

**(2015) 06 OHC CK 0021**

**In the Orissa High Court**

**Case No :** Writ Petition (C) No. 22753 of 2010

Anatha Bandhu Mandal

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

**Date of Decision :** 18-06-2015

**Acts Referred:**

Orissa Forest Act, 1972 — Section 2 (e), 56, 56(1), 56(2-a), 58  
Orissa Kendu Leaves (Control of Trade) Act, 1961 — Section 14

**Citation :** AIR 2015 Ori 143 : (2015) 120 CLT 897 : (2015) 2 ILR Ori 117 :  
(2015) 2 OLR 1

**Hon'ble Judges :** Akshaya Kumar Rath, J; Biswajit Mohanty, J; B.R. Sarangi, J

**Bench :** Full Bench

**Advocate :** B.P. Pradhan, Addl. Govt. Advocate, Advocates for the Respondent

## **Judgement**

Biswajit Mohanty, J.—The question that has been referred to be answered by this Full Bench is as follows;

"Whether the Orissa Forest (Detection, Enquiry and Disposal of Forest Offence), Rules 1980 have any application to the proceeding before the Authorised Officer under Section 56 of the Orissa Forest Act, 1972?"

2. The short facts of the case are as follows;

"On 23.8.2009 while one K.C. Dalabehera, Forester and other forest staffs were performing night patrolling duty, they intercepted a truck bearing registration No. WB-33-A-5229 near Khandadhip bridge at Rairakhol on suspicion that the truck was used for transporting Kendu Leaves. On checking the vehicle, it was found that it contained 924 bundles of processed Kendu leaves covered with rice bran (kunda) and tarpaulin. On being asked, the driver of the truck, namely, Ajit Prasad and helper - Chiranjit Patra could not produce any document or authority in support of transportation of Kendu leaves. Accordingly, the vehicle along with Kendu leaves were seized in presence of witnesses. On the basis of aforesaid detection, the driver and helper of the vehicle were taken into custody and

forwarded to the court of the learned S.D.J.M., Rairakhol along with advance Prosecution Report for committing offences under Rules - 4 and 21 of the O.T.T. Rules, 1980 and Section-14 of the Orissa Kendu Leaves (Control and Trade) Act, 1961 and further confiscation proceeding in respect of the aforesaid vehicle and Kendu leaves under Section-56 of the Orissa Forest Act, 1972, for short "the Act" was initiated. Vide order dated 18.6.2010, the Authorised Officer-cum-Assistant Conservator of Forest, Rairakhol Division on consideration of materials on record, passed the order for confiscation of the truck, Kendu leaves and other accessories. Against the order of the Authorised Officer, the petitioner moved the learned District Judge, Sambalpur in F.A.O. No. 29 of 2010 and on 24.11.2010, learned District Judge dismissed the said appeal. Challenging both the above noted orders, the present writ application was filed. While hearing this writ application, there was a cleavage of opinion between the two Hon"ble Judges of this Court constituting the Division Bench regarding applicability of the Orissa Forest (Detection, Enquiry and Disposal of Forest Offence) Rules, 1980, for short "the 1980 Rules" to the proceeding before the Authorised Officer under Section-56 of "the Act". Accordingly, this matter has come before this Full Bench for an answer to the above noted dispute/question. While Hon"ble Justice C.R. Dash has held that "the 1980 Rules" apply to compounding proceedings alone and the same have nothing to do with the confiscation proceeding before the Authorised Officer or trial proceeding before the Magistrate; Hon"ble Justice L. Mohapatra (as His Lordship then was) relying on the decision in the case of Rabinarayan Sahu Vs. Forest Range Officer of Soroda Range and Others, (2008) 106 CLT 482 : (2008) CriLJ 4271 : (2008) 2 OLR 592 disagreed with the view taken by Hon"ble Justice C.R. Dash. However, Hon"ble Justice L. Mohapatra observed that there existed no reference to the confiscation proceeding in "the 1980 Rules". In such background, Hon"ble Justice L. Mohapatra was of the view that the question as to whether the above 1980 Rules had any application to the proceeding before the Authorised Officer under Section-56 of the Orissa Forest Act or not be referred to a Larger Bench or the view of a third Hon"ble Judge be taken on the matter. Accordingly, this matter has come before this Full Bench."

