

A THE STATE OF MADHYA PRADESH

v.

UDAY SINGH

(Criminal Appeal No. 524 of 2019)

B MARCH 26, 2019

**[DR. DHANANJAYA Y CHANDRACHUD AND  
HEMANT GUPTA, JJ.]**

- Forest Act, 1927: ss. 52(substituted by MP Act 25 of 1983),*
- C *52A – Seizure of property liable to confiscation and procedure thereof – Seizure of tractor and trolley involved in illegal excavation of sand from Chambal river – Confiscation proceedings initiated in terms of s. 52(3) – Jurisdiction of the Magistrate u/s. 451 CrPC to order interim release of the seized vehicle – Held: Procedure is governed by ss. 52 and 52A – Magistrate has no jurisdiction u/s. 451 CrPC to direct release of the seized vehicle – Order passed by the High Court u/s. 482 CrPC directing the Magistrate to pass orders for interim release of the seized vehicle set aside – Code of Criminal Procedure, 1973 – ss. 451, 482.*
- D *451 CrPC to direct release of the seized vehicle – Order passed by the High Court u/s. 482 CrPC directing the Magistrate to pass orders for interim release of the seized vehicle set aside – Code of Criminal Procedure, 1973 – ss. 451, 482.*

E **Allowing the appeals, the Court**

- F **HELD: 1.1 Under sub-section (1) of Section 52 of the Forest Act, 1927 where there is a reason to believe that a forest offence has been committed in respect of any reserved or protected forest or forest produce, the produce, and all tools, boats, vehicles or articles used in committing the offence may be seized by any Forest Officer or Police Officer. Under sub-section (2), the officer seizing the property is required to place a mark of seizure and produce the property before the Authorised Officer or, where it is not practicable to produce the property seized, make a report to the Authorised Officer. Where it is intended to launch criminal proceedings against the offender immediately, a report of the seizure has to be made to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made. Sub-section (3) stipulates that subject to sub-section (5), the Authorised Officer may upon being satisfied that a forest offence has been committed upon the production of the property seized**
- G **154**

or on the receipt of a report about the seizure, order the forest produce so seized, together with all tools, vehicles, boats or article used in the commission of the offence to be confiscated. No order of confiscation can be made unless the conditions mentioned under sub-section (4) are complied with. Those conditions are: the Forest Officer must send an intimation in the form prescribed about the initiation of proceedings for confiscation of the property to the Magistrate having jurisdiction to try the offence; the issuance of a notice to the person from whom the property has been seized or any other person who appears to have an interest in the property; Affording a reasonable opportunity of making a representation against the proposed confiscation; and furnishing of an opportunity of being heard to the officer effecting the seizure and to the person to whom a notice has been given. Sub-section (5) provides that no order for confiscation can be passed if the person to whom a notice has been issued under clause (b) of sub-section (4) proves that the tools, vehicles, boats or article were used without her knowledge or connivance and that reasonable and necessary precautions had been taken against their use for the commission of a forest offence. [Para 9][166-D-H; 167-A-D]

1.2 Section 52-A provides an appellate remedy to a person aggrieved to the Conservator of Forests, against an order of confiscation. Significantly, under sub-section (4) of Section 52-A, the Appellate Authority is empowered to pass orders of an interim nature for the custody, preservation or disposal of the subject matter of the confiscation. Section 52-B provides for the remedy of a revision before the Court of Sessions against an order of the Appellate Authority. Section 53 deals with the power to release property which is seized under Section 52. This provision was substituted by MP Act 7 of 2010. Prior to the substitution, Section 53 stipulated the release of the property seized on the execution of a bond, for the production of the property, when required, before the Magistrate having jurisdiction to try the offence. Under Section 60, the property which has been confiscated by an Authorised Officer under Section 52 is to vest in the government, subject to the result of the proceedings before the Appellate Authority under Section 52 or upon *suo motu* action under Section 52-A or a revision before the Court of Sessions u/s 52-B. [Para 10][167-D; 169-B; 171-A-B]

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- A      **1.3** Distinct from the proceedings for confiscation envisaged under the Forest Act are those relating to criminal prosecution, as amended by the State of Madhya Pradesh. Section 52(2) stipulates that where it is intended to launch a criminal proceeding against an offender immediately, a report of the seizure has to be made to the Magistrate having jurisdiction to try the offence.
- B      Where the property which has been seized under Section 52 is released by an Authorised Officer under Section 53, it must be upon execution of security in such form as may be prescribed, equal to the value of the property, so as to ensure the production of the property when required before the Magistrate having jurisdiction to try the offence. On receipt of a report under Section 52(2), Section 54 stipulates that the Magistrate must take all measures necessary for the arrest and trial of the offender and the disposal of the property according to law. This proviso is significant, because before passing any order for disposal of the property, the Magistrate must be satisfied that no intimation has been received under Section 52(4). Section 55 provides that upon the conviction of the offender for a forest offence, the forest produce together with tools, boats, vehicles and other articles used for its commission shall be liable to confiscation, subject to the provisions of Sections 52, 52-A, 52-B and 52-C.
- E      [Para 12, 13][173-D-G; 174-B-D]
- F      **1.4** The intent of the State Legislature is emphasised by the provisions contained in the proviso to Section 54 as well as in sub-section (1) of Section 55. Under Section 52(2) where it is intended to launch criminal proceedings against the offender immediately, the officer seizing any property under the Section has to make a report of the seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made. Upon the conviction of the offender for a forest offence, Section 55 clearly indicates that the forest produce and all tools, boats, vehicles, articles etc. used in the commission of the forest offence would be liable to confiscation subject to the provisions of Sections 52, 52-A, 52-B and 52-C.
- G      [Para 14][174-F-G]
- H      **1.5** 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. 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 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. 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 the CrPC and provides that it shall not be called into question before any court. 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. 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 instant case, in a petition under Section 482 CrPC, to the

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- A **Magistrate to direct the interim release of the vehicle, which had been seized, was contrary to law. The jurisdiction under Section 451 CrPC was not available to the Magistrate, once the Authorised Officer initiated confiscation proceedings.** [Para 26][185-A-H; 186-A-B]
- B **1.6 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 48A of the Directive Principles and the Fundamental Duty of every citizen incorporated in Article 51A(g).**
- C **By isolating the confiscation of forest produce and the instruments utilised 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 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 change are bearing down on every day of our existence. Statutory interpretation must remain eternally vigilant to the daily assaults on the environment. The impugned judgment and order of the High Court is set aside.** [Para 27, 28][186-B-F]

*State of Madhya Pradesh v Madhukar Rao (2008) 14 SCC 624 : [2008] 1 SCR 413 ; Divisional Forest Officer*

*v GV Sudhakar Rao (1985) 4 SCC 573 : [1985] 3 Suppl. SCR 680 ; State of Karnataka v KA Kunchindammed*

*(2002) 9 SCC 90 : [2002] 3 SCR 162 ; State of West Bengal v Sujit Kumar Rana (2004) 4 SCC 129 : [2004] 1 SCR 870 ; State of Madhya Pradesh v Kallo Bai*

