Supreme Court of India
Divisional Forest Officer & Anr vs G.V. Sudhakar Rao & Ors on 31 October, 1985
Equivalent citations: 1986 AIR 328, 1985 SCR Supl. (3) 680
Author: A Sen
Bench: Sen, A.P. (J)

PETITIONER:
DIVISIONAL FOREST OFFICER & ANR.

Vs.

RESPONDENT:
G.V. SUDHAKAR RAO & ORS.

DATE OF JUDGMENT31/10/1985

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
MADON, D.P.

CITATION:
1986 AIR 328 1985 SCR Supl. (3) 680
1985 SCC (4) 573 1985 SCALE (2)897

ACT:
Andhra Pradesh Forest Act, 1967, ss. 44, 45 & 58A read with ss. 20 and 29 - Power vested in the Authorised Officer to direct confiscation of seized timber or forest produce u/s.44 (2A) and the power of Magistrate to direct confiscation of such property on conviction of the accused - Whether separate and distinct powers - Stay of proceedings for confiscation of seized forest produce before the Authorised Officer - Whether permissible when criminal case is pending against the accused in respect of the same forest offence or when accused is acquitted of the offence.

Code of Criminal Procedure, ss. 451, 452 and 457 - Power of Criminal Court to dispose of property - Scope of.

HEADNOTE:
The Forest Range Officer, Flying Squat, Nirmal seized teak timber valued at Rs.. 1,71,000 from the residential house of respondent no. l and produced the same before the Divisional Forest Officer, Hyderabad who is the Authorised Officer under s.44 (2A) of the ALP. Forest Act, 1967 along with a report under sub-a.(2) thereof that he had reason to believe that a forest offence had been committed, for purposes of confiscation of the seized timber under sub-s. (2A) of s. 44 of the Act. While the confiscation proceedings

were pending before the Authorised Officer under s. 44(2A) in relation to the seized timber, the Forest Range Officer simultaneously lodged a complaint with the Metropolitan Magistrate, City Civil Court, Hyderabad for trial of the respondents for commission of offences punishable under 8. 20(1)(c)(iv) and (x) and y. 20(1)(t) read with s. 29(4)(a)(ii) of the Act. The respondents moved the High Court under s. 482 of the Code of Criminal Procedure, 1963 for stay of the c proceedings before the Authorised Officer under 8. 44(2A) of the Act in view of the pending criminal prosecution. Upon the view that the power of the Authorised Officer to direct confiscation under sub-s. (2A) of 8- 44 of the Act and that of the Metropolitan Magistrate under s. 45 of the Act were mutually exclusive therefore there could not be simultaneous proceedings for confiscation before the Authorised Officer under s. 44(2A) as also
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prosecution of the respondents for commission of a fore t offence A under 8. 20 or 29 of the Act, a learned Single Judge by the impugned order directed stay of the proceedings before the Authorised Officer under 8. 44(2A) till the disposal of the criminal case by the Metropolitan Magistrate.

Allowing the appeal.

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HELD:1. The power of the Authorised Officer to direct confiscation of the seized timber or forest produce and the implements etc. under sub-s.(2A) of s.44 of the Act produced before him by the Forest Range Officer along with a report under sub-s.(2) thereof, if the Authorised Officer i- satisfied that y for. t offence has been committed in respect thereof, and the power of the Magistrate to direct confiscation of such property under 8. 45 upon conviction of the accused for commission of a forest offence under 8. 20 or 29 of the Act, are separate and distinct and there is no overlapping of the same. The changes brought about by Act No.17 of 1976 clearly contemplate for two separate proceedings before two independent forums. There is no conflict of jurisdiction as 8.45, as amended by the Amendment Act, in terms curtails the power of the Magistrate to direct confiscation of the seized timber or forest produce on conviction of the accused, by the use of the words 'except where an order for confiscation has already been passed in respect thereof under 8. 44' inserted in 8.45 of the Act.