3. In order to appreciate the things properly, let us first refer to the relevant statutory provisions of "the Act" and its later amending Acts and "the 1980 Rules" in its entirety.

Relevant Provisions of "the Act" as it stood prior to Orissa Act 9 of 1983 also known as the Orissa Forest (Amendment) Act, 1982.

"56. Seizure of property liable to confiscation- (1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, ropes, chains, boats, vehicles or cattle used in committing any such offence may be seized by any Forest Officer or Police Officer.

(2) Every officer seizing any property under this Section shall place, on such property a mark indicating that the same has been so seized and shall as soon as

may be, except where the offender agrees in writing to get the offence compounded, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that, when the forest produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior and the Divisional Forest Officer.

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

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

58. Action after seizure:- Upon the receipt of any such report the Magistrate shall, except where the offence has been compounded, with all convenient dispatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

59. Forest produce, tools, etc. liable to confiscation: (1) All timber or forest produce, which is not the property of Government and in respect of which a forest offence has been committed, and all tools, ropes, chains, boats, vehicles and cattle used in committing any forest offence, shall be liable to confiscation

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

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

64. Property when to vest in Government:- When an order for the confiscation of any property has been passed under Section 59 or Section 61, as the case may be, and the period limited by Section 63 for filing an appeal from such order has elapsed, and no such appeal has been preferred or when, on such an appeal being preferred, the appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the State Government free from all encumbrances.

71. Power to try offence summarily- Any Management of the First Class specially empowered in this behalf by the State Government may try summarily under the Code of Criminal Procedure, 1898, any forest offence punishable with

imprisonment for a term not exceeding one year, or with fine not exceeding one thousand rupees, or with both.

72. Power to compound of offences- (1) Any Forest Officer specially empowered in this behalf by the State Government may accept as compensation from any person who committed or in respect of whom it can be reasonably inferred that he has committed, any forest offence other than an offence under Section 66 or Section 67 -

(i) a sum of money not exceeding fifty rupees where such offences is of a trivial nature and involves forest produce the market value of which does not exceed twenty -five rupees;

(ii) a sum of money which shall not in any case be less than the market value of the forest produce, or more than four times such value as estimated by such Forest Officer, in addition to the market value of the forest produce, where such offence involves any forest produce which in the opinion of the Forest Officer may be released;

(iii) a sum of money which shall not in any case be less than the market value of the forest produce, or more than four times such value as estimated by such Forest Officer, where such offence involves forest produce which in the opinion of the Forest Officer should be retained by the Government:

(2) On receipt of the sum of money referred to in Subsection (1) by such officer -

(i) the accused person, if in custody, shall be discharged;

(ii) the property seized shall, if it is not to be so retained, be released; and

(iii) no further proceedings shall be taken against such person or property;

82. Additional powers to make rules- (1) The State Government may make rules - (a) to prescribe and limit the powers and duties of any Forest Officer under this Act:

(b) to regulate the rewards to be paid to officers and informants out of the proceeds of fines and confiscations under this act;

(c) for the preservation, reproduction and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons; and

(d) generally, to carry out the provisions of this Act.

(2) All rules made under this Act shall, as soon as may be after, they are made, be laid before the State legislature for a total period of fourteen days which may be comprised in one session or in two or more successive sessions and if during the said period, the State legislature makes modifications, if any, therein, the rules shall thereafter have effect only in such modified form so, however, that such modifications shall be without prejudice to the validity of anything

previously done under the rules."

Relevant Provisions of the Orissa Forest (Amendment) Act, 1982, which is also known as Orissa Act 9 of 1983, for short "the 1983 Act".

"8. Amendment of section 56 - In section 56 of the Principal Act,- (a) in sub-section (2), after the words and comma "to get the offence compounded", the following words and brackets shall be inserted, namely:- "either produce the property seized before an officer not below the rank of an Assistant Conservator of Forest authorized by the State government in this behalf by notification (hereinafter referred to as the "authorised officer") or";

(b) after sub-section (2), the following new sub-sections shall be inserted, namely:-

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

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

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

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

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

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

(2-d) Any forest officer below the rank of a Conservator of Forests empowered by the Government in this behalf by notification, may within thirty days from the date of the order of confiscation by the authorized officer under subsection (2-a), either suo motu or on application, call for and examine the records of the case and may make such inquiry or such inquiry to be made and pass such orders as he may think fit.:

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

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

10. Amendment of section 59 - In section 59 of the Principal Act, in sub-section (1), the words and figure "unless an order of confiscation has already been passed in respect thereof under section 56" shall be added at the end.