*(2017) 14 SCC 502 ; State of AP v PK Mohammad*

*(1978) 1 APLJ 391 ; Mohd Yaseen v Forest Range Officer, Flying Squad, Rayachoti (1980) 1 ALT 8 ;*

- G *State of Karnataka v KA Kunchindammed*
- H *(2002) 9 SCC 90 : [2002] 3 SCR 162 ; State of West Bengal v Sujit Kumar Rana (2004) 4 SCC 129 : [2004] 1 SCR 870 ; State of Madhya Pradesh v Kallo Bai*
- I *(2017) 14 SCC 502 ; State of AP v PK Mohammad*
- J *(1978) 1 APLJ 391 ; Mohd Yaseen v Forest Range Officer, Flying Squad, Rayachoti (1980) 1 ALT 8 ;*

*Kailash Chand v State of MP (1995) AIR (MP) 1 ; Ramkumar Sahoo v State of Madhya Pradesh WP No 18818 of 2017 decided on 15.02.2018 – referred to.* A

**Case Law Reference**

|                         |             |         |   |
|-------------------------|-------------|---------|---|
| [2008] 1 SCR 413        | referred to | Para 4  | B |
| [1985] 3 Suppl. SCR 680 | referred to | Para 4  |   |
| [2002] 3 SCR 162        | referred to | Para 4  |   |
| [2004] 1 SCR 870        | referred to | Para 4  |   |
| (2017) 14 SCC 502       | referred to | Para 4  | C |
| (1978) 1 APLJ 391       | referred to | Para 19 |   |
| (1980) 1 ALT 8          | referred to | Para 19 |   |
| (1995) AIR (MP) 1       | referred to | Para 24 |   |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal D  
No. 524 of 2019.

From the Judgment and Order dated 29.07.2011 by the High Court  
of M.P., Bench at Gwalior in Misc. Crl. Case No. 5171/2011.

With

Criminal Appeal No. 525 of 2019 E

Criminal Appeal Nos. 1362-1363 and 1364 of 2012

Varun K. Chopra, Dy. Adv. Gen., Gurtej Pal Singh,  
Mrs. Swarupama Chaturvedi, Advs. for the Appellant.

Jitesh P. Gupta, Ms. Praveena Gautam, Advs. for the Respondent. F

The Judgment of the Court was delivered by

**DR. DHANANJAYA Y CHANDRACHUD, J.**

1. Leave granted in the Special Leave Petitions.

**Criminal Appeal No.524 of 2019 @ SLP (Crl.) No.2001 of G  
2002:**

2. This appeal arises from a judgment of a learned Single Judge  
of the High Court of Madhya Pradesh at its Gwalior Bench dated 29  
July 2011. Allowing a petition under Section 482 of the Code of Criminal H

- A Procedure 1973<sup>1</sup>, the High Court set aside a revisional order dated 16 June 2011 of the Additional Sessions Judge, Morena. The Additional Sessions Judge had confirmed an order of the Judicial Magistrate First Class<sup>2</sup>, Ambah dismissing an application under Section 451 of the CrPC seeking the release of a tractor and trolley which had been seized for being involved in the illegal excavation of sand from the Chambal river.
- B 3. On 26 March 2011, the Forest Officer apprehended a tractor and trolley belonging to the respondent alleged to have been carrying sand illegally excavated from a restricted area of Dalijeet Pura Ghat at the National Sanctuary, Chambal without permission and in the absence of a transit pass. The tractor and trolley was seized together with the sand by the officers of the Forest Department under Sections 41, 52 and 52-A of the Indian Forest Act, 1927<sup>3</sup> and Sections 27, 29, 39(1)(d), 51 and 52 of the Wildlife Protection Act, 1972. Intimation of the seizure was given to the Magistrate under Section 52 of the Indian Forest Act, 1927 on 27 March 2011. The respondent moved an application<sup>4</sup> under
- C Section 451 of the CrPC<sup>5</sup> before the JMFC, Ambah for interim release of the seized vehicle. The Magistrate dismissed the application by an order dated 21 April 2011. A Criminal Revision<sup>6</sup> met with the same fate before the District and Sessions Judge, Morena on 16 June 2011. The respondent then instituted proceedings under Section 482 of the CrPC<sup>7</sup> before the High Court of Madhya Pradesh at its Gwalior Bench. By a judgment dated 29 July 2011, the High Court directed the Magistrate to

<sup>1</sup> “CrPC”

<sup>2</sup> “JMFC”

<sup>3</sup> “Indian Forest Act”

<sup>4</sup> Application No 9661 of 2009

<sup>5</sup> **“Section 451 - Order for custody and disposal of property pending trial in certain cases.”** — When any property is produced before any Criminal Court during an inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

<sup>6</sup> *Explanation.* — For the purposes of this section, “property” includes—

(a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence”

<sup>7</sup> 68 of 2011

H <sup>7</sup> Miscellaneous Criminal Case No. 5171 of 2011

pass orders for the interim release of the vehicle. The State of Madhya Pradesh has instituted these proceedings under Article 136 of the Constitution to assail the judgment of the High Court.

4 The grievance of the State of Madhya Pradesh is that similar orders have been passed by the High Court directing the Magistrate to release seized vehicles, relying on a decision of this Court in **State of Madhya Pradesh v Madhukar Rao<sup>8</sup>**. According to the State, in **Madhukar Rao**, this Court interpreted the provisions of the Wildlife Protection Act, 1972 and came to the conclusion that the Magistrate has the power and jurisdiction under Section 451 of the CrPC to order interim release of a seized vehicle. On the other hand, it has been submitted that the present case and other cases of its genre are governed by the provisions of the Indian Forest Act 1927 as amended in relation to the State of Madhya Pradesh by MP Act 25 of 1983. The submission is that the confiscation proceedings have been initiated in terms of Section 52(3) and hence the procedure is governed by Sections 52 and 52-A. Consequently, the jurisdiction of the Magistrate under Section 451 of the CrPC would (it has been urged) stand excluded. Elaborating on the above submissions, learned counsel appearing on behalf of the appellant has relied on the decisions of this Court in: (i) **Divisional Forest Officer v GV Sudhakar Rao<sup>9</sup>**, (ii) **State of Karnataka v KA Kunchindammed<sup>10</sup>**, (iii) **State of West Bengal v Sujit Kumar Rana<sup>11</sup>**; and (iv) **State of Madhya Pradesh v Kallo Bai<sup>12</sup>**.