2. The High Court was in error in holding that there could not be simultaneous proceedings for confiscation before the Authorised Officer under sub-s.(2A) of the Act and prosecution of the accused for commission of forest offences under 8.20 or 29 of the Act.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 752 of 1985.

From the Judgment and Order dated 26.8.83 of the Andhra Pradesh High Court in Crl. Misc. Petn. No. 1810 of 1983. G K. Parasaran, Attorney General and G. Narashimulu for the Appellants.

P. Ram Reddy and A.V.V. Nair for the Respondents. The Judgment of the Court was delivered by H SEN, J. This appeal by special leave raises a question whether the High Court could have stayed under s. 482 of the code of criminal Procedure, 1973 the Proceedings for confiscation of illicitly felled teak timber trees by the respondents from the reserved forests in Adilabad district, which were seized under sub-s. (1) thereof, pending before the Divisional Forest Officer, Hyderabad who is the Authorized Officer under 8. 44(2A) of the Andhra Pradesh Forest Act, 1967 till the disposal of the criminal case pending against him before the Court of XVIIth Metropolitan Magistrate, City Civil Court, Hyderabad for commission of alleged offences punishable under s. 20 (1) (c) (iv) and (x) and s. 20 (1) (d) read with s. 29 (4) (a) (ii) of the Act.

First as to the facts. On an information being laid that the respondent G.V. Sudhakar Rao was indulging in widespread illicit felling and removal of teak trees from the reserved forest in Adilabad district, the Forest Range Officer, Flying Squad, Nirmal on July 18, 1982 seized teak timber measuring 42.7 cubic metres valued at Rs. 1,71,000 from the residential house of the respondent under sub-s. (1) of s. 44 of the Act. On July 19, 1982, the Range Officer forthwith produced the seized timber before the Divisional Forest Officer, who is the Authorized Officer under s. 44 (2A) of the Act, along with a report that he had reason to believe that a forest offence had been committed by the respondent in respect of the seized timber. While the confiscation proceedings were pending before the Authorized Officer under sub-s. (2A) of s.44 of the Act, on October 9, 1982 the respondent filed a petition before the High Court under Art. 226 of the Constitution praying for release of the seized timber but the Writ Petition was dismissed by a learned Single Judge. In appeal preferred by the respondent, a Division Bench declined to grant any interim relief but directed the Forest Department to decide either to proceed with confiscation of the seized timber under s. 44 (2) of the Act or file a complaint regarding the commission of a forest offence before a Magistrate. Accordingly, the Forest Range Officer lodged a complaint before the XVIIth Metropolitan Magistrate, City Civil Court, Hyderabad for trial of the respondents for commission of alleged offences under s. 20 (1) (c) (iv) and (x) and s. 20 (1) (d) read with s. 29 (4) (a) (ii) of the Act. On August 1, 1983, the respondents moved an application before the High Court under s. 482 of the Code for staying the proceedings before the Authorized Officer under s. 44 (2) of the Act in view of the pending criminal prosecution. A learned Single Judge (Ramachandra Raju, J.) by the impugned order directed stay of the proceedings before the Authorized Officer under 8. 44(2A) of the Act till the disposal of the criminal case A by the learned Metropolitan Magistrate. Aggrieved, the State has come up in appeal by way of special leave as the impugned order passed by the learned Single Judge is of far-reaching consequences .

The precise question that falls for determination is whether where a Forest Officer makes a report of seizure of any timber or forest produce and produces the seized property along with a report under

s. 44 (2) that he has reason to believe that a forest offence has been committed in respect of such timber or forest produce seized, can there simultaneously be proceedings for confiscation to Government of such timber or forest produce and the implements etc. by the Authorized Officer under 8. 44 (2A) of the Act if he is satisfied that a forest offence has been committed, along with a criminal case instituted on a complaint by the Forest Officer before a Magistrate of the commission of a forest offence under 8. 20 of the Act. The appeal turns upon a proper construction of 88. 44 (2), 44 (2A) and 45 of the Act, as amended by Act 17 of 1976.

