

GAHC010033712022



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/1436/2022

MUNUSH DAIMARI @ MUNUSH KUMAR DAIMARI
S/O. LT. MAHENDRA DAIMARI, VILL. MAZKHUTI, P.S. AND P.O. ROWTA,
DIST. UDALGURI (BTAD), ASSAM, PIN-784509.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, FOREST DEPTT.

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST ASSAM

ARANYA BHAWAN
PANJABARI
GUWAHATI
KAMRUP
GUWAHATI-781037.

3:DIVISIONAL FOREST OFFICER

SONITPUR EAST DIVISION
BISWANATH
ASSAM
PIN-784025.

4:ASSTT. CONSERVATOR OF FOREST

O/O. DIVISIONAL FOREST OFFICER
SONITPUR EAST DIVISION
BISWANATH
ASSAM
PIN-784025.

5:THE FOREST RANGE OFFICER

BORGANG RANGE
SONITPUR EAST DIVISION
PIN-784025

Advocate for the Petitioner : MR G KAKOTI, MR K J SAIKIA,MR. K BORUAH,MR. P J SAIKIA, SR. ADV,MR. D KHAKHALARY,MR. P THAKURIA

Advocate for the Respondent : SC, FOREST,

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

30.09.2024

Heard Mr. P. Thakuria, learned counsel for the petitioner. Also heard Mr. D. Gogoi, learned Standing Counsel, Forest Department.

2. The petitioner has prayed for a direction to be issued to the respondent authorities for release of the seized Kobelco Excavator SK 210 HDLC-8 (Pokland Vehicle).

3. The petitioner's case is that on 07.12.2019, the Forest Range Officer, Sonitpur East Division, Biswanath Chariali registered a case bearing No.BG/08 of 2019-2020 dated 07.12.2019 and arrested two persons namely Sri Gobinda Ray and Sanjit Ray for violation of Sections 24, 25, 40, 41, 60 & 61 of the Assam Forest Regulation, 1891 (hereinafter referred to as the '1891 Regulation'), as the petitioner's excavator was being used for construction of a new road under the Bihali Reserve Forest near the Assam-Arunachal Border. In this regard, an offence report was drawn up by the Forest Range Officer, i.e., respondent No.5 bearing O.R. No.BG/08 of 2019-20 dated 07.12.2019. On 24.08.2020, the

respondent No.3 initiated confiscation proceedings of the seized excavator. On 24.08.2020, the Divisional Forest Officer, Sonitpur East Division held that the seized vehicle was involved in the illegal felling of trees and clearing of jungle and construction of roads inside the Bihali Reserve, which was in violation of Sections 24 and 25 of the 1891 Regulation.

4. Being aggrieved against the order dated 24.08.2020 passed by the Divisional Forest Officer, Sonitpur East Division, the petitioner preferred an appeal under Section 49(C) of the 1891 Regulation in the Court of the Addl. Sessions Judge (FTC), Biswanath Chariali being Misc. Appeal No.03/2020 and by judgment dated 27.01.2022, the said appellate Court upheld the temporary confiscation order dated 24.08.2020 passed by the DFO, Sonitpur East Division, Biswanath Chariali. The petitioner thus preferred the present writ petition for release of his vehicle under Article 226 of the Constitution.

5. During the pendency of the present writ petition, the trial of the persons who were detained in pursuance to the forest case and the question with regard to final confiscation of the seized vehicle was taken up by the Court of the Judicial Magistrate First Class, Biswanath in C.R. Case No.59/2020. The Court of learned J.M.F.C., vide order dated 04.03.2023, allowed Petition No.686/2023 under Section 321 Cr.P.C. submitted by the prosecution, praying for withdrawing the prosecution of the detained persons as per the SOP issued vide Notification No. E.2/7405/52 dated 21.10.2022. The learned Trial Court, i.e., J.M.F.C. allowed Petition No.686/2023 by discharging the detained persons and the seized articles, if any, were to be disposed of as per law in due course of time.

6. The order dated 04.03.2023 passed by the learned J.M.F.C., Biswanath in C.R. Case No.59/2020 is reproduced hereinbelow as follows:-

“04.03.2023

Accused persons namely Sri Gobinda Ray and Sri Sanjit Ray are absent without steps.

Further Learned Assistant Public Prosecutor, Smti Binita Upadhyaya has filed a petition bearing vide petition no. 686/23 under Section 321 of Cr.P.C. stating that as per SOP issued vide Notification No. E.2/7405/52 dated 21.10.2022, she withdraws from prosecution In this case.

Heard the Learned APP and the Learned Defense Counsel. Perused the petition.

On perusal of the case record it appears that the case is under Section 24/25/40/41/60/61 of AFR Act.

Hence, considering all the facts and materials on record, this Court finds it fit to allow the petition No. 686/23 In view of provisions of Section 321 of Cr.P.C.

Thus the Petition No. 686/23 is hereby allowed and disposed of.

The accused persons are hereby discharged.

The bail bonds for the accused persons shall be in force for the next six (6) months as per Section 437A of Cr.P.C.

Let the seized articles if any be disposed of as per Law in due course of time.

Inform all concerned. B/A shall take necessary steps.

The case is disposed of on withdrawal by the prosecution."

7. The petitioner's counsel submits that in view of the withdrawal of the case by the prosecution, there is no ground for keeping the seized excavator in the custody of the respondents and the same should be released to the petitioner, who is the owner of the vehicle.
8. Mr. D. Gogoi, learned Standing Counsel, Forest Department submits that the Forest Department did not give any permission to the Prosecutor to withdraw the prosecution before the Court of the learned J.M.F.C. and as such, the learned Court erred in withdrawing the prosecution of the case. He also submits that unless the proceedings in C.R. Case No.59/2020 were allowed to culminate, there was no question of releasing the excavator to the petitioner.
9. I have heard the learned counsels for the parties.
10. The earlier order dated 24.08.2020 issued by the D.F.O., Sonitpur East Division, Biswanath Chariali and the judgment dated 27.01.2022 passed by the learned Additional Sessions Judge (FTC), Biswanath Chariali in Misc. Appeal No.3/2020, regarding the confiscation of the seized excavator, shows that the confiscation in terms of the 1891 Regulation was only temporary in nature, which had to be finally decided by the learned Trial Court. However, as can be seen from the order dated 04.03.2023 passed by the learned Court of the J.M.F.C. in C.R. Case No.59/2020, the criminal case has been disposed of on withdrawal of the prosecution. It is also noticed that while the prosecution had been withdrawn from the case on 04.03.2023, no subsequent action has been taken by the respondent authorities till date against the said order. As such, as on date, the order dated 04.03.2023 passed by the Court of learned J.M.F.C.,

Biswanath in C.R. Case No. 59/2020 has attained finality.

11. In view of the fact that there is no case against the petitioner with regard to the seizure of the excavator or against the petitioner, this Court is of the view that the very basis for keeping an excavator in the custody of the Forest Department does not survive. Accordingly, in view of the reasons stated above, the respondents, especially the respondent No.3, is directed to release the excavator to the petitioner.

10. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant