
(1984) 03 OHC CK 0004

Orissa High Court

Case No: None

Sarat Kumar Malu

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision: March 15, 1984

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 451, 452, 453, 454, 455
- Essential Commodities Act, 1955 - Section 3, 6A

Citation: (1984) 57 CLT 381 : (1984) CriLJ 984

Hon'ble Judges: G.B. Patnaik, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

G.B. Patnaik, J.

The petitioner, registered owner of truck No. ORX 8589, challenges the legality of the order of the Sub-Divisional Judicial Magistrate, Khurda, dated 24-8-1983 whereunder the learned Magistrate has rejected the prayer of the petitioner for release of the truck. The truck in question was seized by the officials of the forest department on 24-6-1983 on the allegation that certain teak logs were stealthily being removed in the said vehicle and thereby an offence under the Orissa Forest Act (14 of 1972) (hereinafter referred to as the Act) is said to have been committed and the vehicle in question was used in committing such offence. The petitioner filed an application in the court of the Sub-Divisional Judicial Magistrate on the ground that he is the registered owner of the vehicle and had absolutely no knowledge about carrying of any teak logs in the vehicle and in the interests of justice, the truck should be released in his favour. By the impugned order, the learned Magistrate has rejected the said petition on the ground that specific provisions having been made in the Act, the jurisdiction of the criminal Courts must be held to be excluded.

2. The learned Counsel for the petitioner challenges the legality of the aforesaid order and contends that the special statute, namely, the Orissa Forest Act, does not exclude the jurisdiction of the criminal Courts in the matter of release of the seized property and the learned Magistrate, therefore, committed gross illegality in rejecting his application for release,

3. Mr. Rath, the learned Additional Standing Counsel on the other hand contends that in view of the specific provisions in the Act, more particularly, Secs. 56, 57 and 58, of the same, the normal jurisdiction of the criminal courts under the Criminal P. C. (hereinafter referred to as the "Code") must be held to be excluded in relation to the matters for which provision has been made in the special statute itself. The rival contentions require careful examination of different provisions of the Code as well as the Act pertaining to release of the seized property, particularly when there is no authority on the point of this High Court.

4. Chapter XXXIV of the Code deals with "disposal of property". Sections 451 to 459 of the Code occurring in the said chapter deal with the powers of Courts in the matter of disposal of property. Any order to be passed by a criminal Court in relation to disposal of property must come under one or another of the said sections depending upon the facts and circumstances of the case. Section 451 enables a magistrate to provide for interim custody of any seized property produced before him in course of an inquiry or trial and the only exception is if the property in question is subject to speedy and natural decay or the magistrate thinks it expedient so to do, then he may order the property to be sold or otherwise disposed of, Section 452 provides for disposal after the trial or inquiry is over. Both these sections deal with cases which have actually come up before the court in any inquiry or trial. Sections 453 to 456 of the Code also relate to disposal of property, but I am not concerned with those sections in the present case. Sub-section (1) of Section 457 applies to cases where the seizure of a property by a police officer is reported to a magistrate, but the property is not produced before the court during inquiry or trial. In such a case, the magistrate has the power to pass orders regarding disposal of such property or delivery of the property to the person entitled to the possession thereof. Sub-section (2) of Section 457 provides the procedure to be adopted when the person entitled to the property is unknown. Section 457 is a general provision. Section 458 provides the procedure where no claimant appears within six months and Section 459 empowers the magistrate to sell perishable properties. These are all the provisions in the Code dealing with disposal of properties seized.