11. Amendment of section 64 - In Section 64 of the Principal Act, shall be re-numbered as sub-section (1) thereof and after sub-section (1) as so re-numbered, the following new sub-section shall be added, namely;- "When an order of confiscation of any property passed under section 56 has been become final under that section in respect of the whole or any portion of the property, such property or the portion thereof as the case may be, shall vest in the State Government free from all encumbrances."

12. Insertion of new section 64-A - After section 64 of the principal Act, the following new section shall be inserted, namely:--

"64-A. Confiscation to be no bar to imposition of other penalty - An order of confiscation made under section 56 shall not act as a bar to the imposition of any other penalty to which the offender is liable under this Act or the rules made thereunder".

14. Amendment of section 72 - In section 72 of the Principal Act, in sub-section (1),-

(a) for the words and figures "any forest offence other than an offence under section 66 or section 67", the words, figures and brackets "any forest offence (other than an offence under section 66 or section 67 or an offence in committing which a vehicle has been used)," shall be substituted;

(b) the following proviso shall be added at the end, namely:- "Provided that no such offence as is referred to in clause (ii) or clause (iii) shall be compounded if the market value of the forest produce involved exceeds one hundred rupees."

Relevant Provisions of the Orissa Forest (Amendment) Act, 2000, which is also known as Orissa Act 12 of 2003, for short "the 2003 Act".

"8 - Amendment of Section 56: In Section 56 of the principal Act:

(a) In Sub-section (2), after the words, "offence compounded", the words and figure "under Section 72" shall be inserted;

(b) In Sub-section (2-a), for the words "he may" the words "he shall" shall be substituted; and

(c) To Sub-section (3), the following proviso shall be added, namely :

"Provided that the seized property shall not be released during pendency of the confiscation proceeding or trial even on the application of the owner of the property for such release."

13 - Amendment of Sections 71 and 77 : In Section 71 and in clause (c) of Sub-section (1) of Section 7 of the principal Act:

(a) for the figure "1898", the figure "1973" shall be substituted; and

(b) for the marginal references "5 of 1898" and "45 of 1898" the marginal references "2 of 1974" shall be substituted."

Relevant Provisions of the Orissa Forest (Amendment) Act, 2010, which is also known as Orissa Act 9 of 2011, for short "the 2011 Act".

"2. Amendment of Section 72 - In Section 72 of the Orissa Forest Act, 1972, in the proviso to Sub-section (1), for the words "one hundred rupees", the words "five thousand rupees" shall be substituted."

Relevant Provisions of "the Act" as those stand today.

"56. Seizure of property liable to confiscation - (1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, ropes, chains, boats, vehicles or cattle used in committing any such offence may be seized by any Forest Officer or Police Officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, except where the offender agrees in writing to get the offence compounded, under Section 72 either produce the property seized before an officer not below the rank of an Assistant Conservator of Forests authorised by the State Government in this behalf by notification (hereinafter referred to as the authorised officer) or make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that, when the forest produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior and the Divisional Forest Officer.

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

(2-b) No order confiscating any property shall be made under sub-section (2-a)

unless the person from whom the property is seized is given-

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

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

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

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

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

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

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

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

Provided that the seized property shall not be released during pendency of the confiscation proceeding or trial even on the application of the owner of the property for such release.

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

58. Action after seizure- Upon the receipt of any such report the Magistrate shall, except where the offence has been compounded, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.



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

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

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

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

64. Property when to vest in Government- (1) When an order for the confiscation of any property has been passed under Section 59 or Section 61, as the case may be, and the period limited by Section 63 for filing an appeal from such order has elapsed, and no such appeal has been preferred or when, on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the State Government free from all encumbrances.

(2) When an order of confiscation of any property passed under Section 56 has become final under that section in respect of the whole or any portion of the property, such property or the portion thereof, as the case may be, shall vest in the State Government free from encumbrances.