In order to deal with the question involved, it is necessary to refer to the statutory changes brought about. The Act, prior to its amendment by Act 17 of 1976 provided by 8. 44 insofar as material, as follows :

> 44(1) Where there is reason to believe that a forest offence has been committed in respect of any timber or forest produce, such timber, or forest produce, together with all tools, ropes, chains, boats, vehicles and cattle used in committing any such offence, may be seized by any forest officer or police officer.
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> (2) Every officer seizing any property under this section shall place on such property, or the receptacle, if any, in which it is contained a mark indicating that the same has been 80 seized and shall, except where the offender agrees in writing forthwith to get the offence compounded, make a report of such seizure to the magistrate : Provided that where the timber or forest produce with respect to which such offence is believed to have been committed is the property of the Central or State Government and the offender is not known, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to the Divisional Forest Officer.
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> (3) *** *** *** *** (4) *** **** **** (5) The property seized under this section, shall be kept in the custody of the forest officer not below the rank of a Forest Guard or the village headman until the compensation for compounding the offence is paid or until an order of the magistrate directing its disposal is received.

Section 45 of the Act, prior to its amendment, was in these terms :

> 45. Where a person is convicted of a forest offence, the court sentencing him shall order confiscation to the Government of timber or forest produce in respect of which such offence was committed and of any tool, boat, vehicle other than a cart drawn by animals, vessel or other conveyance or any other article used in committing such offence.

The change in the law was brought about with a view to prevent the growing menace of ruthless exploitation of Government forests by illicit felling of teak and other valuable forest produce by unscrupulous traders, particularly from the reserved forests by providing for a machinery for confiscation of illegally felled trees or forest produce by the Forest authorities. Under s. 45 of the Act as it then stood, where a person was convicted of a forest offence, the Court sentencing him was

empowered to order confiscation to the Government of timber or forest produce in respect of which a forest offence was committed and of any tool, boat, vehicle other than a cart draw by animals, vessel or other conveyance or any other article used in committing such offence. Although there was a provision for seizure of such articles in s. 44 of the Act, there was no provision in the Act enabling the forest officers to confiscate such timber or forest produce and the implements etc. used for committing forest offences even in a case where he was satisfied that a forest offence had been committed. In view of this, the Forest Department was finding it difficult to curb the forest A offences effectively and quickly inspite of the fact that large scale felling and smuggling of forest produce was on the increase. Hence it was thought necessary to empower the officials of the Forest Department seizing any property under sub-s.(l) of s. 44, instead of merely making a report of the seizure to a Magistrate, also to order confiscation of timber or forest produce seized together will all the tools, boats, vehicles etc. used in committing such offence. Statement of Objects and Reasons: The intendment of the Legislature in enacting Act 17 of 1976 was therefore to provide for two separate proceedings before two independent forums in the Act, one, for confiscation by a departmental authority exercising quasi-judicial powers conferred under sub-s. (2A) of s. 44 of the goods forming the subject matter of the offence, and the other for the trial of the person accused of the offence so committed. It brought about the following changes, namely, : (1) In sub- s.(2) of s. 44 of the Act in the opening paragraph, for the words make a report of such seizure to the magistrate: , the following words and brackets were substituted, namely :

> Without any unreasonable delay either produce the property seized before an officer not below the rank of an Assistant Conservator of Forests authorized by the Government in this behalf by notification (hereinafter referred to as the authorized officer) or make a report of such seizure to the magistrate:

(2) After sub-s. (2), Sub-ss; (2A), (2B), (2C), (2D) and (2E) were inserted. Sub-s. (2A), which is material for our purposes,provides:

> (2A) 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 80 seized or produced together with all tools, ropes, chains, boats or vehicles used in committing such offence.

