

THE HIGH COURT OF MADHYA PRADESH

W.P.No.18604/2021

(Dilip Buidcon Ltd. v. Chief Conservator of Forest and others)

Jabalpur, Dated : 30.09.2021

Shri Jubin Prasad, Advocate for the petitioner.

Shri Ritwik Parashar, Government Advocate for the respondents/State.

Heard.

By the instant petition filed under Article 226 of the Constitution of India, the petitioner is asking for release of vehicle which got confiscated in a forest offence under the provisions of the Indian Forest Act, 1927 (for brevity "Forest Act, 1927").

Primarily, the learned Government Advocate appearing for the respondents/State points out that in view of the law laid down by the Supreme Court *in re State of Madhya Pradesh v. Uday Singh (2020) 12 SCC 733* and various other similar cases, once the vehicle is confiscated under the Forest Act, it cannot be released by the direction of the High Court.

The learned counsel for the petitioner although does not dispute the settled legal position, yet paradoxically tried to distinguish the case cited on behalf of the respondents. He accentuates that although the Supreme Court has considered the fact that the direction for release of vehicle under the provisions of Code of Criminal Procedure, especially under Section 451, cannot be given, but, the intention of the Supreme Court does not

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preclude or create any rider for availing the jurisdiction of this Court under Article 226 of the Constitution of India. On that premise, the learned counsel for the petitioner vehemently submits that a direction for release of the vehicle in exercising of extraordinary jurisdiction under Article 226 of the Constitution of India can be given by this Court.

As per the learned counsel for the petitioner, the Supreme Court in paragraph 29 of its decision on analysing the amended provisions brought in the Forest Act, 1927 and made applicable in the State of Madhya Pradesh led to the conclusion that specific provisions have been made for the seizure and confiscation of forest produce and of tools, boats, vehicles and articles used in the commission of offences. Further, Shri Jubin Prasad submits that the Supreme Court has observed that Section 52-C bars the jurisdiction of court in respect of the vehicle seized in commission of forest offence if confiscated and intimation to that regard is given to the Magistrate having jurisdiction to try the offence to make any order with regard to possession, delivery, disposal or distribution of the vehicle or any property for which proceeding of confiscation has been initiated. He submits that in paragraph 29.4 of the decision, it is specified by the Supreme Court that the High Court in a

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petition under Section 482 of Cr.P.C. cannot issue any direction to the Magistrate for directing interim release of such seized vehicle. It is also contended by him that since power under Section 451 of CrPC was not available to the Magistrate as per embargo of Section 52-C, the Supreme Court according to the provision of Section 52 of the Forest Act and bar imposed thereon, has observed that under Section 482 of Cr.P.C. such direction cannot be given, but this Court under Article 226 of the Constitution of India can very well exercise the extraordinary power directing the Magistrate to release the vehicle confiscated in relation to the forest offence. He further submits that this Court in number of cases has observed that the order of Court below passed under Section 52B(5) of the Indian Forest Act has attained finality and therefore Code of Criminal Procedure is not applicable to challenge the said order. However, judicial review under Article 226/227 of the Constitution of India is permissible.

As a whole perusal of the decision rendered by the Supreme Court in the case of **Uday Singh** (supra), does not find support to the submission of the learned counsel for the petitioner. Therefore, I am not convinced with the submission made by the learned counsel for the petitioner for the reason

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that the intention of the Supreme Court was not abundant that direction for release of seized/confiscated vehicle in spite of bar as available under Section 52-C can be issued by the High Court while exercising the writ jurisdiction under Article 226/227 of the Constitution of India, but the Supreme Court has deprecated the order of High Court whereby confiscated vehicle was directed to be released in a petition under Section 482 of Cr.P.C. observing the object for not issuing any direction that itself is available in the observation made in paragraph 29 of the decision. I deem it apt to reproduce paragraph 29 for the purpose of convenience, as under:-

“29. Our analysis of the amendments brought by MP Act 25 of 1983 to the Forest Act 1927 leads to the conclusion that specific provisions have been made for the seizure and confiscation of forest produce and of tools, boats, vehicles and articles used in the commission of offences.