5. Learned counsel appearing on behalf of the appellant submitted that:

(i) Section 52 of the Forest Act provides that when a forest offence has been committed in respect of any forest produce, the produce together with all tools, boats, vehicles, ropes, chains or any other article used in committing the offence may be seized by any Forest Officer. Section 52(3) provides that subject to sub-section (5), where the Authorised Officer, upon production before him of property seized or upon receipt of a report about seizure, as the case may be, is satisfied

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<sup>8</sup> (2008) 14 SCC 624

<sup>9</sup> (1985) 4 SCC 573

<sup>10</sup> (2002) 4 SCC 90

<sup>11</sup> (2004) 4 SCC 129

<sup>12</sup> (2017) 14 SCC 502

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- A that a forest offence has been committed in respect thereof, he may order in writing, for reasons to be recorded, the confiscation of the forest produce so seized together with all tools, vehicles, boats, chains or any other article used in committing the offence;
- B (ii) For the State of Madhya Pradesh, MP Act 25 of 1983 substituted the original provisions of Section 52 of the Forest Act, with certain conditions. Sub- section (3) of Section 52 as enacted by MP Act 25 of 1983, empowers the Authorised Officer to make an order in writing with reasons confiscating the forest produce so seized along with the tools, vehicles or any other article used in committing the offence. Similarly, for the State of Madhya Pradesh, MP Act 25 of 1983 inserted Section 52-A which provides for an appeal against the order of confiscation to the Appellate Authority within thirty days of the order of confiscation being passed by the Authorised Officer;
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- (iii) The High Court has erred in directing the release of the seized vehicle in exercise of its inherent jurisdiction under Section 482 of the CrPC. The High Court failed to appreciate that in the present case confiscation proceedings have been initiated in terms of sub-section (3) of Section 52 of the Forest Act, and the procedure thereafter would be governed by Sections 52 and 52-A. Since the confiscation proceedings have been initiated by the forest department, in terms of Section 52(3), the Magistrate in pursuance of the power conferred under Section 451 of the CrPC cannot direct release of the seized vehicle, as the jurisdiction of the criminal court stands excluded;
- (iv) This Court in **Sujit Kumar Rana** (*supra*) has held that once confiscation proceedings are initiated, the jurisdiction of the criminal court stands excluded. Since confiscation proceedings have been initiated by the forest authorities in terms of Section 52(3), the Magistrate cannot order release of the vehicle under Section 451 of the CrPC. Similarly, the High Court cannot under Section 482 of the CrPC direct release of the seized vehicle as the jurisdiction of the criminal court stands excluded; and

- (v) The legislative intent while inserting the abovementioned provisions must be kept in mind. Forests are a national wealth which are required to be preserved. In most cases, the State is the owner of the forest and forest produce and is enjoined with a duty to preserve forests to maintain an ecological balance. Therefore, statutory interpretation of such provisions should have regard to the principle of purposive construction so as to give effect to the aim and object of the legislature, and keeping the principles contained in Articles 48-A and 51-A(g) of the Constitution in mind. A
6. On the other hand, it has been urged on behalf of the respondent<sup>13</sup> that Chapter IX of the Forest Act, as amended in its application to the State of Madhya Pradesh, does not oust the jurisdiction of the Magistrate to deal with seized property, once it becomes a part of evidence at a criminal trial under the CrPC. In this context, it was urged that: C
- (i) Under Section 52(2), where the intention is to launch criminal proceeding, the report is to be sent only to the Magistrate having jurisdiction to try the offence and not the Authorised Officer. The expression “officer seizing the property” needs to be distinguished from the expression “authorised officer under the Act”; D
- (ii) The said Authorised Officer can proceed to satisfy herself whether a forest offence has been committed or not under Section 52(3), only if the seized property is produced before the Authorised Officer. If under Section 52(2), the report of the seizure has been sent to the Magistrate, the Authorised Officer cannot decide upon the commission of a forest offence, as the report of seizure is not before the Authorised Officer; E
- (iii) Since Authorised Officers cannot apply themselves to whether the seizure was valid, the circumstance of the Authorised Officer passing an order of confiscation does not arise at all. It follows that the intimation under Section 52(4) cannot be given when there is no confiscation; F
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<sup>13</sup> In SLP (Crl.) No. 5413 of 2013

- A (iv) The bar on jurisdiction under Section 52-C only applies after intimation under Section 52(4) is given. Since the Authorised Officer cannot pass an order of confiscation, the jurisdiction for trial of a criminal offence and the power to deal with the property involved rests with the Magistrate; and
- B (v) Therefore, there is no scope for parallel proceedings before both the Authorised Officer and the Magistrate, if the officer seizing the property believes that the gravity of the offence calls for a criminal trial and sends the report of seizure directly to the Magistrate.
- C 7. The rival submissions fall for consideration.
- 8. Section 52 of the Forest Act forms a part of Chapter IX which deals with penalties and procedure. In relation to Madhya Pradesh, Section 52 was substituted by MP Act 25 of 1983 and is in the following terms:
- D **“52. Seizure of property liable to confiscation and procedure therefor.—**
  - (1) When there is reason to believe that a forest offence has been committed in respect of any reserved forest and protected forest or forest produce, the produce, and all tools, boats, vehicles, ropes, chains or any other article used in committing 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, either produce the property seized before an officer not below the rank of an Extra Assistant Conservative of Forests by the State Government in this behalf by notification (hereinafter referred to as the authorized officer) or where it is, having regard to the quantity of bulk or other genuine difficulty, not practicable to produce property seized before the authorized officer, make a report about the seizure to the authorized officer, or where it is intended to launch criminal proceedings against the offender immediately, make a report of such seizure to the magistrate having jurisdiction to try the offence on account of which the seizure has been made:
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Provided that, when the forest produce with respect to which offence is believed to have been committed is the property of the 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.

(3) Subject to sub-section (5), where the authorized officer upon production before him of property seized or upon receipt of report about seizure, as the case may be, is satisfied that a forest offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded confiscate forest-produce so seized together with all tools, vehicles, boats, ropes, chains or any other article used in committing such offence. A copy of order of confiscation shall be forwarded without any undue delay to the Conservators of Forests of the forest circle in which the timber or the forest- produce, as the case may be, has been seized.

(4) No order confiscating any property shall be made under sub-section (3) unless the authorized officer—

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

(5) No order of confiscation under sub-section (3) of any tools, vehicles, boats, ropes, chains or any other article (other than timber or forest-produce seized) shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of

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- A authorized officer that any such tools, vehicles, boats, ropes, chains or other articles were used without his knowledge or convenience or, as the case may be, without the knowledge or convenience of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission of forest-offence.
- B (6) The seized property shall continue to be under custody until confirmation of the order of the authorized officer by the Appellate Authority or until the expiry of the period for initiating ‘suo motu’ action by him whichever is earlier, as prescribed under Section 52-A.
- C (7) Where the authorized officer having jurisdiction over the case is himself involved in the seizure or investigation, the next higher authority may transfer the case to any other officer of the same rank for conducting proceedings under this section.”
- D 9. Under sub-section (1) of Section 52, where there is a reason to believe that a forest offence has been committed in respect of any reserved or protected forest or forest produce, the produce, and all tools, boats, vehicles or articles used in committing the offence may be seized by any Forest Officer or Police Officer. Under sub-section (2), the officer seizing the property is required to place a mark of seizure and produce the property before the Authorised Officer or, where it is not practicable to produce the property seized, make a report to the Authorised Officer. Where it is intended to launch criminal proceedings against the offender immediately, a report of the seizure has to be made to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made. Sub-section (3) stipulates that subject to sub-section (5), the Authorised Officer may upon being satisfied that a forest offence has been committed upon the production of the property seized or on the receipt of a report about the seizure, order the forest produce so seized, together with all tools, vehicles, boats or article used in the commission of the offence to be confiscated. No order of confiscation can be made unless the conditions mentioned under sub-section (4) are complied with. Those conditions are:
  - (i) The Forest Officer must send an intimation in the form prescribed about the initiation of proceedings for confiscation of the property to the Magistrate having jurisdiction to try the offence;
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- (ii) The issuance of a notice to the person from whom the property has been seized or any other person who appears to have an interest in the property; A
- (iii) Affording a reasonable opportunity of making a representation against the proposed confiscation; and B
- (iv) Furnishing of an opportunity of being heard to the officer effecting the seizure and to the person to whom a notice has been given. Sub-section (5) provides that no order for confiscation can be passed if the person to whom a notice has been issued under clause (b) of sub-section (4) proves that the tools, vehicles, boats or article were used without her knowledge or connivance and that reasonable and necessary precautions had been taken against their use for the commission of a forest offence. C