5. Chapter VIII of the Act deals with Penal Penalties and Procedure and the relevant sections in connection with seizure of property and its disposition are Secs. 56, 57, 58, 59, 60, 61 and 62. Section 56 of the Act provides for seizure of forest produce when a forest offence appears to have been committed in respect thereof and also seizure of all tools, chains, boats, vehicles or cattle used in committing any such offence. Section 57 provides for interim custody of the seized property on certain terms and conditions. Section 58 empowers a magistrate for the arrest and "trial of the offender and disposal of the property seized. Section 59 deals with confiscation of the seized property. Section 60

is the provision dealing with disposal of the property after conclusion of trial. Section 61 deals with the procedure when the offender is unknown or cannot be found and Section 62 envisages power of magistrate to deal with perishable properties seized u/s 56. These provisions in the Act are more or less a complete code by themselves dealing with the seizure of property used in the commission of a forest offence and the disposal of the same. For the sake of convenience, the aforesaid provisions of the Act are, quoted hereinbelow in extenso:-.

56. 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 tools, ropes, chains, boats, vehicles or cattle used in committing any such offence may be seized by any forest officer or police officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall as soon as may be, except where the offender agrees in writing to get the offence compounded, either produce the property seized before an officer not below the rank of an Assistant Conservator of Forests authorised by the State Government in this behalf by notification (hereinafter referred to as the "authorised officer") or make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made :

Provided that, when the 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 makes, as soon as may be, a report of the circumstances to his official superior and the Divisional Forest officer.

(2-a) Where an authorised officer seized any forest produce under Sub-section (1) or where any such forest produce is produced before him under Sub-section (2) and he is satisfied that a forest offence has been committed in respect thereof, he may order confiscation of the forest produce so seized or produced together with all tools, ropes, chains, boats, vehicles or cattle used in committing such offence.

(2-b) No order confiscating any property shall be made under Sub-section (2-a) unless the person from whom the property is seized is given -

(a) a notice in writing informing him of the grounds on which it is proposed to confiscate such property;

(b) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) a reasonable opportunity of being heard in the matter.

(2-c) Without prejudice to the provisions of Sub-section (2-b), no order of confiscation under Sub-section (2-a) of any tool, rope, chain, boat, vehicle or cattle, shall be made if the owner thereof proves to the satisfaction of the authorised officer that it was used without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of the tool, rope, chain, boat, vehicle or cattle, in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.

(2-d) Any forest officer not below the rank of Conservator of Forests empowered by the Government in this behalf by notification, may within thirty days from the date of the order of confiscation by the authorised officer under Sub-section (2-a), either suo motu or on application, call for and examine the records of the case and may make such inquiry or cause such inquiry to be made and pass such orders as he may think fit :

Provided that no order prejudicial to any person shall be passed without giving him an opportunity of being heard.

(2-e) Any person aggrieved by an order passed under Sub-section (2-a) or Sub-section (2-d) may, within thirty days from the date of communication to him of such order, appeal to the District Judge having jurisdiction over the area in which the property has been seized, and the District Judge shall after giving an opportunity to the parties to be heard, pass such order as he may think fit and the order of the District Judge so passed shall be final.

(3) The property seized under this section shall be kept in the custody of a Forest Officer or with any third party, until the compensation for compounding the offence is paid or until an order of the Magistrate directing its disposal is received,

Explanation- For the purpose of this section and Section 59, cattle shall not include buffaloes, cows, calves and oxen.

57. Power to release property seized u/s 56:-

Any Forest Officer of a rank not inferior to that of a Range Officer who or whose subordinate has seized any tools, ropes, chains, boats, vehicles or cattle u/s 56, and where a report of such seizure has been made to Magistrate under Sub-section (2) of that section may release the same on the execution by the owner thereof. of a bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

58. Action after seizure:-

Upon the receipt of any such report, the Magistrate shall, except where the offence has been compounded, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property

according to law.

59. Forest produce, tools, etc. liable to confiscation:-

(1) All timber or forest produce which is not the property of Government and in respect of which a forest offence has been committed and all tools, ropes, chains, boats, vehicles and cattle used in committing any forest offence, shall be liable to confiscation unless an order of confiscation has already been passed in respect thereof u/s 56.

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

60. Disposal on conclusion of trial for forest offence of produce in respect of which it was committed:-

When, the trial of any forest offence is concluded, any forest produce in respect of which such offence has been committed shall, if it is the property of Government or has been confiscated, be taken charge of by or under the authority of the Divisional Forest Officer, and in any other case, may be disposed of in such manner as the Court may direct.