64-A. Confiscation to be no bar to imposition of other penalty-An order of confiscation made under Section 56 shall not act as a bar to the imposition of any other penalty to which the offender is liable under this Act or the rules made thereunder.

71. Power to try offences summarily - Any Magistrate of the First Class specially empowered to this behalf by the State Government may try summarily under the Code of Criminal Procedure, 1973, (2 of 1974) any forest offence punishable with imprisonment for a term not exceeding one year, or with fine not exceeding one thousand rupees, or with both.

72. Power to compound of offences - (1) Any Forest Officer specially empowered in this behalf by the State Government may accept as compensation from any person who committed or in respect of whom it can be reasonably inferred that he has committed any forest offence (other than an offence under Section 66 or Section 67 or an offence in committing which a vehicle has been used)-

(i) a sum of money not exceeding fifty rupees where such offence is of a trivial nature and involves forest produce the market value of which does not exceed twenty-five rupees;

(ii) a sum of money which shall not in any case be less than the market value of the forest produce, or more than four times such value as estimated by such Forest Officer, in addition to the market value of the forest produce, where such offence involves any forest produce which in the opinion of the Forest Officer may be released;

(iii) a sum of money which shall not in any case be less than the market value of the forest produce, or more than four times such value as estimated by such Forest Officer, where such offence involves forest produce which in the opinion of the Forest Officer should be retained by the Government:

Provided that no such offence as is referred to in Clause (ii) or Clause (iii) shall be compounded if the market value of the forest produce involved exceeds five thousand rupees.

(2) On receipt of the sum of money referred to in subsection (1) by such officer-

(i) the accused person, if in custody, shall be discharged;

(ii) the property seized shall, if it is not to be so retained, be released; and

(iii) no further proceedings shall be taken against such person or property.

82. Additional powers to make rules - (1) The State Government may make rules-

(a) to prescribe and limit the powers and duties of any Forest Officer under this Act;

(b) to regulate the reward to be paid to officers and informants out of the proceeds of fines and confiscations under this Act;

(c) for the preservation, reproduction and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons; and

(d) generally, to carry out the provisions of this Act.

(2) All rules made under this Act shall, as soon as may be after, they are made, be laid before the State Legislature for a total period of fourteen days which may be comprised in one session or in two or more successive sessions and if during the said period, the State Legislature makes modifications, if any, therein, the rules shall thereafter have effect only in such modified form, or, however, that such modifications shall be without prejudice to the validity of anything previously done under the rules."

The relevant provisions of "the 1980 Rules"

"S.R.O. No. 56/80-In exercise of the powers conferred by clause (d) of sub-

section (1) of Section 82 of the Orissa Forest Act, 1972 (Orissa Act 14 of 1972), the State Government do hereby make the following rules, namely:--

1. (1) These rules may be called the Orissa Forest (Detection, Enquiry and Disposal of Forest offence) Rules, 1980.

(2) They shall come into force on the date of their publication in the Official Gazette

2.(1) In these rules, unless the context otherwise requires,-

(i) "Act" means the Orissa Forest Act, 1972;

(ii) "Accused" means any person who committed or in respect of whom it may be reasonably inferred that he has committed or abetted the commission of a forest offence;

(iii) "Case record" means the records of a case relating to any forest offence maintained by a Forest Officer under these Rules;

(iv) "Form" means a form appended to these rules.

(2) All words and expressions used but not defined in these rules shall have the meanings, respectively assigned to them in the Act.

3.(1) When a forest offence is detected and booked it shall be dealt with in the manner hereinafter provided.

(2) The forest officer who detects any forest offence under any of the provisions of the Act, shall draw a report in Form No. 1 which shall form a part of the case record.

(3) A list in duplicate of articles seized shall be prepared by the officer detecting the offence, in Form No. II, and a copy of the seizure list shall be made over to the accused person, where the accused is known and his signature shall be obtained in the duplicate copy of the said seizure list. The duplicate copy of the seizure list shall form a part of the case record.

(4) The report of seizure required to be made to the Magistrate under sub-section (2) of Section 56 of the Act shall be in Form No. III, and a copy of the report shall be retained in the case record when the report is so made.

