

PETITIONER:
STATE OF MADHYA PRADESH

Vs.

RESPONDENT:
SWAROPCHANDRA

DATE OF JUDGMENT: 24/09/1996

BENCH:
K. RAMASWAMY, K. VENKATASWAMI, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This appeal by special leave arises from the judgment of the Division Bench of the Madhya Pradesh High Court made on 31st March, 1983 in Misc. Petition No.203 of 1983.

The admitted facts are that since the truck bearing No.9493 was found carrying 22 logs of timber on October 4, 1983 without permit, it was seized on the said date by the Divisional Forest Officer under the M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969, No.9 of 1969 (for short, the 'Act'). On October 5, 1983, a notice was issued to the driver of the truck whether he was willing to have the offence compounded. The truck was valued at Rs.70,000/-. The driver consented to the compounding of the offence and paid a sum of Rs. 1,000/-. After following the prescribed procedure, by impugned order, the truck was confiscated as the value thereof was not paid. The respondent challenged the power of seizure in the writ proceedings in the High Court. The High Court held that the Act did not provide the power of confiscation of the truck under Section 19(1)(b) of the Act. By operation of Section 22 of the Act, the Central Forest Act, 1927 as amended by the State Amendment Act 9 of 1965 (for short, the 'Forest Act') is not applicable to the confiscation of the truck. The Divisional Forest Officer had not produced the truck before the criminal court nor did he lay any charge-sheet for prosecution of the offender. Therefore, the order of confiscation was without authority of Law. Accordingly a direction was given to release the vehicle. Pending appeal in this Court, interim direction was given to release the vehicle to the respondent on furnishing security for a sum of Rs.25,000/-.

The question, therefore, is: whether the view taken by the High Court is correct in law? It is contended by Mr. Sakesh Kumar, learned counsel for the State, that Section 15 provides for the seizure. Section 19 gives power to compound the offence including payment of the compensation for release of the vehicle seized and confiscation of specified forest produce. Section 22 excludes only the specified forest produce. Section 52 of the Forest Act read with the State Amendment Act 9 of 1965 gives power for confiscation of the vehicle or receptacle used for transportation of the

forest produce which includes the specified forest produce. Therefore, there is no necessity to expressly provide in the Act, the power for confiscation in Section 19 of the Act of the vehicle, tools or receptacle etc. used for transportation of the specified forest produce. Therefore, the view taken by the High Court is not correct in law.

Mr. Sunil Gupta, learned counsel for the respondent, on the other hand, contended that the Act has occupied the field in respect of specified forest produce with power of seizure, power to levy penalty or collect compensation in lieu of prosecution, power to prosecute either for the forest offence or confiscate the forest produce. Having specified the detailed procedure and identified the specified forest produce alone to be confiscated, by necessary implication, the Legislature intended not to take any action for confiscation of the vehicle, cart, receptacle or tools etc. used for offence of transport of forest produce. Unless it is an offence of forest produce under the Forest Act, Sections 52 to 55 of the Forest Act have no application to the facts. Thereby, there is no express power given by the Legislature to the officer to confiscate the vehicle used for the transportation of the specified forest produce. Thus considered, the High Court was clearly right in directing the release of the vehicle.