10. Section 52-A provides an appellate remedy to a person aggrieved to the Conservator of Forests, against an order of confiscation. D Section 52-A provides as follows:

**“52-A. Appeal against the order of confiscation.—**

- (1) Any person aggrieved by an order of confiscation may, within thirty days of the order, or if fact of such order has not been communicated to him within thirty days of date of knowledge of such order, prefer an appeal in writing, accompanied by such fee and payable in such form as may be prescribed and by certified copy of order of confiscation to the Conservator of Forests (hereinafter referred to as Appellate Authority) of the forest circle in which the forest produce, has been seized. E F

*Explanation.* - (1) The time requisite for obtaining certified copy of order of confiscation shall be excluded while computing period of thirty days referred to in this sub- section.

- (2) The Appellate Authority referred to in sub-section (1), may, where no appeal has been preferred before him, “suo motu” within thirty days of date of receipt of copy of order of confiscation by him, and shall on presentation of memorandum of appeal issue a notice for hearing of appeal or, as the case may be, of “suo motu” action to the officer effecting seizure and to any other person G

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- A (including appellant, if any) who in the opinion of the Appellate Authority, is likely to be adversely affected by the order of the authorised officer, and may send for the record of the case:
  - Provided that no formal notice of appeal need be issued to such amongst the appellant, officer effecting seizure and any other person likely to be adversely affected as aforesaid, as may waive the notice or as may be informed in any other manner of date of hearing of appeal by the Appellate Authority.
- B (3) The Appellate Authority shall send intimation in writing of lodging of appeal or about "suo motu" action, to the Authorised Officer.
- C (4) The Appellate Authority may pass such order of "Interim" nature for custody, preservation or disposal (if necessary) of the subject matter of confiscation, as may appear to be just or proper in the circumstances of the case.
- D (5) The Appellate Authority, having regard to the nature of the case or the complexities involved, may permit parties to the appeal to be represented by their respective legal practitioners.
- E (6) On the date fixed for hearing of the appeal or "suo motu" action, or on such date to which the hearing may be adjourned, the Appellate Authority shall peruse the record and hear the parties to the appeal if present in person, or through any agent duly authorised in writing or through a legal practitioner, and shall thereafter proceed to pass an order of confirmation, reversal or modification order of the authorised officer:
- F Provided that before passing any final order the Appellate Authority may if, it is considered necessary for proper decision of appeal or for proper disposal of "suo motu" action, make further inquiry itself or cause it to be made by the Authorised Officer, and may also allow parties to file affidavits for asserting or refuting any fact that may arise for consideration and may allow proof of facts by affidavits.
- G (7) The Appellate Authority may also pass such orders of consequential nature, as it may deem necessary.

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(8) Copy of final order or of order of consequential nature, shall be sent to the Authorised Officer for compliance or for passing any order appropriate order in conformity with the order of the Appellate Authority.”

Significantly, under sub-section (4) of Section 52-A, the Appellate Authority is empowered to pass orders of an interim nature for the custody, preservation or disposal of the subject matter of the confiscation. Section 52-B provides for the remedy of a revision before the Court of Sessions against an order of the Appellate Authority. Section 52-B is in the following terms:

**“52-B. Revision before Court of Sessions against order of Appellate Authority.—**

(1) Any party to the appeal, aggrieved by final order or by order of consequential nature passed by the Appellate Authority, may within thirty days of the order sought to be impugned, submit a petition for revision to the Court of Sessions within the Sessions division whereof the headquarters of the Appellate Authority are situate. *Explanation.*—In computing the period of thirty days under this sub-section, the time requisite for obtaining certified copy of Appellate Authority shall be excluded.

(2) The Court of Sessions, may confirm, reverse or modify any final order or an order of consequential nature passed by the Appellate Authority.

(3) Copies of the order passed in revision shall be sent to the Appellate Authority and to the Authorised officer for compliance or for passing such further orders or for taking such further action as may be directed by such Court.

(4) For entertaining, hearing and deciding a revision under this section, the Court of Sessions shall, as far as may be, exercise the same powers and follow the same procedure as it exercises and follows while entertaining, hearing and deciding a revision under the Code of Criminal Procedure, 1973 (No. 2 of 1974).

(5) Notwithstanding anything to the contrary contained in Code of Criminal Procedure, 1973 (No. 2 of 1974), the order of the Court of Sessions passed under this section shall be final and shall not be called in question before any Court.”

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- A Section 52-C contains a bar to the jurisdiction of courts, tribunals and authorities:

**“52-C. Bar of Jurisdiction of court, etc., under certain circumstances.—**

- B (1) On receipt of intimation under sub-section (4) of section 52 about initiation of proceedings for confiscation or property by the magistrate having jurisdiction to try the offence on account of which the seizure of property which is subject matter of confiscation, has been made, no Court, Tribunal or Authority (other than the authorised officer, Appellate Authority and Court of Sessions referred to in sections 52, 52- A and 52-B) shall have jurisdiction to make orders with regard to possession, delivery, disposal or distribution of the property in regard to which proceedings for confiscation are initiated under section 52, notwithstanding anything contrary in this Act, or any other law for the time being in force.
- C D *Explanation.*—Where under any law for the time being in force, two or more Courts have jurisdiction to try forest- offence, then receipt of intimation under sub-section (4) of section 52 by one of the Courts of Magistrate having such jurisdiction shall be construed to be receipt of intimation under that provision by all the Courts and the bar to exercise jurisdiction shall operate on all such Courts.
- E (2) Nothing in sub-section (1) shall affect the power saved under section 61.”