4.(1) When a forest offence is detected, a preliminary enquiry may be held by a Forester in charge of the Section, who shall forward his enquiry report along with the Report in Form No. 1 to the Range Officer concerned, soon after his preliminary enquiry is completed :

Provided that no enquiry may be held by any such Officer, if the accused who has committed a forest offence, other than an offence under Sections 66 and 67 of the Act agrees, and files a petition to that effect in Form No. 4 to get the offence compounded under Section 72 of the Act and to pay compensation therefore.

Such application in Form No. IV shall also form a part of the case record.

(2) An enquiry into the forest offence shall thereafter be held by an officer not below the rank of a Range Officer.

(3) The enquiry report together with the case record shall be submitted to the Divisional Forest Officer by the Range Officer in all cases in which the Divisional Forest Officer is not competent to compound under Rule 7 and where the accused persons do not opt to compound the offence.

5. Every accused who agrees under Rule 4 to get the offence compounded shall immediately deposit in advance an amount as determined by the Forest Officer not below the rank of a Forester towards the probable compensation within the meaning of Section 72 of the Act. On receipt of such amount the forest officer concerned shall issue a receipt in Form No. V duly signed by him.

Provided that the acceptance of any amount as aforesaid by the Forest Officer shall be without prejudice to any decision that may be taken by the Forest Officer specially empower under Section 72 of the Act having regard to the quantum of compensation in conformity with the clauses (i) to (iii) of sub-section (1) of the said Section.

6. Any forest produce seized from an accused shall not immediately be released on receipt of the amount of advance towards probable compensation under Rule 5 but shall be retained with the Forest Officer concerned until an order in this behalf is issued by the competent authority under Section 72 of the Act.

7. Where the accused files the petition under Rule 4, the Forest Officer specially empowered under Section 72 of the Act may compound the case by passing an order in this behalf in Form No. VI. The order shall in all such cases be communicated to the accused immediately by or through the Range Officer, as the case may be.

8. When the Forest Officer empowered under Section 72 refused to compound an offence, the amount that was received as advance towards probable compensation from the accused under Rule 5 shall be refunded to him by the Range Officer on receipt of the order in that behalf from such Forest Officer.

9. The compounding order once passed shall be final and no appeal shall lie against such order.

10. (1) In the event where the amount of compensation ordered under Rule 7 becomes higher than the amount deposited under Rule 5, the differential amount shall be paid by the accused to the concerned Range Officer within thirty days from the date of issue of the compounding order.

(2) In case of default in such payment under sub-rule (1), the Divisional Forest Officer shall take action to recover the balance amount as provided under Section 87 of the Act.

11. Where the accused does not opt to compound the offence or the Forest Officer empowered refused to compound the offence and for all cases under Sections 66 and 67 of the Act, the Divisional Forest Officer may forward the offence report in Form No. VII along with the report in Form No. 1 to the Magistrate having jurisdiction for prosecution of the offender.

12. All rules corresponding to these rules and in force prior to the commencement of these rules are hereby repealed.

Provided that orders made, notices issued, compensation levied, imposed or assessed, proceeding instituted and sent for prosecution and all actions taken and things done under any of the provisions of the rules so repealed shall be deemed to have been respectively made, issued, levied, imposed or assessed, instituted, taken or done under these rules."

4. The entire purpose of quoting the relevant provisions of "the Act" as those stood prior to their amendments in 1983 is to show that when "the 1980 Rules" came into force, at that point of time a reading of Section-58, unamended Section-59 and unamended Section-64 of "the Act" would show that only the Magistrate was empowered to order confiscation in addition to imposition of any punishment provided for the offence. At that point of time, there was no provision in "the Act" empowering Authorised Officer to order confiscation of forest produce along with all tools, chains, ropes, vehicles, etc. used in committing forest offence. The detailed provisions for confiscation proceeding before the Authorised Officer were introduced later only by way of an amendment by "the 1983 Act", i.e., much after coming into force of "the 1980 Rules". Till date there is also no reference to "the 1980 Rules" in Section 56 of "the Act". Secondly, "the 1980 Rules" are also totally silent on confiscation proceeding of any type.

