

GAHC010001042022



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

Case No. : Crl.Rev.P./4/2022

BINAD NARZARY
S/O LT. MANGAL NARZARY
R/O VILL- KHORPAGURI, P.O. KHUNGRING, P.S. RUNIKHATA,
DIST. CHIRANG, ASSAM, PIN-783375

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE PP, ASSAM

2:THE DIVISIONAL FOREST OFFICER

AIE VALLEY
BONGAIGAON
ASSAM
PIN-783380

3:SEIZING OFFICER OF THE CENTRAL PROTECTION SQUAD

AIE VALLEY DIVISION
BONGAIGAON
PIN-78338

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

Date : 11-06-2024

Heard Mr. A. Boro, learned counsel for the petitioner Sri Binod Narzary. Also heard Mr. K. Baishya, learned Additional Public Prosecutor for the respondent State and Mr. D. Gogoi, learned Standing counsel for the Forest Department being the respondent Nos. 2 and 3.

2. The petitioner has filed this application under Section 401 read with Section 397 of the Code of Criminal Procedure, 1973 (CrPC for short) against the judgment and order dated 03.12.2021 passed by the learned Sessions Judge, Bongaigaon in Criminal Appeal No. 08/2021, passing an order for confiscation of the vehicle bearing registration No. AS-26C-6470, a vehicle of Bolero Pick Up FB make.

3. It is submitted on behalf of the respondent Nos. 2 and 3 that instead of going into the merits of the case, a direction may be given to the petitioner to appear before the learned District Judge, Bongaigaon against the aforementioned order impugned by the petitioner. The Bolero Pick Up vehicle was seized and confiscated vide order dated 26.07.2021 by the authorized Officer cum Divisional Forest Officer, Aie Valley Division, Bongaigaon through OR No. SPQ/13 dated 24.10.2020.

4. Aggrieved by this order, the petitioner preferred an appeal before the Sessions Judge, Bongaigaon and the appeal was numbered as Criminal Appeal No. 08/2021 and the appeal was dismissed vide order dated 03.12.2021.

5. The respondent Nos. 2 and 3 have relied on the decision of this Court vide order dated 26.06.2023 in connection Criminal Petition No. 1060/2022 and have

submitted that the appeal lies before the District Judge and not before the Sessions Judge and the appeal has to be registered as Misc Appeal and not as a Criminal Appeal. It has been observed by this Court in Criminal Petition No. 1060/2022 that:

*“15. I have considered the rival submissions made by learned counsel for both the sides and have gone through the cited rulings. In the instant case, the impugned order of interim custody has been passed in an appeal under Section 49 (c) of the Assam Forest Regulation, 1891. Even a cursory perusal of the said provision would reveal without any ambiguity that any person aggrieved by an order under section 49(4) or 49-B of the Assam Forest Regulation, 1891 may within 30 days from the date of communication to him of such order prefer an appeal to the District Judge having jurisdiction over the area in which the property has been seized. It also appears, that it is the District Judge, who after giving reasonable opportunity of being heard to the parties may pass such order either varying, confirming, modifying, annulling or setting aside the order appealed against and the order of the court so passed shall be final. Thus, Section 49 (c) of the Assam Forest Regulation, 1891 in unambiguous terms gives appellate jurisdiction, against an order of confiscation, passed under section 49(4) of the Assam Forest Regulation, 1891 by the authorised officer, only to the District Judge and none else. As observed by Hon’ble Supreme Court of India in **“Superintendent of Police, Manipur and Ors. -Vs- R. K. Tomalsana Singh (Dead) by ”(Supra)** when the power is conferred by statute on the statutory authority and as such the said power can be exercised by that authority alone and the factum that one person is exercising two separate authorities is irrelevant.*

16. In the instant case also, though the appeal under Section 49 (c) of the

Assam Forest Regulation, 1891 was filed by the present respondent in the court of learned District and Sessions Judge, Kamrup, Amingaon, however, on perusal of the record of Criminal Appeal No. 02/2022 would reveal that all the orders passed in the said appeal were by learned Sessions Judge Kamrup, Amingaon. This, in the considered opinion of this court may not be regarded as a mere irregularity, which may be cured by Section 465 of the Code of Criminal Procedure, 1973 as both the courts, that is, the court of District Judge and the court of Sessions Judge are created by two different statutes and they exercise different jurisdictions. Moreover, in an appeal before District Judge, the provisions of Chapter 14 of the Civil Courts Rules and Orders of Gauhati High Court would be applicable, whereas, in an appeal before Sessions Judge the provisions of the Chapter 2 of Gauhati High Court Criminal Rules and Orders would be applicable. It is also not clear as to why the appeal preferred under Section 49 (c) of the Assam Forest Regulation, 1891 was registered as a Criminal Appeal, whereas, considering the fact that the appeal lies before the District Judge, it ought to have been registered as a Miscellaneous Appeal.”

“19. The District Judge, Kamrup, Amingaon is hereby directed to re number the Criminal Appeal No 2/2022 as Miscellaneous Appeal and dispose it of as expeditiously as possible, preferably, within three weeks of the receipt of copy of this judgment.”

6. In the conspectus of the decision of this Court in *The State of Assam and Anr. vs. Philo Kumar Deori in connection with Criminal Petition No. 1060/2022*, I deem it appropriate to direct the petitioner to appear the District Judge, Bongaigaon and present his appeal as per Section 49-C of the Assam Forest Regulation, 1891, within a period of one month from the date of receipt of

certified copy of this order.

7. In the above terms, this Criminal Revision Petition stands disposed of.

JUDGE

Comparing Assistant