

SUPREME COURT OF INDIA

State of Madhya Pradesh

Vs.

Kallo Bai

Crl.A.No.932 of 2017

(N.V.Ramana and Prafulla C.Pant,JJ.,)

08.05.2017

JUDGMENT

N.V.Ramana,J.,

SLP(Crl)No.8861 of 2014

1. Leave granted.
2. This appeal is filed assailing the judgment, dated 21.01.2014, in M.Cr.C No. 12750/2013, passed by the High Court of Madhya Pradesh at Jabalpur, wherein the High Court has dismissed the appeal filed by the appellant State by upholding the order of the lower court, which through its order directed to release the confiscated vehicle during the pendency of the main criminal case.
3. Brief facts of the case in nut shell are that the respondent is the owner of the tractor bearing number (MP-22 AA-0736) and trolley bearing number (MP 22 AA 0764). On 03.1.2012 while this vehicle was being used to transport 1.054 cubic meters of teak wood from Saliwara to Parasia Road, Reserve Forest Compartment No. 117. As the driver was not carrying the documents required for the transportation of teak wood, the staff of Forest Development Corporation, at Dhuma District, Seoni, after completion of formalities seized the teakwood and the aforesaid vehicle, being tractor (MP-22 AA-0736) and trolley (MP 22 AA 0764). Thereafter, the Project Range Officer registered the offence under Section 5 and Section 15 of Madhya Pradesh Van Upaj (Vyapar Viniyam) Adhiniyam, 1969 [hereinafter 'Adhiniyam' for brevity] read with Section 26 and Section 41 of the Indian Forest Act, 1927. The said case was registered as Offence No. 251/2013. In relation to this, a charge sheet was filed which was numbered as Criminal Case No. 269/2013 before the trial court.
4. The Authorized Officer-cum-Sub Divisional Officer Lakhnadone, Forest Division North (territorial), Seoni simultaneously initiated the confiscation proceeding under Section 15 of the Adhiniyam. The same was registered as Confiscation Case No. 9/2012.

5. In the process, the Authorized Officer-cum-Sub Divisional Officer Lakhnadone, Forest Division North (territorial), Seoni, ordered confiscation of tractor (MP-22 AA-0736) and trolley (MP 22 AA 0764) and teak wood. The Authorized Officer-cum-Sub Divisional Officer held that the vehicle operator and his companion had deliberately transported the teak wood without the requisite permit or any valid document. Further, he held that the owner was aware of the said illegal transport.

6. Aggrieved by the said order, the respondent carried the matter in appeal before the Appellate Authority i.e. Appellate Authority-cum-Chief Conservator of Forest, Seoni Circle, Seoni (M.P), who in turn dismissed the appeal and confirmed the order of the authority below by order dated 06.12.2012.

7. The respondent having been unsatisfied with the order dated 6-11-2012 preferred revision before the additional sessions judge, Seoni, under Section 15-B of the Adhiniyam. The additional sessions judge, Seoni, by judgment dated 18.07.2013, allowed the revision and quashed the order of confiscation and directed to release the vehicle. Moreover the court was of the view that unless the guilt of the accused is proved, there cannot be any confiscation of the vehicle and the forest produce. The reasoning of the first revisional court is extracted as under:

“14. As such, the order of Authorized Officer and Sub Divisional Officer dated 09.04.2012 and order of Appellate Authority and Designated Conservator of Forests dated 06.12.2012 in Appeal No. 7/2012 are violation of Section 55 of the Indian Forest Act, 1927 and also Adhiniyam, 1969. The Sub Divisional Forest officer lakhnadon and Appellate Authority without holding accused guilty in criminal case no. 269/2012 had no right to confiscate the vehicle and forest produce.

(emphasis supplied)”

8. The State challenged the aforesaid order of the additional sessions judge, Seoni, dated 18.07.2013, by filing a petition under Section 482 of the Code of Criminal Procedure, 1973 being M.Cr.C No. 12750/2013 before the High Court of Madhya Pradesh at Jabalpur. The High Court, by order dated 21.01.2014, dismissed the petition filed by the appellant/state and affirmed the order of the lower court. Aggrieved by the order of the High Court, the appellant/state has knocked on the doors of this Court by way of special leave petition.

9. Heard the learned counsel for both parties and perused the material available on record.

10. Madhya Pradesh is famous for its abundant biodiversity. The rich biodiversity generates minor forest produce such as *tendu, harra, sal seed and gum etc*¹. These forest produce are a good source of revenue for the state and provides employment opportunities for the people.

11. In order to facilitate development of a good forest policy, the State of Madhya Pradesh enacted the *Adhiniyam in the year 1969*². This legislation was enacted with an object to

¹Madhya Pradesh Development Report, Planning Commission (2011).

²Preamble, Adhiniyam.

regulate the trade of certain forest produce in the *State of Madhya Pradesh*³. The Adhiniyam is a statute enacted for the purpose of preserving certain forest produce in the State of Madhya Pradesh. The Scheme of the Act, as expressed in several provisions, is to empower the authorized officers of the Forest Department for proper implementation/enforcement of the statutory provisions and for enabling them to take effective steps for preserving these forest produce. For this purpose certain powers including the power of seizure, confiscation and forfeiture have been vested in them. This position is made clear by giving overriding effect to the provisions of the Act over other statutes and laws.

12. At this juncture it is important to have a glance at certain changes the Adhiniyam has undergone over the years. Sections 15 and 22 (1) were replaced by Section 15-A to 15-D by the State Act 15 of 1987. Adhiniyam as originally enacted did not provide for separate confiscatory proceedings. Original enactment only had penal provisions. The newly introduced Sections from Section 15-A to 15-D were brought in line with Indian Forest Act, as amended by the State of Madhya Pradesh to provide for a separate confiscatory mechanism.

13. Before we delve into the issue, a brief reference to the overall scheme of the Act is necessary. Section 2 of the Adhiniyam is the definition clause. Under Sub-clause (d) of Section 2 various forest produce have been elucidated. Section 3 of the Adhiniyam empowers State Government to divide forest area into units for carrying out the purposes of the Act. Section 4 of the Adhiniyam states that the State Government may appoint requisite number of agents to trade in specific forest produce. Further, Section 5 creates bar on individuals other than the State Government or authorized officers of the State Government or an agent appointed under Section 4, to purchase or transport such specified forest produce in such area with certain exceptions as provided under Sub-section (2) of Section 5. Furthermore, Section 7, 8 and 9 of the Adhiniyam allows the State Government to fix prices, prescribe procedures for opening depots, publication of price lists etc. at the depot.

14 . Section 10 and 11 of the Adhiniyam prescribes registration of growers, manufacturers, traders and consumers of specified forest produce respectively. Section 12 vests discretionary powers upon the State Government to dispose of specified forest produce. Section 12-A provides for re-sale of excess specified forest produce by manufacturer, trader or consumer. Section 13 provides for the mode of retail sale of specified forest produce. Section 14 empowers State Government to delegate powers or functions under the Act.

15. It would be useful for the purpose of this case to reproduce Section 15 of the Adhiniyam-

“15. Search and seizure of property liable to confiscation and procedure thereof - (1) Any Forest Officer as may be notified by the State Government or any Police Officer not below the rank of an Assistant Sub Inspector or any other person authorized by the State Government may, with a view to securing compliance with the provisions of

this Act or the Rules made thereunder or to satisfying himself that the said provisions have been complied with,-

(i) stop and search any person, boat, vehicle or receptacle use or intended to be used for the transport of satisfied forest produced;

(ii) Enter and search any place.

(2) When there is reason to believe that any officer under this Act has been committed in respect of any specified forest produce, 3[Any Forest Officer as may be notified by the State Government or any Police Officer not below the rank of an Assistant Sub Inspector] or any person authorized by the State Government in this behalf may, seize such specified Forest Produce along with all tools, boats, vehicles, ropes, chains or any other articles used in committing such offence under the provisions of this Act.