5. Before referring to the submissions of the learned counsel for the parties, let us re-visit the question, which is required to be answered by this Full Bench. The question is whether "the 1980 Rules" have any application to the proceeding before the Authorised Officer under Section-56 of the Act? It is important to note here that the proceeding before the Authorised Officer under Section-56 of "the Act" as it stands now or as it stood on the date of occurrence is only a confiscation proceeding. Therefore, we have to see whether "the 1980 Rules" have any application to the confiscation proceeding before the Authorised Officer under Section 56 of "the Act" or not as it stands now. This is also clear from the Additional Note of Submission dated 25.6.2014 filed by the petitioner

6. Now to the submissions of the learned counsel for the parties.

7. Mr. D.P. Dhal, learned counsel for the petitioner put much emphasis on the phrase "reason to believe" as appearing in subsection (1) of Section- 56 of "the Act". According to him though the phrase "reason to believe" has been used as above, however, as to what constitutes "reason to believe" has not been made clear in "the Act". According to him, in order to give a clear meaning to the

phrase "reason to believe", the State Government in its wisdom has framed "the 1980 Rules" in exercise of its power conferred under Section-82(1)(d) of "the Act" which clearly empowered the State Government to make rules generally to carry out the provisions of "the Act". According to Mr. Dhal, a combined reading of Section-56 of "the Act" and Rules - 3 and 4 of "the 1980 Rules" would show that Government has taken care of the intricacies to be followed while detecting a forest offence under the provisions of "the Act". To make things more clear and transparent, "the 1980 Rules" provided for enquiry by a senior officer to carry out the mandate of provisions like confiscation proceeding as contained in Section 56 of "the Act". Thus, according to him "the 1980 Rules" have been framed only with an intention to give a clear meaning to the phrase "reason to believe" by providing for an enquiry under Rule-4 in order to arrive at a conclusion that forest offence has been committed in respect of any forest produce, before initiation of confiscation proceeding under Section - 56 of "the Act", though, this has not been stated in clear terms either in "the Act" or in "the 1980 Rules". Accordingly, Mr. Dhal contended that an enquiry under Rule-4 of "the 1980 Rules" is a must prior to initiation of confiscation proceeding under sub-section (2-a) of Section-56 of "the Act". Thus, "the 1980 Rules" have full application to the confiscation proceeding to be carried out by the Authorised Officer. On the meaning of the phrase "reason to believe", Mr. Dhal relied on the decisions in the cases of *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, AIR 1961 SC 372 : (1961) 41 ITR 191 : (1961) 2 SCR 241 , *The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another*, AIR 1962 SC 316 : (1983) ECR 2198 : (1961) 3 SCR 786 , *Pukhraj Vs. D.R. Kohli*, AIR 1962 SC 1559 : (1983) 13 ELT 1360 : (1962) 3 SCR 866 Supp , *Dr Partap Singh and Another Vs. Director of Enforcement, Foreign Exchange Regulation Act and Others*, AIR 1985 SC 989 : (1985) 58 CompCas 477 : (1986) CriLJ 824 : (1985) 46 CTR 319 : (1985) 6 ECC 103 : (1985) 155 ITR 166 : (1985) 1 SCALE 1208 : (1985) 3 SCC 72 : (1985) 3 SCR 969 , *Jogendra Singh v. State of Orissa* reported in 1990 (70) CLT 613 , *Joti Parshad Vs. State of Haryana*, AIR 1993 SC 1167 : AIR 1992 SC 1167 : (1993) CriLJ 413 : (1992) 3 Crimes 756 : (1992) 6 JT 94 : (1992) 3 SCALE 42 : (1993) 2 SCC 497 Supp : (1993) 2 SCC 497 and *N. Nagendra Rao and Co. Vs. State of Andhra Pradesh*, AIR 1994 SC 2663 : (1994) 5 JT 572 : (1994) 3 SCALE 977 : (1994) 6 SCC 205 : (1994) 3 SCR 144 Supp in order to emphasize the point that the concept of "reason to believe" was not synonymous with subjective satisfaction of the officer. It contemplated existence of reasons for holding such a belief. In other words the officer must have information at his disposal for such a belief.