Sub-s. (2B) enjoins that no order confiscating any property shall be made under sub-s. (2A) 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 for confiscation; and (c) a reasonable opportunity of being heard in the matter. Sub-s. (2C) provides that without prejudice to the provisions in sub-s. (2B), no order of confiscation under sub-s. (2A) of any tool, rope, chain, boat or vehicle shall be made after the owner thereof proves to the satisfaction of the Authorized Officer that it was used in carrying the property 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 or vehicle in committing the offence and that each of them had taken all reasonable and necessary precautions against such use. Sub-s. (2D) confers power on an Authorized Officer not below the rank of a Conservator of Forests empowered by the Government in that behalf, may within 30 days of the date of the order of confiscation by the Authorized Officer under sub-s. (2A), either suo motu or on an application call for and examine the record of that order and may make such inquiry or cause such inquiry to be made and pass such orders as he may think fit. Proviso thereto enjoins that no order prejudicial to any person shall be passed without giving him an opportunity of being heard. Sub-s.(2E) confers a right of appeal to the person aggrieved by an order passed under sub-s.(2A) or sub- s. (2D). Such an appeal had to be preferred within 30 days from the date of communication to him of such order, to the District Court having jurisdiction over the area in which the property had been seized. The District Court was conferred the power after giving an opportunity to the parties to be heard, to pass such order as it may think fit and the order of the District Court so passed shall be final.

With the conferral of power on an officer not below the rank of an Assistant Conservator of Forests authorized by the State Government to order confiscation of the property seized under sub-s.(2A) of s.44, there was a corresponding change made in s.45 of the Act. The amended s. 45 reads:

> 45. Where a person is convicted of a forest offence, the court sentencing him shall order confiscation to the Government of timber or forest produce in respect of which such offence was committed and of any tool, boat, vehicle, vessel or other conveyance or any other article used in committing such offence except There an order of confiscation has already been passed in respect thereof under section 44."

The Act also inserted s. 58A which reads :

> 58A. An order of confiscation under sub-section (2A) or sub-section (2D) of section 44 shall not be deemed to bar the imposition of any other penalty to which the person from whom the property is seized is liable under this Act. B We cannot but accept the contention of the learned Attorney General appearing on behalf of the State that the effect of the amendments brought about by Act 17 of 1976 is that the Act, as amended, does contemplate two separate proceedings before two different forums. It is urged that there is no conflict of jurisdiction as s. 45 of the Act as amended by the Amendment Act, in terms, curtails the power conferred on the Magistrate to direct confiscation of timber or forest produce on conviction of the accused. Emphasis was laid on the words except where an order for confiscation has already been passed in respect thereof under 8.44 inserted by 8.3 of Act 17 of 1976. The submission, therefore, is that the power vested in the Authorized Officer to direct confiscation of the seized timber or forest produce and the implements etc. under sub-s.(2A) of 8.44 and the power of the Magistrate to direct confiscation of such property on conviction of the accused under 8.45, are two separate and distinct powers. According to his, the learned Single Judge proceeded on a wrongful assumption that there is overlapping of the two powers and therefore exceeded his jurisdiction under 8. 482 of the Code in directing stay of the confiscation proceedings before the Authorized Officer under

s.44(2A) of the Act. In support of his submissions, the learned Attorney General drew our attention to certain decisions of the High Court, particularly to a decision of this Court in State of A.P. v. Smt.Haji Begum,(C.A. No. 1216 of 1979 decided on April 23, 1979) which, he says, the learned Single Judge has wrongly tried to distinguish.