- F Section 53 deals with the power to release property which is seized under Section 52:

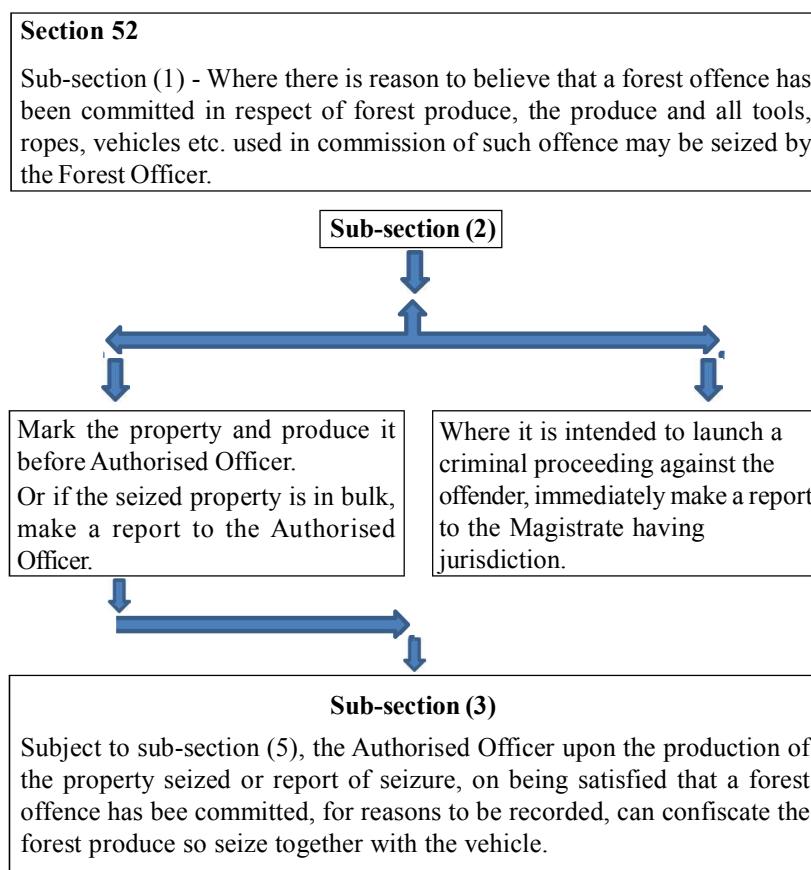
- G **“53. Power to release property seized under Section 52.-** Any Forest-officer of a rank not inferior to that of a Ranger, who, or whose sub-ordinate, has seized any tools, boats, vehicles or any other article Section 52, may release the same on the execution by the owner thereof, of a security in a form as may be prescribed of an amount equal to the value of such property, as estimated by such officer, for the production of the property so released, when so required, before the authorised officer under Section 52 or the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.”

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This provision was substituted by MP Act 7 of 2010. Prior to the substitution, Section 53 stipulated the release of the property seized on the execution of a bond, for the production of the property, when required, before the Magistrate having jurisdiction to try the offence. Under Section 60, the property which has been confiscated by an Authorised Officer under Section 52 is to vest in the government, subject to the result of the proceedings before the Appellate Authority under Section 52 or upon *suo motu* action under Section 52-A or a revision before the Court of Sessions under Section 52-B.

11. The provisions for seizure and confiscation are depicted in Flow chart I below:

**Flow Chart I: Seizure and Confiscation**



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**Sub-section (4)**

No order of confiscation may be made unless the Authorised Officer sends an intimation to the Magistrate having jurisdiction and issues notice, and grants an opportunity of making representation and hearing to a person from whom property had been seized or who has an interest in such property.

**Sub-section (5)**

No order under sub-section (3), shall be made if the person under clause (b) of sub- section (4) proves that such tools, vehicles, etc. were used without her knowledge or connivance and all reasonable and necessary precautions had been taken against their use.

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**Section 52-A – Appeal against order of confiscation –** Any person aggrieved by the order of confiscation, may prefer an appeal in writing within thirty days.

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**Section 52-B – Revision before Court of Sessions against order of Appellate Authority –**

- (i) The party aggrieved by the order of the Appellate Authority can submit a revision to the Court of Sessions within thirty days.
- (ii) The Court of Sessions may confirm, reverse or modify the order.

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**Section 52-C – Bar to jurisdiction of Court under certain circumstances –**

- (i) No court, tribunal or authority except the Authorised Officer or Appellate Authority and Court of Sessions referred under Sections 52, 52-A and 52-B shall have jurisdiction to make order in regard to possession, disposal, distribution, or delivery of the property.
- (ii) Nothing in sub-section (1) shall affect the power saved under Section 61.

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**Section 53** – Power to release property seized under Section 52 – A Forest Officer, not below the rank of Ranger, who or whose subordinate has seized the property under Section 52, may release it on the execution of security, equal to the value of such property in a form as prescribed, by the owner of the property.

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**Section 60** – Property confiscated under Section 52 shall vest in the Government free from all encumbrances upon:

- (i) Expiry of period specified for preferring an appeal or for taking ‘suo moto’ action under Section 52-A, whichever is later.
- (ii) Expiry of period specified for submitting petition for revision under Section 52-B.

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12. Distinct from the proceedings for confiscation envisaged under the Forest Act are those relating to criminal prosecution, as amended by the State of Madhya Pradesh. Section 52(2) stipulates that where it is intended to launch a criminal proceeding against an offender immediately, a report of the seizure has to be made to the Magistrate having jurisdiction to try the offence. Where the property which has been seized under Section 52 is released by an Authorised Officer under Section 53, it must be upon execution of security in such form as may be prescribed, equal to the value of the property, so as to ensure the production of the property when required before the Magistrate having jurisdiction to try the offence. On receipt of a report under Section 52(2), Section 54 stipulates that the Magistrate must take all measures necessary for the arrest and trial of the offender and the disposal of the property according to law. Section 54 provides thus:

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**“54. Procedure thereupon.-** Upon the receipt of any such report, the Magistrate shall, 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:

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- A      **Provided that before passing any order for disposal of property, the Magistrate shall satisfy himself that no intimation under sub-section (4) of section 52 has been received by his Court or by another Court having jurisdiction to try the offence on account of which the seizure of property has been made.”**

B      (emphasis supplied)

C      This proviso is significant, because before passing any order for disposal of the property, the Magistrate must be satisfied that no intimation has been received under Section 52(4).

D      13. Section 55 provides that upon the conviction of the offender for a forest offence, the forest produce together with tools, boats, vehicles and other articles used for its commission shall be liable to confiscation, **subject to the provisions of Sections 52, 52-A, 52-B and 52-C:**

E      “**55. Forest-produce, tools, etc., when liable to confiscation.**

F      (1) All timber or forest produce which in either case is not the property of the Government and in respect of which a forest-offence has been committed, and all tools, boats, vehicles, ropes, chains or any other article, in each case used in committing any forest-offence, shall subject to provisions of Sections 52, 52-A, 52-B and 52-C, be liable to confiscation upon conviction of the offender for such forest- offence.

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

H      14. The intent of the State Legislature is emphasised by the provisions contained in the proviso to Section 54 as well as in sub-section (1) of Section 55. Under Section 52(2) where it is intended to launch criminal proceedings against the offender immediately, the officer seizing any property under the Section has to make a report of the seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made. Upon the conviction of the offender for a forest offence, Section 55 clearly indicates that the forest produce and all tools, boats, vehicles, articles etc. used in the commission of the forest offence would be liable to confiscation **subject to** the provisions of Sections 52, 52-A, 52-B and 52-C.

I      15. Section 56 provides that upon the conclusion of the trial, any forest produce in respect of which a forest offence has been committed shall, where it is the property of the government or has been confiscated,

be taken charge of by a Forest Officer and, in any other case, may be disposed of in such manner as the Court may direct. A

16. Section 57 deals with a situation where the offender is not known or cannot be found. Section 58 deals with the procedure to be followed in respect of perishable property seized under Section 52.