(3) Any Officer or Person seizing any property under this Section shall place on all such property a mark indicating that the same has been so seized and shall, as soon as may be, either produce the property seized before the officer not below the rank of an Assistant Conservator or Forest authorised by the State Government in this behalf, by notification (hereinafter referred to as the Authorised Officer] or where it is having regard to quantity or bulk or other genuine difficulty, not practicable to produce the property seized before the Authorised Officer, make a report about the seizure to the Authorised Officer, or where it is intended to launch criminal proceedings against the offender immediately make report of such seizure to the Magistrate having jurisdiction to try the offence account of which seizure has been made: Provided that, when the specified Forest Produce with respect to which such offence is believed to have been committed is the property of Government and the offender is unknown it shall be sufficient if the officer make as soon as may be a report of the circumstances to his official superior.

(3A) Any forest officer of a rank not inferior to that of a Ranger, who or whose subordinate, has seized any tools, boats, vehicles, ropes, claims or any other article as liable for confiscation, may release the same on the execution by the owner thereof, of a security in a form as may be prescribed, of an amount equal to double the value of such property, as estimated by such officer, of the production of the property so released, when so required, before the officer authorized order the confiscation or the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

(4) Subject to the provisions of sub-section(6), where the authorized officer upon production before him of the specified forest produce or upon receipt of report about the seizure, as the case may be, is satisfied that offence has been committed in respect thereof, he may, by order in writing and for reasons to be recorded confiscate the specified forest produce so seized together with all tools, vehicles, boats ropes, chains or any other articles used in committing such offence. A copy of order of confiscation

shall be forwarded without any undue delay to the 1[Officer-in-charge of Forest Circle] in which the specified forest produce has been seized.

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

(a) sends an intimation in forms prescribed about intimation 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 or person effecting the seizure and the person or persons to whom notice has been issued under clause (b), hearing on the date to be fixed for such purpose.

(5A) When the authorised officer having the jurisdiction over the case is himself involved in the seizure of investigation, the next higher authority may transfer the case to any other officer of the same rank for conducting proceedings under this section.

(6) No order of confiscation under sub-section (4) of any tools, vehicles, boats, ropes, chains or any other articles (other than specified forest produce seized) shall be made if any person referred to in clause (b) of sub-section (5) proves to the satisfaction of authorised officer that any such 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 an offence under this Act.

(6A) The seized forest produce or any other property, if ordered to be released by the authorised officer, shall continue to be under custody until confirmation of the order of the authorised officer by the Appellate Authority or until the expiry of the period for initiating "suomotu" action by him, whichever is earlier, as specified under Section 15-A.

(7) The provisions of Sections 102 and 103 of the Code of Criminal Procedure, 1973 (No.2 of 1974) relating to search and seizures shall so far as may be apply to searches and seizures and seizures under this section.

Sub-section (1) of Section 15 empowers concerned forest officers to conduct search to secure compliance of the provisions of the Adhiniyam. On a plain reading of Sub-section (2), it is clear that the concerned officer may seize vehicles, ropes etc, if he has reason to believe that the said items were used for the commission of an offence under the Adhiniyam. Confiscation proceedings as contemplated under Section 15 of the Adhiniyam is a quasi-judicial proceedings and not a criminal proceedings. Confiscation proceeds on the basis of the 'satisfaction' of the Authorized Officer with regard to the commission of forest offence. Sub-section (3) of the provision lays down the procedure to be followed for confiscation under the Adhiniyam. Sub-section (3A) authorizes forest officers of rank not inferior to that of a Ranger, who or whose subordinate, has seized any tools, boats, vehicles, ropes, claims or any other article as liable for confiscation, may release the same on execution of a security worth double the amount of the property so seized. This provision is similar to that of Section 53 of the Indian Forest Act as amended by the State of Madhya Pradesh. Sub-section (4) mandates that the concerned officer should pass a written order recording reasons for confiscation, if he is satisfied that a forest offence has been committed by using the items marked for confiscation. Sub-section (5) prescribes various procedures for confiscation proceedings. Sub-Section (5A) prescribes that whenever an Authorized Officer having jurisdiction over the case is himself involved in the seizure, the next higher authority may transfer the case to any other officer of the same rank for conducting confiscation proceedings. Sub-section (6) provides that with respect to tools, vehicles, boats, ropes, chains or any other article other than timber or forest-produce seized, confiscation may be directed unless the person referred in clause (b) of Sub-section 5 is able to satisfy that the articles 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 the use of such objects for commission of forest offence.