The contention to the contrary by learned counsel appearing for the respondents is that under sub-s.(2) of s.44 as amended, The Forest Officer has either to produce without any unreasonable delay the property seized before any officer not below the rank of an Assistant Conservator of Forests authorized by The Government in that behalf, or to make a report of such seizure to the Magistrate. Much stress was placed on the use of the Words either and or in sub-s.(2) of 8.44 of the Act for the arguments that the power vested in the Authorized Officer to direct confiscation of seized timber or forest produce and the implements etc. under sub-s. (2) of 8.44 of the Act and the power of the Magistrate to direct confiscation of such property on conviction of the accused under 8.44 were mutually exclusive and, therefore, the Forest Department has the option of adopting either of the two courses. He contends that the Forest authorities having elected to prosecute the respondents for commission of the alleged offences under s. 20 (l)(c)(iv) and (x) and s. 20(1)(d) read with s. 29(4)(a)(ii) of the Act, they cannot at the same time proceed with the confiscation proceedings before the Authorized Officer under s. 44 (2A) for confiscation of the timber or forest produce and the implements etc. seized or produced before him. In other words, it is said that there cannot be two parallel proceedings before two distinct forums empowered to direct confiscation of the timber or forest produce seized under s. 44 (2A) of the Act and s. 45 and this would give rise to an anamolous situation. The submission is that the order of confiscation passed by the Authorized Officer under s. 44(2A) on being satisfied that a forest offence had been committed must necessarily be subject to the finding of the court in a criminal prosecution as to whether such an offence under s.20 or s.29 has been committed or not and in case the trial ends in an acquittal of the accused, the seized timber or forest produce ant the implements etc. cannot be confiscated to the Government. He tries to distinguish the decision of this Court in State of A.P. v. Smt. Haji Begum, supra, and submits that the Court did not lay down that after the Amendment Act the Magistrate has no jurisdiction to confiscate the seized property. It is urged that the Court only held on the facts and circumstances before it that the High Court in Smt. Haji Begum's case had taken an erroneous view of the report made by the Authorized officer under sub- s.(2) of s.44 of the Act while forwarding the accused to the Magistrate and hence the proceedings before the Divisional Forest Officer had to go on. We are afraid, these contentions cannot prevail.

Under the scheme of the Act, where a Forest Officer effects a seizure under sub-s.(l) of s. 44 of the Act of any timber or forest produce together with the implements etc., when he has reason to believe that a forest offence has been committed in respect thereof, he has the discretion to either produce the property seized before the Authorized Officer or make a report of such seizure to the Magistrate. Where the timber or forest produce 18 seized by the Authorized Officer or the Forest Officer or where any such timber or forest produce 18 produced b fore him by any Forest Officer under sub-s.(2), the Authorized Officer has to proceed to order confiscation thereof after Following the procedure laid down in sub-ss. (2B) and (2C). The order of confiscation passed by an Authorized Officer under sub-s. (2A) is liable to be interfered with within 30 days of the passing of such order by an officer not below the rank or Conservator of Forests empowered by the Government in that

behalf under sub-s.(2D) either suo motu or on an application made by the person aggrieved after making such inquiry as he thinks fit. Under the proviso thereto, no order prejudicial to any person shall be passed without giving him an opportunity of being heard. The person aggrieved by an order of confiscation passed under sub-s.(2A) or (2D) has a right of appeal within 30 days from the date of communication to him of such order under sub-s.(2E) to the District Court having jurisdiction over the area in which the property had been seized. The District Court has been conferred the power to pass such order as it may think fit after giving an opportunity to the parties to be heard, and the order of the District Court 80 passed is final.

The Forest Department may also decide to prosecute the accused. In such a case, the Forest Officer shall, except where the offender agrees in writing forthwith to get the ofence compounded, make a report of such seizure to the Magistrate under sub-s.(2) of s.44. As regards the implements used in committing any such offence i.e. tools, ropes, chains, boats, vehicles etc. seized by the Forest Officer under sub-s.(l) and where he makes a report of such seizure to the Magistrate under sub-s.(2), the Forest Officer is empowered by sub-s.(3) to 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. Sub-s.(4) of s.44 of the Act enjoins that upon receipt of any report from a Forest Officer under sub- s.(2) thereof, the Magistrate shall except where the offence is compounded take such measures as may be necessary for the trial of the accused and the disposal of the property according to law. Sub-s.(5) directs that the property seized under sub-s.(l) shall be kept in the custody of the forest Officer until the compensation for compounding the offence is paid or until an order of the Magistrate directing its disposal 18 received. Under s. 45, where a person 18 convicted of a forest offence the Court sentencing him shall order confiscation to the government of timber or forest produce in respect of which such offence was committed and of the implements etc. used in committing such offence, except where an order of confiscation his already been passed in respect thereof under s.44. The words except where an order of confiscation has already been passed in respect thereof under s.44 appearing in s. 45 of the Act have the effect of curtailment of the power of the Magistrate to order confiscation on conviction of an accused of a forest offence under s.45. It would therefore appear that there can be no conflict of jurisdiction between the Authorized Officer acting under sub-s.(2A) of s.44 of the Act to direct confiscation of the property seized under sub-s.(l) on has being satisfied that a forest offence has been committed, and the Magistrate making an order for confiscation of the property so seized on conviction of an accused for a forest offence under s.45. The power of confiscation conferred on the Authorized officer under sub-s.(2A) of s. 44 of the Act is separate and distinct from the power of the Magistrate to direct confiscation on conviction of an accused under s.45. There 18 no overlapping of their respective jurisdictions as there is clear demarcation over the areas in which they operate.

