act merely by seizure of property of an accused would deprive him of his property, which he might be using for his trade, profession or occupation. This would be a serious encroachment on the

fundamental right of a citizen under Article 19(1)(g) of the Constitution of India, to carry on his trade, occupation or business.

19. Even otherwise, if the confiscation proceedings are treated to be final before the criminal proceedings then the confiscated vehicle is, if auctioned in the interregnum period (between confiscation and completion of trial) then how the property of the acquitted person in the criminal trial would be returned back or compensated would be the question. Same is the case with the vehicle being decayed and got rusted after confiscation, if subsequently, the accused is acquitted from the allegations of forest offence in the criminal trial. Therefore, the legislative intent is clear that the confiscation proceedings can only be held and culminated after criminal trial for commission of forest offence is over.

20. Full Bench of Hon'ble Madhya Pradesh High Court in the case of Madhukar Rao laid down the principle, that once the criminal case was pending, confiscation proceedings should not be held and finalized. The judgment rendered by the Full Bench was affirmed by the Supreme Court in the case of 'State of M.P. V. Madhukar Rao' holding that the provisions of Section 50 of the Wild Life (Protection) Act, and the amendment made to the said Act [Section 39 (1) (d)] do not in any way affect the powers of the Magistrate to pass interim order with regard to release of the vehicle and it is further held that when the criminal case is pending, final order with regard to confiscation, of the vehicle should not be passed. This principle laid down in the case of Madhukar Rao was again reiterated and affirmed by the Supreme Court in the case of 'Principal Chief Conservator of Forests Vs. J. K. Johnson', **AIR 2012 SC 61** holding that the provisions of Act do not permit Specified Officer to deal with the property

seized for commission of the offence until and unless final decision in the criminal proceedings are not taken.

21. The contention of the learned State counsel and reliance on the judgment of State of Madhya Pradesh & Ors. Versus Kallo Bai [2017 (4) SCC 502] that confiscation of vehicle prior to conviction in criminal trial is permissible, seems to be misplaced, for the reason that the aforestated enunciation has been in view of the provisions of Madhya Pradesh Van Upaj (Vyapar Viniyam) Adhiniyam, 1969, wherein independent power of confiscation to authorized officer even prior to establishment of guilt by the criminal court has been given by Section 15. There is no such provision in the J&K Forest Act, for a non-governmental property, seized as in the case on hand, as provided in Section 28 of J&K Forests Act 1987. In the cases, where seized forest produce, is a government property, the confiscation can be ordered by the authorised officer, in independent or parallel confiscatory proceedings to criminal proceedings, even before culmination of criminal trial or recording of conviction of the offender, however, such a recourse is not legally available for non-governmental property.

22. The criminal prosecution is distinct from confiscation proceedings. The two proceedings are different and parallel, each having a distinct purpose. The object of confiscation proceeding is to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence while the object of the prosecution is to punish the offender. The scheme of the J&K Forest Act prescribes an independent procedure for confiscation, in case, the seized produce is a government property, while as after conviction in the criminal case in case of a private property, regarding which, the offence may have been committed. The intention of prescribing separate

proceedings is to provide a deterrent mechanism and to stop further misuse of the vehicle etc.

CONCLUSION

23. The seized vehicle loaded with the Willow Clefts was seized by the officers of the Forest Department on 12.12.2023 at Toll Plaza Lakhanpur at around 6.00 AM. After the J&K Re-organization Act, 2019 passed by the Parliament, J&K Forest Act, 1987 was repealed, lock, stock and barrel and the Indian Forest Act, 1927 was made applicable to the Union Territory of J&K as well. However, no S.O. was issued to replace the earlier SRO 308 dated 12.09.2003 providing for mechanism of the confiscation proceedings under the J&K Willow Act, 2000. Though there are provisions made in the Indian Forest Act in Chapter IX for seizure, confiscation and procedure thereof, however, those provisions cannot, ipso facto, be applied to the procedure to be adopted under the J&K Willow (Prohibition on Export and Movement) Act, 2000 without any rule or standing order in this behalf, to be issued by the Government as provided under sub section (2) of Section 4 of the Willow Act. In this view of the matter even proceedings of the confiscation of the seized Truck and the Willow Clefts was illegal, ab initio, without any legal backing with regard to the procedure. On this count, the impugned confiscatory orders passed by the Authorized Officer and affirmed by the Appellate Authority, are not tenable and are liable to be quashed.