17. Section 59 provides that the officer making a seizure under Section 52, or any superior or a person claiming to be interested in the property seized, may within a month of any order passed under Sections 55, 56 or 57 appeal to the Court to which orders made by the Magistrate are ordinarily appealable. Under sub-section (2) of Section 60, where no appeal has been preferred within the period of limitation or where an appeal has been preferred and the order has been confirmed by the appellate Court, the property shall vest with the government free from all encumbrances. B

18. Flow-chart II below indicates the scheme in relation to criminal proceedings under the Forest Act as amended by the State of Madhya Pradesh: C

**Flow Chart II : Criminal Proceedings**

**Section 52(2) – Launch of criminal proceedings**

Where it is intended to launch a criminal proceeding against the offender, the officer seizing the property is to immediately make a report of such seizure to the Magistrate having jurisdiction to try the offence. D



**Section 54**

Upon receipt of a report under 52(2), the Magistrate shall take measures for arrest and trial of the offender and disposal of property under law. Provided there is no intimation under Section 52(4) with respect to initiation of confiscation proceedings by the Authorised Officer. E



**Section 55**

Forest produce, vehicles and tools or any other article used in committing a forest offence, shall be liable to confiscation upon conviction of the offender. Provision subject to Section 52, 52-A, 52-B and 52-C. F

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**Section 56**

- B Disposal of produce in respect of which offence has been committed, on conclusion of the trial – When a trial of a forest offence is concluded, any forest produce in respect of which a forest offence has been committed, both property of government or which has been confiscated, are to be taken charge of by the Forest Officer, and in any other case, may be disposed of in such a manner as directed by the Court.

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**Section 57**

- D When an offender is not known, or cannot be found – the Magistrate may order the property to be confiscated and taken charge of by the Forest Officer, or the person deemed fit by the Magistrate. No order to be made for thirty days from the date of seizing or without hearing the person, who claims any right thereto.

**Section 58**

- E Procedure as to perishable property seized under Section 52 – Notwithstanding anything contained hereinbefore, the Magistrate may direct sale of perishable property and deal with the sale proceeds.



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**Section 59**

- G Appeal from orders under Section 55, 56 or 57 to be made within thirty days to the Court to which orders made by such Magistrate are ordinarily appealable. The order passed on appeal shall be final.



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**Section 60(2)**

- I When no appeal is preferred under Section 59 or when the appellate court confirms order of confiscation of property, such property shall vest in the government, free from all encumbrances.

19. Several decisions rendered by this Court have a bearing on the controversy involved in the present case. In a decision of 1985 in **GV Sudhakar Rao** (supra), the issue before a two judge Bench of this Court was whether the High Court could have taken recourse to Section 482 of the CrPC to stay proceedings for the confiscation of illicitly felled forest produce which was seized under the Andhra Pradesh Forest Act, 1967 till the disposal of a criminal case pending before the Metropolitan Magistrate, for offences under the Act. This Court upheld the correctness of the view of a Single Judge of the Andhra Pradesh High Court in **State of AP v PK Mohammad**<sup>14</sup> and of a Division Bench in **Mohd Yaseen v Forest Range Officer, Flying Squad, Rayachoti**<sup>15</sup> that the Andhra Pradesh Forest Act, 1967 contemplated two procedures, one for the confiscation of the goods forming the subject matter of the offence by an Authorised Officer under Section 44 (2A)<sup>16</sup> and the other for the trial of a person accused of the offence so committed under Section 20 or 29<sup>17</sup>. Explaining the purpose of the legislation, this Court noted with approval the view of the High Court in the above cases that the provision for confiscation by an Authorised Officer had been enacted in public interest to suppress an evil which the legislature wishes to avoid:

“14. We find that a later division bench consisting of Kondaiah, C.J. and Punnayya, J. in *Mohd Yaseen v. Forest Range Officer, Flying Squad, Rayachoti* [(1980) 1 ALT 8] approved of the view expressed by Jeewan Reddy, J. in *P.K. Mohammad case* [(1978) 1 APLJ 391], and held that the Act contemplates two procedures, one for confiscation of goods forming the subject-matter of the offence by the Authorized Officer under sub-section (2-A) of Section 44 of the Act, and the other for trial of the person accused of the offence so committed under Section 20 or 29 of the Act.

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<sup>14</sup> (1978) 1 APLJ 391

<sup>15</sup> (1980) 1 ALT 8

<sup>16</sup> “(2-A) Where an Authorized Officer seizes under sub-section (1) any timber or forest produce or where any such timber or 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 timber or forest produce so seized or produced together with all tools, ropes, chains, boats or vehicles used in committing such offence.”

<sup>17</sup> **Section 20** provides for penalties for trespass or damage in reserved forest and acts prohibited in such forest, and **Section 29** provides for the power to make rules to regulate the transit possession of timber and other forest produce.

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- A      **The learned Judges held that the Act provides for a special machinery for confiscation of illicitly felled timber or forest produce by the Authorized Officer under sub- section (2-A) of Section 44 enacted in the general public interest to suppress the mischief of ruthless exploitation of government forests by illicit felling and removal of teak and other valuable forest produce.”**
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(emphasis supplied)

- Consequently, the mere fact that there was an acquittal in a criminal trial before a Magistrate due to a paucity of evidence would not necessarily result in nullifying the order of confiscation passed by an Authorised Officer based on a satisfaction that a forest offence had been committed.
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20. In 2002, a two judge Bench of this Court in **KA Kunchindammed** (supra) dealt with the provisions of the Karnataka Forest Act 1963. The issue before the Court was whether it is the Authorised Officer under that Act or the Magistrate under the CrPC who is vested with the power to order interim release of forest produce seized under the Act. Section 71<sup>18</sup> contained a savings provision that allowed an officer duly empowered by the state government to direct the release of property seized under Section 62, which is the property of the government. Section 71-G<sup>19</sup> provided for the bar of jurisdiction, save and except of the Authorised Officer or the Appellate Authority. Interpreting the provisions of the Karnataka Forest Act, 1963 this Court
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<sup>18</sup> “**71. Saving of power to release property seized.**—Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the State Government from directing at any time the immediate release of any property seized under Section 62, which is not the property of Government, and the withdrawal of any charge made in respect of such property.”

<sup>19</sup> “**71-G. Bar of jurisdiction in certain cases.**—Whenever any timber, ivory, Gulmavu (*Machilus Marantha*) bark, Dalchini bark, Halmaddi (exudation of *Ailanthus Malabaricum*), canes firewood or charcoal belonging to the State Government or any sandalwood, together with any tool, rope, chain, boat, vehicle or cattle used in committing any offence is seized under sub-section (1) of Section 62, the authorized officer under Section 71-A or the officer specially empowered under Section 71-C or the Sessions Judge hearing an appeal under Section 71-D shall have and, notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, any other officer, court, tribunal or authority shall not have, jurisdiction to make orders with regard to the custody, possession, delivery, disposal or distribution of such property.”