61. Procedure when offender not known, or cannot be found:-

Where the Magistrate is of opinion that a forest offence was committed, but the offender is not known or cannot be found, he may on an application made in this behalf, order the property in respect of which the offence was committed and which was seized to be confiscated and taken possession of by or under the authority of the Divisional Forest Officer or to be made over to any person whom the Magistrate considers to be entitled to the sale :

Provided that before making any such order, the Magistrate shall cause a notice of any application made under this section to be served upon any person who, he has reason to believe is interested in the property seized, or shall publish such notice in such manner as he thinks fit.

Provided further that no such order shall be made until the expiration of one month from the date of seizing such property or without hearing the person, if any, claiming any right thereto, and the evidence, if any, which he may produce in support of his claim.

62. Procedure as to perishable property seized u/s 56:-

The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized u/s 56 which is subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it has not been sold.

Provided that if in the opinion of the officer seizing such property, it is not possible to obtain the orders of the Magistrate in time, such officer may sell the property, remit the

sale proceeds to the nearest Government treasury and make a report to the Magistrate and thereupon the Magistrate shall take such measure as may be necessary for the trial of the accused:

Provided further that no officer below the rank of a Range Officer shall have power to dispose of property under the preceding proviso.

6. An analysis of the aforesaid provisions of the Act would clearly show that the Legislature has provided for all contingencies regarding disposal of the properties seized in connection with the commission of any forest offence. The provisions aforesaid are more or less in pari materia with the provisions contained in Chapter XXXIV of the Code. The question now, therefore, remains to be considered as to whether the jurisdiction of the criminal courts under Chapter XXXIV of the Code must be held to be excluded because of the Legislature making necessary provisions in that regard in Chapter VIII of the Act. Admittedly, there is no provision in the Act specifically excluding the jurisdiction of criminal court in relation to the property seized in connection with commission of any forest offence. But it is a well-known principle of constructor that when any specific statute confers special powers on specified authority and provides for adequate remedy in the specific statute, then to that extent the powers and remedies available under a general statute must be held to be excluded.

7. A similar question relating to a seizure made under the Essential Commodities Act had come up for consideration before the Allahabad High Court in the case of Bharat Mahey v. State of U. P. 1975 Cri LJ 890. In view of the special provisions in the Essential Commodities Act, namely, Section 6A, it was held in that case;-

In view of Section 6A I am of the opinion that the Judicial Magistrate, Meerut, before whom the report of the Station Officer dated 17th June, 1974, was placed for obtaining orders was not the proper authority vested with jurisdiction to pass orders in respect thereto. It was the Collector of the District alone who could direct the disposal of the Dalda tins in question, if he was satisfied that there had been a contravention of the conditions of any order issued u/s 3 of the Essential Commodities Act.

An identical question was also considered by the Himachal Pradesh High Court in the case of Amar Nath v. State of Himachal Pradesh AIR 1975 Him Pra 40. A learned single Judge held:-

...It is manifest, the general provision contained in the Criminal P. C. must be displaced by the special provision provided by Section 6A of the Essential Commodities Act, 1955. In my opinion, the amended provisions of Section 6A of the Act impliedly limit the powers of the criminal Court in the matter of disposal of foodgrains etc. which are seized in contravention of the Act and orders, whether or not prosecution is instituted against the accused. There is no condition precedent for making the order of confiscation that a prosecution case should be pending. This is so clear from Section 6A itself. Therefore,

the provisions of the Criminal P.C. will not come into play and even without prosecution case being launched, the Collector will have the power to confiscate and also to deal with the property, may be by selling the same in public interest. Where a statute specifies a particular mode of enforcing a new obligation created by it, such obligation can, as a general rule, be enforced in no other manner than that provided by the statute. Therefore, in my opinion, there can be no relevancy of Section 516-A of the Criminal P.C." To the same effect is the decision of the Patna High Court (Ranchi Bench) in the case of Om Prakash Sao v. State of Bihar 1979 BLJR 312. Of course in that case, the learned Judge also considered the provisions of Section 6A of the Essential Commodities Act which specifically ousted the jurisdiction of criminal Courts.