16. Section 15 A provides the remedy of appeal against the order of the authorized officer under Section 15 in confiscation proceedings. Section 15-B of the Adhiniyam provides for revision before the Court of Sessions against the order of the Appellate Authority in the confiscation proceedings.

17. Under Section 15-C of the Adhiniyam, a jurisdictional bar on courts and tribunals have been provided for, if the confiscation proceedings are initiated under Section 15 of the Adhiniyam. Moreover Sub-section (2) of Section 15-C provides that nothing hereinbefore contained shall be deemed to prevent any officer authorized in this behalf by the State Government from directing at any time the immediate release of any property seized under Section 15. The necessary proposition which follows such a provision is that, in a case where the Authorized Officer is empowered to confiscate the seized forest produce on being satisfied that an offence under the Act has been committed, the general power vested in the Magistrate for dealing with interim custody/release of the seized materials under the Cr. P.C. gives way. The Magistrate while dealing with a case of seizure of forest produce under the Act should first examine whether the power to confiscate the seized forest produce is vested in the Authorized Officer under the Act and if he finds so, then he has no power to pass any order dealing with interim custody/release of the seized material. Such ouster of jurisdiction would aid in proper implementation of the Adhiniyam. If in such cases the power to grant

interim custody/release of seized forest produce is vested in the Magistrate, then it will defeat the very scheme of the Act. Such a consequence is to be avoided.

18. Another relevant provision which needs to be to be discussed is Section 15-D of the Adhiniyam. It provides that:

15-D. Confiscation of property when the produce is not the property of Government.- All specified forest produce which in either case is not the property of the Government and in respect of which a contravention of any provision of the Act or the rules made thereunder has been committed and all tools, boats, vehicles, ropes, chains or any other articles, in case used in committing such contravention shall, subject to the provisions of Sections 15, 15A, 15 B and 15 C be liable to confiscation upon conviction of the offender for such contravention.”

19. The said section makes it clear that section 15-D subjects itself to confiscation proceedings under Section 15, 15-A, 15-B and 15-C of Act. Further Section 15-D speaks of confiscation of all tools, boats, vehicles, ropes, chains or any other articles upon conviction of the offender for such forest offence. This Section is equivalent to Section 55 of the Indian Forest Act as amended by the State of Madhya Pradesh. In this Section the confiscation after the conviction is subjected to separate confiscation proceedings as contemplated under Section 15, 15-A, 15-C. At the cost of repetition it should be noted that if a confiscation proceeding under Section 15 has commenced and the confiscation has already occurred, then there is no question of confiscation under Section 15-D again. If the confiscation has not taken place under Section 15, then the Court after final conviction can order confiscation under Section 15-D of the Adhiniyam.

20. The broad scheme of the Adhiniyam is to punish those who are in contravention of the law at the hand of the criminal court. The confiscation being incidental and ancillary to the conviction, State of Madhya Pradesh, separated the process of confiscation from the process of prosecution. The purpose of the enactment seems to be that the power of the criminal court regarding the disposal of property is made subject to the jurisdiction of the authorized officer with regard to that aspect; the jurisdiction of criminal court in regard to the main trial remains unaffected.