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held that the law is a special statute. Moreover, the non obstante clause gave overriding effect to the legislation as a result of which the general power which is vested with the Magistrate under the CrPC is taken away. Justice DP Mohapatra, speaking for the Court, held:

“23. The Karnataka Forest Act is a special statute enacted for the purpose of preserving the forests and the forest produce in the State. The scheme of the Act, as expressed in the sections, is to vest power in 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 the forests and forest produce. For this purpose, certain powers including the power of seizure, confiscation and forfeiture of the forest produce illegally removed from the forests have been vested exclusively in them. The position is made clear by the non obstante clause in the relevant provisions giving overriding effect to the provisions in the Act over other statutes and laws. The necessary corollary of such provisions 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 thereof the general power vested in the Magistrate for dealing with interim custody/release of the seized materials under CrPC has to give way. The Magistrate while dealing with a case of any seizure of forest produce under the Act should examine whether the power to confiscate the seized forest produce is vested in the Authorized Officer under the Act and if he finds that such power is vested in the Authorized Officer then he has no power to pass an order dealing with interim custody/release of the seized material. This, in our view, will help in proper implementation of provisions of the special Act and will help in advancing the purpose and object of the statute. If in such cases power to grant interim custody/release of the seized forest produce is vested in the Magistrate then it will be defeating the very scheme of the Act. Such a consequence is to be avoided.

24. From the statutory provisions and the analysis made in the foregoing paragraphs the position that emerges is that the learned Magistrate and the learned Sessions Judge were right in holding that on facts and in the circumstances of the case, it is the Authorized Officer who is vested with the power to pass order of interim custody of the vehicle and not the Magistrate.”

A      Consequently, in the view of this Court, it is the Authorised Officer who is vested with the power to pass an order for interim custody of a seized vehicle and not the Magistrate.

- B      21. Subsequently in 2004 in **Sujit Kumar Rana** (supra) another two judge Bench of this Court dealt with the applicability of Section 482 of the CrPC for quashing of proceedings for confiscation of forest produce under the provisions of the Indian Forest Act, 1927, as amended in relation to the State of West Bengal. Sections 59-A to 59-G<sup>20</sup> were inserted in the principal Act by the State amendments to *inter alia*, confer a power of seizure and confiscation and to enact a bar of jurisdiction of other courts and tribunals notwithstanding anything contained in the CrPC. This Court held:

D      “31. Once, however, a confiscation proceeding is initiated; in terms of Section 59-G of the Act, the jurisdiction of the criminal court in this behalf stands excluded. The criminal court although indisputably has the jurisdiction to deal with the property which is

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<sup>20</sup> **“59-A. Confiscation by Forest Officer of forest produce in the case of forest offence believed to have been committed.”**—(1) Notwithstanding anything contained in the foregoing provisions of this Chapter or in any other law for the time being in force, where a forest offence is believed to have been committed in respect of the timber

E      or other forest produce which is the property of the State Government, the Forest Officer or the police officer seizing the timber or other forest produce under sub-section (1) of Section 52, shall, without any unreasonable delay, produce the same, together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence, before an officer of a rank not inferior to that of an Assistant Conservator of Forests, authorized by the State Government in this behalf by notification in the Official Gazette (hereinafter referred to as the authorized officer).”

F      **Section 59-B** provides the procedure for issue of notice before confiscation. **Section 59C** provides for a revision against the order of confiscation. **Section 59D** provides a right to appeal against the order of revision. **Section 59E** provides a savings provision for award of punishment under other provision of the Act. **Section 59F** provides that confiscated property and proceeds of sale to vest in Government.

G      **“Section 59-G. Bar of jurisdiction in certain cases.”**—Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, the officer authorized under Section 59-A or the Forest Officer specially empowered under Section 59-C or the District Judge to whom an appeal may be preferred under Section 59-D shall have and any other officer or Forest Officer or court, tribunal or authority shall not have jurisdiction to make orders with regard to the custody, possession, delivery, disposal or distribution of any property or tools, ropes, chains, boats, vehicles or cattle seized under Section 52.”

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the subject-matter of offence in terms of the provisions of the Code of Criminal Procedure but once a confiscation proceeding is initiated, the said power cannot be exercised by the Magistrate.”

Once the criminal court had no power to deal with the property seized under the Act, the High Court was held to have no jurisdiction under Section 482 of the CrPC to quash proceedings for confiscation of forest produce.

22. In 2017, a similar view has been taken by another two judge Bench of this Court in **Kallo Bai** (supra) while construing the provisions of the *Madhya Pradesh Van Upaj (Vyapar Viniyam) Adhiniyam, 1969*. By virtue of the amendments made to the *Adhiniyam*, Sections 15-A to 15-D<sup>21</sup> were introduced to provide for confiscation proceedings in line with the provisions contained in the Forest Act as amended in relation to the State of Madhya Pradesh. Relying on the earlier decisions of this Court including **GV Sudhakar Rao** (supra), Justice NV Ramana, speaking for the two judge Bench held:

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<sup>21</sup> **Section 15-A** provides for an appeal against order of confiscation. Section 15-B. provides for a revision before Court of Sessions against order of Appellate Authority.

“**Section 15-C. Bar of jurisdiction of court etc. under certain circumstances.**—  
(1) On receipt of intimation under sub-section (5) of Section 15 about initiation of proceedings for confiscation of property by the Magistrate having jurisdiction to try the offence on account of which the seizure of property which is subject matter of confiscation, has been made, no Court, Tribunal or Authority (other than the authorised officer, Appellate Authority and Court of Sessions referred to in Sections 15, 15-A and 15-B as the case may be), shall have jurisdiction to make orders with regard to which proceedings for confiscation are initiated under Section 15, notwithstanding anything contained in this Act, or, any other law for the time being in force:

Provided that before passing any order for disposal of property the Magistrate shall satisfy himself that no intimation under sub-section (5) of Section 15 has been received by his Court or by any other Court having jurisdiction to try the offence on account of which the seizure of property has been made.

*Explanation.*—Where under any law for the time being in force, two or more Courts have jurisdiction to try offence under this Act, then receipt of intimation under sub-section (5) of Section 15 by one of the Courts of Magistrate having such jurisdiction shall be construed to be receipt of intimation under that provision by all the Courts and the bar to exercise jurisdiction shall operate on all such Courts.

(2) Nothing hereinbefore contained shall be deemed to prevent any officer authorised in this behalf by the State Government from directing at any time the immediate release of any property seized under Section 15.”

**Section 15-D** provides for confiscation of property when the produce is not the property of Government.

- A “23. 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 Adhiniyam 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.”
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- C 23. This leaves the Court to deal with a judgment rendered in 2008 by a two judge Bench of this Court in **State of MP v Madhukar Rao**<sup>22</sup>. The issue in that case was whether upon the seizure of a vehicle or vessel under Section 50(1)(c)<sup>23</sup> of the Wildlife Protection Act, 1972, the Magistrate has no power to direct its release under Section 451 of the CrPC during the pendency of a trial. Significantly, in that case the
- D provisions of the Wildlife Protection Act 1972 did not contain provisions analogous to the MP amendments to the Forest Act or for that matter those contained in the state laws noticed in **Sudhakar Rao, Kunchindammed, Sujit Kumar Rana and Kallo Bai**. Section 50 empowered the Director or the Chief Wildlife Warden, Forest Officer, Authorised Officer or Police Officer, if they had reasonable grounds for believing that any person has committed an offence under the Act, to
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<sup>22</sup> (2008) 14 SCC 624