With a view to appreciate the respective contentions, it is necessary to look into the relevant provisions under the Act. Section 2(d) defines "Forest Produce". Section 2(k) defines "specified area". Section 2(1) defines "Specified forest producer". Section 5 imposes restrictions on purchase or transport of specified forest produce except in accordance with the permit issued under the Act and the rules made thereunder. Section 15 deals with power of entry, search, seizure of the forest produce given to the Forest Officer or vehicles used for the transport to satisfy the compliance of the Act or rules used in contravention of the provisions of the Act or the rules made thereunder so as to ensure compliance of the provisions of the Act. The details thereof are not necessary for the purpose of the case. But Section 15(1)(iii) gives power to seize the specified forest produce in respect of which the officer suspects that any of the provisions of the Act or rules made thereunder have been, are being or are about to be contravened, along with the receptacle or vehicle containing such produce, or the vehicle or boats, carts etc. used in carrying such produce. The provisions of Sections 102 and 103 of the Code of Criminal Procedure, 1898 (for short, the 'Repealed Code') are pari materia with the provisions of the Code of Criminal Procedure, 1973 would apply for such seizure as well. Section 19(1)(b) provides that when the property, other than a specified forest produce, has been seized is liable to confiscation, to release the same on payment of the value thereof as estimated by such officer. The State Government may, by notification empower a Forest Officer. Under sub-section [2] of Section 19, on payment of such sum or money, or such value or both, as the case may be, to such officer, the suspected persons shall be discharged, and the property other than the specified forest produce, if any, seized, shall be released and no further proceedings shall be taken against such person or property. Resultantly, if a suspected person pays compensation of the value of the property seized other than specified forest produce the same should be released and no further prosecution would lie and the proceedings would be closed. The receptacle or vehicle, boats or carts etc. used for the carriage of the specified forest produce when seized, the necessary consequence would

be, the same procedure would be followed for non-payment. What provision of law would be applied is the question? Section 22 of the Act, prior to the Amendment Acts 15/1987 and 16/1990, reads as under:

"Nothing contained in the Indian Forest Act, 1927 (No.16 of 1927) shall apply to specified forest produce in respect of matters for which provisions are contained in this."

In other words, if there is a specified procedure provided in the Act in respect of the specified forest produce, by operation of the provisions of Section 22 of the Forest Act, the provisions of Forest Act stand excluded. The question is whether the content, i.e., specified forest produce, is liable to confiscation and when on payment of value of vehicle etc. it is liable to release and proceedings closed, whether on non-payment in respect of the container i.e. vehicle used in contravention of the provisions of the Act or rules and seized by the officer, is liable to confiscation under the provisions of the Forest Act or to be released? There is no provision for release of the vehicle by the officer except on payment of the value thereof. It is seen that when the Act was made with a view to prevent illicit transportation of the forest produce or the specified forest produce and seizure and confiscation have been provided for, could it be said that the Legislature intended to exclude the confiscation of the container, i.e., vehicle or receptacles or boats, carts or tools used for carriage of the specified forest produce, i.e., content, in contravention of the provisions of the Act? The answer is obviously no.

In our view, the High Court was clearly in error in reaching the conclusion that there is no such provision under the Forest Act. It is seen that the Act occupies the field in respect of the specified matters enumerated thereunder. In view of the fact that the Forest Act, as amended under the State Amendment Act 9 of 1965 has already occupied the field for confiscation of the vehicles etc., it is not necessary, again to provide the same procedure under the Act. In this behalf, it is relevant to look into the procedure provided in the Amendment Act 9 of 1965. Section 52 deals with the seizure of the property liable to confiscation and procedure thereunder. Section 52-A deals with the appeal against orders of confiscation. Section 52-B deals with revision before Court of Sessions against order of appellate authority. Section 53 gives power to the Forest Officer to release the seized property under certain circumstances enumerated thereunder. Thus, it could be seen that Sections 52 and 52A, as amended by the State Amendment Act 9 of 1965 having occupied the field in respect of the confiscation of vehicles etc. and the procedure thereunder the Legislature had not expressly provided such procedure again for confiscation under the Act. The High Court, therefore, was clearly in error in coming to the conclusion that by operation of Section 22 of the Act, the vehicle used for transportation of the specified forest produce in contravention of the Act has excluded the applicability of the provisions of the Forest Act, as amended by Act 9 of 1965 in respect of vehicles etc. It was confined only to specified forest produce.

The order of the High Court stands set aside.

The release order will be subject to the respondent's paying the balance amount, after deducting the sum already secured. The sum of Rs.25,800/- be realised from the

security. The balance sum will be paid within a period of six months from today. If he does not pay the amount, it would be open to the appellant to seize the vehicle, if available or proceed against any other property or person of the respondent.

JUDIS