24. Having regard to the foregoing reasons and observations made in the discussion hereinabove, this court, on its considered view, draws following conclusion:

- (i) Authorized Officer is competent to pass order of confiscation with regard to seized forest property, implements and its carrier, in independent and parallel proceedings to the criminal proceedings, without waiting for the conclusion of trial or conviction of the offender by the court of Magistrate, when forest offence is in respect of government property.
- ii) Authorized Officer is not competent to pass confiscation order with regard to reported seized property in respect of a forest offence, in case of a non-government property, until and unless conviction of the offender is recorded by the Magistrate.

25. In the aforesaid backdrop, it is held that in the case of non- governmental property as the Willow clefts in the case on hand, confiscation proceedings cannot be finalized or confiscation order passed, until the conviction of the offenders in the case.

26. Viewed thus, as there was admittedly neither registration of criminal case, nor conviction of the offenders, as such, the confiscatory proceedings finalized by the Authorized Officer and affirmed by the Appellate Authority vide impugned orders with regard to petitioners' willow clefts and the vehicle, being confiscated, were not legal or sustainable, without recording of conviction of the offenders.

27. As a result, both the petitions are allowed and the impugned orders passed by the Authorized Officer as well as Appellate Authority are hereby quashed and the petitioners' Willow Clefts and vehicle No. **JK-21G/9603** are ordered to be finally released in their favour.

OBSERVATIONS

28. Protection of forests against depredation is a constitutionally mandated goal exemplified by Article 48-A of the Constitution of India, which provides that 'the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country'. Besides, the aforesaid Directive Principle of State Policy, a fundamental duty upon every citizen is cast which is incorporated in sub-clause (g) of Article 51-A of the Constitution of India, which provides 'it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures'. The avarice of humankind through the ages has resulted in an alarming depletion of the natural environment. The consequences of climate change are bearing down on every day of our existence. Statutory interpretation must remain eternally vigilant to the daily assaults on the environment. By isolating the confiscation of forests produce and the instruments utilized for the commission of an offence from criminal trials, the legislature intended to ensure that confiscation is an effective deterrent. The absence of effective deterrence was considered by the legislature to be a deficiency in the legal regime, therefore, the provisions with regard to confiscation are an effective tool for protecting and preserving environment and these provisions must receive a purposive interpretation. For, it is only when the interpretation of law keeps pace with the object of the legislature that the grave evils which pose a danger to our natural environment can be suppressed.

29. In absence of any prescribed procedure to deal with the seized willow, a forest produce, either of government or private, the confiscation proceedings cannot be carried out by any of the officers of Forest or Industries Department or

Police and any such proceedings cannot be conducted in absence of any Rule or Regulation to be notified by the Government of J&K. If the government is serious about enforcing the provisions of the Jammu & Kashmir Willow (Prohibition of Export and Movement) Act, 2000, keeping in view its aims and objectives, it should rise to the occasion and issue a Notification/Standing Order to prescribe the manner/procedure to be adopted to deal with seized property. The Forest Department of J&K Government shall do well to submit a proposal in this behalf, to the Government for consideration within a period of eight weeks, from the date of this Judgment.

30. A copy of this order shall be forwarded to the Administrative Secretary of Forest Department of the Government of J&K, Civil Secretariat, Srinagar, for compliance.

31. This judgment shall be placed across files of both the cases.

32. The petitions are, accordingly, disposed of as **allowed**, alongwith application(s).

(MA CHOWDHARY)
JUDGE

JAMMU
30.07.2026
Raj Kumar

Whether the order is reportable: Yes/No