<sup>23</sup> “**Section 50 - Power of entry, search, arrest and detention.**- (1) Notwithstanding anything contained in any other law for the time being in force, the Director or any other officer authorised by him in this behalf or the Chief Wild Life Warden or the authorised officer or any forest officer or any police officer not below the rank of a sub-inspector, may, if he has reasonable grounds for believing that any person has committed an offence against this Act,-

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- (c) seize any captive animal, wild animal, animal article, meat, trophy or uncured trophy, or any specified plant or part or derivative thereof, in respect of which an offence against this Act appears to have been committed, in the possession of any person together with any trap, tool, vehicle, vessel or weapon used for committing any such offence and, unless he is satisfied that such person will appear and answer any charge which may be preferred against him, arrest him without warrant, and detain him: Provided that where a fisherman residing within ten kilometres of a sanctuary or National Park, inadvertently enters on a boat, not used for commercial fishing, in the territorial waters in that sanctuary or National Park, a fishing tackle or net on such boat shall not be seized.”

seize a captive or wild animal, animal article, meat, trophy etc. together with tools, vehicles, vessels or weapons used for the commission of the offence. Under sub section (2) of Section 50, prior to its amendment in October 1991<sup>24</sup>, the Assistant Director or Wildlife Warden was empowered to release *inter alia*, a vehicle, vessel or weapon subject to a bond. This provision was deleted in 1991 and was substituted<sup>25</sup> by a provision for handing over custody of a captive animal or wild animal which was seized, subject to the execution of a bond for production before a Magistrate of a competent jurisdiction. In view of the more limited power of release post- amendment, it was urged that Section 50 provided a comprehensive scheme and it was not open to the Magistrate to direct interim release of a vehicle seized under Section 50. This submission was rejected by the Court, which held that Section 50 and other provisions in Chapter VI of the Wildlife Protection Act 1972 did not exclude the application of the provisions of the CrPC. The decision in **Kunchindammed** was distinguished on the ground that it dealt with the provisions of the Karnataka Forest Act 1963 whereas the provisions contained in the Wildlife Protection Act were materially different. Consequently, it was held that the provisions of Section 50 did not affect the Magistrate's power to order interim release of a vehicle under Section 451 of the CrPC. The decision in **Madhukar Rao** involved legislation which had provisions distinct from the special provisions contained in the state amendment to the Forest Act enacted in relation to Madhya Pradesh. Indeed, the Court noted the distinction when it dealt with the earlier decision in **Kunchindammed** which arose in the context of the Karnataka Forest Act 1963.

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<sup>24</sup> “(2) Any officer of a rank not inferior to that of an Assistant Director of Wild Life preservation of Wild Life Warden, who, or whose subordinate has seized any trap, tool, vehicle, vessel or weapon under clause (c) of sub- section (1), 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.”

<sup>25</sup> **Section 50(2)** was deleted post-amendment and replaced with Section 50(3A) as follows:

“(3A) Any officer of a rank not inferior to that of an Assistant Director of Wild Life Preservation or an Assistant Conservator of Forests, who, or whose subordinate, has seized any captive animal or wild animal under clause (c) of sub-section (1) may give the same for custody on the execution by any person of a bond for the production of such animal if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.”

A        24. In **Kailash Chand v State of MP<sup>26</sup>**, a Division Bench of the Madhya Pradesh High Court considered a challenge to the constitutional validity of the state amendments to the Forest Act through MP Act 25 of 1983. Noticing that a criminal prosecution and a proceeding for confiscation are distinct, each with its own purpose and object, the High Court held:

- B        "...Criminal prosecution is not an alternative to confiscation proceedings. The two proceedings are parallel proceedings, each having a distinct purpose and object. 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. The object of the prosecution is to punish the offender..."

Explaining the underlying purpose and object of the state amendment, the Division Bench noted:

- D        "...The scheme of the Central Act contemplating successful prosecution of the offender leading to confiscation has been drastically modified by the 1983 Act to provide for an additional procedure for confiscation, a procedure which is less cumbersome and more expeditious than the procedure of prosecution and at the same time, assuring necessary safeguards to the affected persons. The scheme of the Central Act provides for prosecution incidentally leading to confiscation of property. The scheme of the amendments introduced by the 1983 Act prescribes an independent procedure for confiscation. The intention is to ensure that the vehicle used in the transaction is no longer available for such misuse and to act as deterrent for the other offender and others. These objects can be well served by confiscating the vehicle..."

- E        25. In a judgment rendered by one of us (Brother Justice Hemant Gupta as Chief Justice of the Madhya Pradesh High Court) in **Ramkumar Sahoo v State of Madhya Pradesh<sup>27</sup>**, these principles were followed while construing the provisions of Rule 53 of the MP Minor Mineral Rules 1996.

F        26. Our analysis of the amendments brought by MP Act 25 of 1983 to the Indian Forest Act 1927 leads to the conclusion that specific

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<sup>26</sup> (1995) AIR (MP) 1

H        <sup>27</sup> Writ Petition No 18818 of 2017 decided on 15 February 2018

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. 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 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. 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 the CrPC and provides that it shall not be called into question before any court. 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 Indian 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. The scheme contained in the amendments enacted to the Indian 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 of the CrPC, to the Magistrate to direct the interim release of the vehicle,

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- A which had been seized, was contrary to law. The jurisdiction under Section 451 of the CrPC was not available to the Magistrate, once the Authorised Officer initiated confiscation proceedings.

27. The Madhya Pradesh amendments to the Indian Forest Act 1927 are infused with a salutary public purpose. Protection of forests against depredation is a constitutionally mandated goal exemplified by Article 48A<sup>28</sup> of the Directive Principles and the Fundamental Duty of every citizen incorporated in Article 51A(g)<sup>29</sup>. By isolating the confiscation of forest produce and the instruments utilised 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 change are bearing down on every day of our existence. Statutory interpretation must remain eternally vigilant to the daily assaults on the environment.

28. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court dated 29 July 2011 in MCRC 5171 of 2011.

F **Criminal Appeal No.525 of 2019 @ SLP (Crl.) No 5413 of 2013:**

29. For the reasons which have been indicated in the judgment delivered today in Criminal Appeal @ Special Leave Petition (Crl.) No 2001 of 2012, the judgment and order of the High Court dated 7 July

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<sup>28</sup> **Article 48(A)** : “The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.”.

<sup>29</sup> **Sub-clause (g) of Article 51A** 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.”

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2011 in MCRC No 1818 of 2009 shall stand set aside and the appeal is A accordingly allowed.

**Criminal Appeal No 1364 of 2012:**

30. For the reasons which have been indicated in the judgment delivered in Criminal Appeal @ Special Leave Petition (Crl.) No 2001 of 2012, the judgment and order of the High Court dated 7 July 2011 in MCRC No 2634 of 2009 shall stand set aside and the appeal is accordingly allowed. B

**Criminal Appeal Nos 1362-63 of 2012:**

31. For the reasons which have been indicated in the judgment delivered today in Criminal Appeal @ Special Leave Petition (Crl.) No 2001 of 2012, the judgments and orders of the High Court dated 7 July 2011 and 21 September 2011 in MCRC No 1751 of 2009 and MCRC No 5673 of 2011 shall stand set aside and the appeals are accordingly allowed. C

Nidhi Jain

Appeals allowed. D