21. Before we deal with the question concerned in this appeal it would be apt to have a look at three cases decided by this court. In *Divisional Forest Officer And Anr. Vs. G.V. Sudhakar And Ors¹*, this Court was concerned with the question as to whether the proceedings for confiscation of illegally felled timber by the respondent therein can be continued till the disposal of main criminal case pending against him. This Court after considering the various provisions of the Andhra Pradesh Forest Act came to the conclusion that there is no doubt that the object of the legislation was to provide for two separate proceedings before two different forums and that there is no conflict of jurisdiction as Section 45, as amended by the Amendment Act, in turn curtails the power conferred on the Magistrate to direct confiscation of timber or forest produce on conviction of the accused. This Court proceeded to observe-

The conferral of the power of confiscation of seized timber or forest produce and the implements, etc. on the Authorized Officer under Sub-section (2a) of Section 44 of the Act on his being satisfied that a forest offence had been committed in respect thereof, is not dependent upon whether a criminal prosecution for commission of a forest offence has been launched against the offender or not. It is a separate and distinct proceeding from that of a trial before the Court for commission of an offence. Under Sub-section (2A) of Section 44 of the Act, where a Forest Officer makes report of seizure of any timber before the Authorized Officer along with a report under Section 44(2), the Authorized Officer can direct confiscation to Government of such timber or forest produce and the implements, etc., if he is satisfied that a forest offence has been committed, irrespective of the fact whether the accused is facing a trial before a Magistrate for the commission of a forest offence under Section 20 or 29 of the Act.

22. In the case of *State of West Bengal vs. Gopal Sarkar*⁵, this Court again had an opportunity to deal with the confiscatory proceedings initiated for forest offences. This Court while relying on the judgment in *Divisional Forest Officer vs G. V. Sudhakar Rao* (Supra) has come to the following conclusion:

10. On a fair reading of the provision it is clear that in a case where any timber or other forest produce which is the property of the State Government is produced under sub-section (1) and an Authorised Officer is satisfied that a forest offence has been committed in respect of such property he may pass order of confiscation of the said property (forest produce) together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence. The power of confiscation is independent of any proceeding of prosecution for the forest offence committed. This position is manifest from the statute and has also been held by this Court in *Divisional Forest Officer v. G.V. Sudhakar Rao*(Supra).

23. In the case of *State of M.P vs. S.P Sales Agencies*⁶, the brief facts therein were a truck was intercepted by the police in the District of Gwalior. It was found that 281 cases of Kuttcha manufactured by M/s Harsh Food Products, respondent 2 therein were found in the truck. These wood cases were being transported without requisite transit pass under Rule 3 of M.P. Transit Rules thereafter; this matter was reported to Sub-Divisional Forest Officer, Gwalior, who initiated confiscation proceedings under Section 52 of the Act. This Court had an opportunity to deal with the question as to whether confiscation proceedings can be initiated under section 52 of the Act only after launching of the criminal prosecution or is it open to the forest authorities upon seizure of forest produce to initiate both or either. This Court relying on the cases in *Divisional Forest Officer vs. G. V. Sudhakar Rao*⁷ and *State of West Bengal vs. Gopal Sarkar*, came to the conclusion that the power of confiscation is independent of any criminal prosecution for forest offences committed.

24. In view of the foregoing discussions, it is apparent that Section 15 gives independent power to the concerned authority to confiscate the articles, as mentioned there under, even before the guilt is completely established. This power can be exercised by the concerned officer if he is satisfied that the said objects were utilized during the commission of a forest offence. A protection is provided for the owners of the vehicles/articles, if they are able to

prove that they took all reasonable care and precautions as envisaged under Sub-section (5) of Section 15 of the Adhinyam and the said offence was committed without their knowledge or connivance.

25. 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 Adhinyam prescribes an independent procedure for confiscation. The intention of prescribing separate proceedings is to provide a deterrent mechanism and to stop further misuse of the vehicle

26. At the cost of repetition we clarify that confiscatory proceedings are independent of the main criminal proceedings. In view of our detailed discussion in the preceding paragraph we are of opinion that High Court as well as the revisional court erred in coming to a conclusion that the confiscation under the law was not permissible unless the guilt of the accused is completely established.

27. Consequently the appeal is allowed and the judgment of the High Court is set aside.

Judgment Referred.

⁴(1985) 4 SCC 0573

⁵(2002) 1 SCC 0495

⁶(2004) 4 SCC 0448