29.1 Upon a seizure under Section 52(1), the officer effecting the seizure has to either produce the property before the authorised officer or to make a report of the seizure under sub-section (2) of Section 52. Upon being satisfied that a forest offence has been committed, the authorised officer is empowered, for reasons to be recorded, to confiscate the forest produce together with the tools, vehicles, boats and articles used in its commission. Before confiscating any property under sub-section (3), the authorised officer is required to send an intimation of the initiation of the proceedings

WWW.LIVELAW.IN

for the confiscation of the property to the Magistrate having jurisdiction to try the offence. Where it is intended to immediately launch a criminal proceeding, a report of the seizure is made to the Magistrate having jurisdiction to try the offence.

29.2 The order of confiscation under Section 52(3) is subject to an appeal under Section 52-A and a revision under Section 52-B. Sub-section (5) of Section 52-B imparts finality to the order of the Court of Sessions in revision notwithstanding anything contained to the contrary in CrPC and provides that it shall not be called into question before any court.

29.3 Section 52-C stipulates that on the receipt of an intimation by the Magistrate under sub-section (4) of Section 52, no court, tribunal or authority, other than an authorised officer, an appellate authority or Court of Sessions (under Sections 52, 52-A and 52-B) shall have jurisdiction to pass orders with regard to possession, delivery, disposal or distribution of the property in regard to which confiscation proceedings have been initiated. Sub-section (1) of Section 52-C has a non obstante provision which operates notwithstanding anything to the contrary contained in the Forest Act, 1927 or in any other law for the time being in force. The only saving is in respect of an officer duly empowered by the State Government for directing the immediate release of a property seized under Section 52, as provided in Section 61. Hence, upon the receipt of an intimation by the Magistrate of the initiation of confiscation proceedings under sub-section (4)(a) of Section 52, the bar of jurisdiction under sub-section (1) of Section 52-C is clearly attracted.

29.4 The scheme contained in the amendments enacted to the 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

WWW.LIVELAW.IN
of 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 CrPC was not available to the Magistrate, once the authorised officer initiated confiscation proceedings.”

The object for not releasing the confiscated vehicle in a forest offence has been enlightened by the Supreme Court in paragraph 30 of the judgment, which provides as under:-

“30. The Madhya Pradesh amendments to the Forest Act, 1927 are infused with a salutary public purpose. Protection of forests against depredation is a constitutionally mandated goal exemplified by Article 48-A of the Directive Principles and the Fundamental Duty of every citizen incorporated in Article 51A(g). By isolating the confiscation of forest 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. The State Amendment has sought to overcome that deficiency by imposing stringent deterrents against activities which threaten the pristine existence of forests in Madhya Pradesh. As an effective tool for protecting and preserving environment, 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. The avarice of humankind through the ages has resulted in an alarming depletion of the natural environment. The consequences of climate

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change are bearing down on every day of our existence. Statutory interpretation must remain eternally vigilant to the daily assaults on the environment.”

Inevitably, the observation and object of not releasing the confiscated vehicle in forest offence, makes it amply clear that the Supreme Court was not of the opinion that the order of release can be given by the High Court while exercising the power under Article 226 of the Constitution of India, but merely specified that it cannot be given in a petition filed under Section 482 of Cr.P.C.

Adverting to the decision rendered by the Gwalior Bench of High Court of Madhya Pradesh in M.Cr.C.No.2640/2014 (The State of Madhya Pradesh v. Manish Kumar Garg) on 04.08.2015, relied upon by the counsel for the petitioner saying that the Court has observed that as per Section 52B(5) of the Indian Forest Act, the order in revision has attained finality, therefore, the only remedy available to the State is to invoke the powers of judicial review or of superintendence under Article 226/227 of the Constitution of India, it does not mean that the High Court cannot issue the order of release of vehicle directing the Magistrate, however, I am not convinced with the submission made by learned counsel for the petitioner because the

intention of the Supreme Court is very clear that if any vehicle or property is involved and confiscated in forest offence, no direction for its release can be given by the High Court.

On the anvil of above interpretation, I am not inclined to entertain this petition for the reason that the orders passed by the Court below/authorities do not suffer from any illegality and in the light of law laid down by the Supreme Court in the case of **Uday Singh** (supra), no direction can be issued for release of vehicle confiscated in connection with forest offence.

Petition stands **dismissed**.

(Sanjay Dwivedi)
Judge

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