True it is, where any property is produced by an officer before a Criminal Court in an inquiry or trial, the Court may under 8. 451 of the Code of Criminal Procedure, 1973 make any direction, as it thinks fit, for the proper custody of such property pending the conclusion of the inquiry or trial. At the conclusion of the inquiry or trial, the Court may also under 8. 452 of the Code make an order for the disposal of the property produced before it and make such other directions as it may think necessary. Where the property is not produced before a Criminal Court in an inquiry or trial, the Magistrate is empowered under s.457 of the Code to make such order as he thinks fit, respecting the

disposal of the property. The general provision of s. 452 of the code with regard to 'disposal of property by a Criminal Court such as by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof, and that of 8.457 investing a Magistrate to make an order for disposal of property seized by a Police Officer and not produced before a Criminal Court during an inquiry or trial, must necessary yield where a statute makes a special provision with regard to forfeiture of any property and its disposal. In the instant case, admittedly, the illicitly felled teak trees seized by the Forest Range Officer, Adilabad were produced by him before the Divisional Forest Officer, Hyderabad who is the Authorised Officer under sub- s. (2A) of s.44 of the Act, along with a report by his under sub-s. (2) thereof that he had reason to believe that a forest offence had been committed by the respondents. Merely because the Forest Range Officer also later lodged a complaint before the learned Metropolitan Magistrate for trial of he respondents for commission of offences under ss. 20(1)(c)(iv) and A (x) and 20(1)(d) read with s. 29(4)(a)(11) of the Act, did not imply that the Authorised Officer was bereft of his power and authority to direct confiscation of the seized timber and the implements etc. under sub-s.(2A) of s.44 of the Act if he was satisfied that a forest offence had been committed.

A close, careful and combined reading of the various subsections of s. 44, s. 45 and s. 58A of the Act as introduced or amended by Act 17 of 1976 leaves no doubt that the intendment of the Legislature was to provide for two separate proceedings before two different forums and there is no conflict of jurisdiction as s.45, as amended by the Amendment Act, in terms curtails the power conferred on the Magistrate to direct confiscation of timber or forest produce on conviction of the accused. The conferral of power of confiscation of seized timber or forest produce and the implements etc. On the Authorized officer under sub-s.(2A) of s.44 of the Act on his being satisfied that a forest offence had been committed in respect thereof, is / t dependent upon whether a criminal prosecution for commission of a forest offence has been launched against the offender or / t. It is a separate and distinct proceeding from that of a trial before the Court for commission of an offence. Under sub-s.(2A) of 8.44 of the Act, where a Forest Officer makes a report of seizure of any timber or forest produce and produces the seized timber before the Authorized Officer along with a report under 8.44(2), the Authorized Officer can direct confiscation to Government of such timber of forest produce and the implements etc. if he is satisfied that a forest offences has been committed irrespective of the fact whether the accused is facing a trial before a Magistrate for the commission of a forest offence under 8.20 or 29 of the Act.