8. An identical question pertaining to the provisions of the Andhra Pradesh Forest Act was considered by a learned single Judge of the Andhra Pradesh High Court in the case of State of Andhra Pradesh v. P.K. Mahammad, Writ Petition No. 334 of 1977 : (1978) 1 APLJ 391. The learned Judge held:

...In cases where the property is not produced before the Court but only the persons are produced before it and where the Court is clearly told or informed that the property seized has been produced before the Authorised Officer, the Court can have no power to pass orders of disposal with respect to such seized property.

It was further held:-

But the said general power of the Court under the Criminal P.C. has to be read along with and in the context of the special procedure prescribed by the Amending Act 17 of 1976. Once a competent authority is created for dealing with the property and the property seized has been produced before such competent authority, the Court cannot propose to pass orders of disposal with respect to such property since any such orders are likely to interfere with the course of proceedings before the authorised Officer....

The ultimate conclusion of the learned Judge was:-

...I am of the opinion that in this case, the learned Magistrate had no jurisdiction to release the motor car which was not produced before him but which was produced before the Authorised Officer and the latter was seized of the same.

This view of the learned single Judge did not find favour with the Division Bench of the said High Court in the case of Smt. Haji Begum v. State of Andhra Pradesh (1979) 1 AnWR 190 : 1979 CriLJ 42. The Division Bench held that the Magistrates have power to dispose of forest produce and the "tools" once a report is received by them. It was also held in that case that on receipt of the report, the Magistrate is seized of the case and is empowered to take such measures as may be necessary for the trial of the accused and the disposal of the property according to law. It may be noted that the learned Judges of the Division Bench located powers with the Magistrate not under the provisions of the Criminal P. C, but under the provisions of the Andhra Pradesh Forest Act. This view of the

Division Bench did not find favour with the Supreme Court and in Civil Appeal No. 1216 of 1979 (State of Andhra Pradesh v. Smt. Jahi Behum), the Supreme Court by order dated 23rd April, 1979, held :-

In our opinion on the facts and circumstances of this case the order of the High Court is not fit to be sustained. The High Court has taken an erroneous view of the report made by the Forest Ranger to the Magistrate while forwarding the accused to him. The proceedings as to the confiscation of the property seized as also the car has got to go on before the Divisional Forest Officer. He will decide the matter and unprejudiced by anything that has been said in the judgment of the High Court. Thereafter, if necessary, it will be open to the respondents to file an appeal before the District Court....

Thus it is abundantly clear from the aforesaid pronouncement of the Supreme Court that the power to pass orders regarding disposal of the seized property lies with the authorities under the Forest Act and not with the court by invoking the provisions of the Criminal P.C. In my view, therefore, when any forest produce together with the vehicle used in committing any forest offence is seized by any Forest Officer in exercise of his powers u/s 56 of the Orissa Forest Act, then the power to release the property seized lies with the authorities prescribed in the four corners of the provisions of the Forest Act and not with a Magistrate in exercise of his powers under the provisions of the Criminal P. C.

That apart, the vehicle in question in the present case has not been produced before any Magistrate, and, therefore, in terms, (sic) Section 452 of the Code deals with the power of the Magistrate to dispose of the property at the conclusion of trial and, therefore, that stage has also not reached in this case. The only other provision is the general provision provided in Section 457. That also in terms will have no application when the property in question has not been seized by a police officer in this case but by a forest officer. Consequently, there is no provision in the Code which could give jurisdiction to a Magistrate to exercise his powers for disposal of the seized property,

9. In the result, therefore, the order of the Sub-Divisional Judicial Magistrate, Khurda, dated 24-8-1983 is unassailable and this criminal revision is accordingly dismissed.