Secondly, Mr. Dhal contended that where the language of the statute was plain and unambiguous and held out a clear and definite meaning, there was no occasion for resorting to the rules of statutory interpretation. According to him the words Detection, Enquiry and Disposal of Forest Offence involved three contingencies envisaged under "the 1980 Rules" and since "the 1980 Rules"

provided the procedure for each such contingencies, the attempt to give any other meaning would amount to enacting a new statute. "Detection", "Enquiry" and "Disposal of Forest Offence" connoted distinct meanings and accordingly those were to be interpreted. Accordingly, the 1980 Rules could not be interpreted so as to confine it to facilitating the compounding of forest offence only. Such an interpretation would fly in the face of Rules - 8 and 11 of "the 1980 Rules" which covered the cases where offender did not opt to compound the offences. According to Mr. Dhal, a rule cannot be interpreted differently for different persons. He relied on the decisions in the cases of Nathi Devi Vs. Radha Devi Gupta, AIR 2005 SC 648 : (2005) 1 JT 1 : (2004) 10 SCALE 550 : (2005) 2 SCC 271 : (2005) AIRSCW 2721 : (2005) 1 Supreme 393 and Puspa Ranjan Sahoo Vs. Assistant Director of Income Tax (Inv.), (2012) 252 CTR 113 : (2012) 210 TAXMAN 217 to highlight the position of law that the court should harmoniously interpret all the provisions and each and every word of the statute should be given effect to.

Thirdly, Mr. Dhal relied on the decisions in the cases of Rabinarayan Sahu v. Forest Range Office of Sorada Range and others reported in 2008 (II) OLR 592 and Sukanta Kumar Jena v. State of Orissa and another reported in 2012 (I) OLR 229 to press his point that "the 1980 Rules" applied to the confiscation proceeding under Section-56 of the Act.

Fourthly, Mr. Dhal submitted that true nature of law has to be determined not by the label given to it by the statute but on its substance. In this context, he relied on the decisions in the cases of MPV Sundararamier and Co. v. State of A.P. and another reported in AIR 1950 SC 468 and Amarendra Kumar Mohapatra and Others Vs. State of Orissa and Others, AIR 2014 SC 1716 : (2014) AIRSCW 1894 : (2014) 3 JT 244 : (2014) LabIC 1655 : (2014) 2 SCALE 589 : (2014) 4 SCC 583 : (2014) 2 SCC(L&S) 54 .

Fifthly, Mr. Dhal submitted that the term "Disposal" was of wide import and would take within its ambit confiscation proceeding, which could be considered as one of the methods in which forest offence could be disposed of. For interpreting the word "disposal", he relied on the case of Tata Engineering and Locomotive Co. Ltd. Vs. The State of Bihar and Another, (2000) 2 JT 406 Supp : (2000) 4 SCALE 27 : (2000) 5 SCC 346 . Further he submitted a conjoint reading of Rules 4,8 and 11 of "the 1980 Rules" made it clear that "the 1980 Rules" also would apply to confiscation proceeding.

Sixthly, Mr. Dhal submitted that even under Section - 56(2-a) of "the Act", the Authorised Officer has to be satisfied that a forest offence has been committed in order to move further in the matter. Such satisfaction of the Authorised Officer was not a mere formality. He could not satisfy himself about commission of forest offence without possessing necessary facts. For this an enquiry under Rule 4 of "the 1980 Rules" was a must.

Lastly, Mr. Dhal submitted that the rule of last antecedent was not an absolute

rule and the same was subordinate to the contextual background. Requirement of context thus should not be forgotten. Here according to Mr. Dhal the context suggested that "the 1980 Rules" have been made to give effect to the provisions of "the Act" more particularly, sub-sections (2-a), (2-b), (2-c) and (2-d) of Section-56 of "the Act". Therefore, the Rules could not be confined to compounding of offence only and term "enquiry" could not be restricted by the subsequent phrase. In this context he relied on the decision in the case of *The Regional Provident Fund Commissioner, Bombay Vs. Shree Krishna Metal Manufacturing Co., Bhandara*, AIR 1962 SC 1536 : (1962) 4 FLR 473 : (1962) 1 LLJ 427 : (1962) 3 SCR 815 Supp .