As to the scope and effect of sub-s. (2A) of 8. 44 of the Act, different views appear to have prevailed in the High Court. In State of Andhra Pradesh v. P. Mohammed & Ors., (1978) A.P.L.J. 391, Jeewan Reddy, J. held that the general power of the Court under 8. 452 of the Code or that of the Magistrate under 8. 457 to direct disposal of seized property, had to be read along with and in the context of the special procedure prescribed by the Amendment Act 17 of 1976. In that case, the Forest Officer produced the seized forest produce and the vehicle used for the commission of a forest offence under sub-s. (1) of 8. 44 before the Authorized Officer along with a report as contemplated by sub-s. (2) thereof for purposes of confiscation, and thereafter he produced the accused before a Magistrate for trial for the commission of such offence. In those circumstances, the learned Judge held that the Amending Act by sub-s. (2A) of s. 44 created the Authorized Officer to be the competent authority to direct confiscation of any timber or forest produce on his being satisfied that a forest offence has

been committed in respect thereof, and the seized property having been produced by the Forest Officer before the Authorized Officer along with a report for confiscation under sub-s.(2A) of s. 44 of the Act, the Magistrate could not have any jurisdiction to pass an order under s. 457 of the Code for the disposal of such property. A discordant note was, however, struck by a Division Bench consisting of Sambasiva Rao, C.J. and Raghuvir, J. in Smt. Haji Begum v. State of Andhra Pradesh & Ors., (1978) 2 A.P.L.J. 191. The learned Judges held that the power of the Authorized officer to direct confiscation under sub-s.(2A) of s.44 of the Act and that of the Magistrate under 8.45 were mutually exclusive and, therefore, there could not be simultaneous proceedings for confiscation before the Authorized Officer under sub-s. (2A) of s.44 and also the trial of the accused for commission of a forest offence under s.20 or 29 of the Act. Their conclusion was based on the use of the words 'either' and 'or' in sub-s.(2) of 8.44 of the Act and they held that the Forest Department had an option to adopt either of the two courses. The judgment of the High Court in Smt. Haji Begum's case was clearly wrong and was reversed by this Court in State of Andhra Pradesh v. Smt. Haji Begam (supra), where it was observed:

> "In our opinion, on the facts and circumstances of the case, the order of the High Court is not fit to be sustained. The High Court has taken an erroneous view of the report of the Forest Ranger to the Magistrate while forwarding the accused to him. The proceeding as to the confiscation of the property seized as also the car has got to go on before the Divisional Forest Officer.

We find that a later Division Bench consisting of Kondaiah, C.J. and Punnayya, J. in Mohd. Yaseen & ors. v. The Forest Range Officer, Flying Squad, Rayachoti & Ors., (1980) 1 A.L.T. 8, approved of the view expressed by Jeewan Reddy, J. in P.K. Mohammad's case (supra), 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-s.(2A) of 8.44 of the Act, and the other for trial of the person accused of the offence so committed under 8. 20 or 29 of the Act. 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-s.(2A) of 8.44 enacted in the general public interest to suppress the mischief of ruthless exploitation of Government forest. by illicit felling and removal of teak and other valuable forest produce. They further held that merely because there was an acquittal of. the accused in the trial before the Magistrate due to paucity of evidence or otherwise did not a necessarily entail in nullifying the order of confiscation of the seized timber or forests produce by the Authorized Officer under sub-s.(2A) of 8.44 of the Act based on his satisfaction that a forest offence had been committed in respect thereof. We affirm the view expressed by Jeewan Reddy, J. in P.K. Mohammad's case and by Kondaiah, C.J. and Punnayya, J. in Mohd. Yaseen's case.

The result therefore is that the appeal succeeds and is allowed. The judgment and order of the High Court passed under 8. 482 of the Code of Criminal Procedure, 1973 for stay of the proceedings before the Authorized Officer under sub-s. (2A) of 8. 44 of the Andhra Pradesh Forest Act, 1967 are set aside and the Authorized Officer is directed to proceed with the inquiry for confiscation of the seized timber in accordance with law. D M.L.A. Appeal Allowed