8. Per contra, Mr. B.P. Pradhan, learned Additional Government Advocate for the State contended that "the 1980 Rules" has no application to the confiscation proceeding before the Authorised Officer as envisaged under sub-sections- (2-a), (2-b) and (2-c) of Section-56 of the Act. According to him, these provisions were inserted by way of an amendment in 1983 vide "the 1983 Act". Much prior to these amendments, "the 1980 Rules" were holding the field. When "the 1980 Rules" came into force, there were two modes of disposal of forest offence cases under "the Act". One was by compounding and another by prosecution. Thus, when "the 1980 Rules" came into existence, there was no provision under the Act for confiscation by the Authorised Officer. The only way confiscation at that point of time could be ordered was after conclusion of trial following Section-58, unamended Section-59, Section-60 and unamended Section-64 of "the Act". Since confiscation at the end of the trial was provided under "the Act" itself, no provision was made under "the 1980 Rules" dealing with confiscation proceeding by anybody else. Had "the 1980 Rules" made provisions for dealing with confiscation proceeding by any one else other than the Magistrate, these would have run contrary to the provisions of "the Act" and it would have been ultra vires "the Act". Therefore, "the 1980 Rules" were never meant to be applied to confiscation proceeding and it was only meant for compounding of the offence failing which the offence report was to be forwarded to the Magistrate having jurisdiction for prosecution of the offender. Thus, "the 1980 Rules" has no application to confiscation proceeding as the same was supposed to be taken up after conclusion of trial. According to him a conjoint reading of provisions of "the Act" and "the 1980 Rules" made clear that trial would start after forwarding of the offence report under Rule 11 of "the 1980 Rules".

Secondly, Mr. Pradhan contended that the question "the 1980 Rules" being made applicable to confiscation proceeding before the Authorised Officer did not arise as the said Rule till date was totally silent with regard to its application to confiscation proceeding before the Authorised Officer. Had it been the intention of the authorities to make "the 1980 Rules" applicable to the confiscation proceeding before the Authorised Officer, State Government would have suitably amended "the 1980 Rules" after insertion of subsections (2-a), (2-b) and (2-c) of Section-56 of "the Act" after coming into force of "the 1980 Rules". This having not been done, "the 1980 Rules" have no application whatsoever to the



proceeding before the Authorised Officer under sub-sections (2-a), (2-b) and (2-c) of Section-56 of "the Act". Mr. Pradhan reiterated that the entire scheme of "the 1980 Rules" dealt mainly with compounding of forest offences, failing which the offence report was to be sent to the jurisdictional Magistrate for prosecution of the offender.

Thirdly, Mr. Pradhan submitted that confiscation proceeding was distinct from trial of the offender for committing forest offence. While confiscation proceeding was a proceeding against the forest produce together with all tools used in committing the forest offence; the trial was mainly directed against the offender, who was either to be punished or to be acquitted at the end of the trial. In this context, Mr. Pradhan relied on the decision in the case of Divisional Forest Officer and Another Vs. G.V. Sudhakar Rao and Others, AIR 1986 SC 328 : (1986) CriLJ 357 : (1986) 1 Crimes 313 : (1985) 2 SCALE 897 : (1985) 4 SCC 573 : (1985) 3 SCR 680 Supp : (1985) 3 SCR 680 .

Fourthly, Mr. Pradhan submitted that for detection of forest offence and for satisfaction of the Authorised Officer under subsection (2-a) of Section-56 of "the Act" that a forest offence had been committed, no rule requiring detailed enquiry was needed. The term "forest offence" has been defined under Section 2 (e) of "the Act" and a trained Forest Officer or a Police Officer or an Authorised Officer would have no difficulty in detecting prima facie that a forest offence had been committed as in the present case. He also reiterated that "the 1980 Rules" have been introduced providing for enquiry for disposal of forest offence by way of compounding and have no application to a confiscation proceeding before the Authorised Officer under Section- 56 of "the Act".

Fifthly, Mr. Pradhan submitted that a plain reading of Rule-4 of "the 1980 Rules" would also show that the enquiry envisaged therein was an "enquiry" into the forest offence and not an enquiry with regard to confiscation proceeding. Therefore, he submitted that applicability of "the 1980 Rules" to a confiscation proceeding before the Authorised Officer could not be read into "the 1980 Rules" without doing violence to the language of "the 1980 Rules". "The 1980 Rules" could only be made applicable to confiscation proceeding before the Authorised Officer by reading words into "the 1980 Rules", which was otherwise not permissible under law.

Lastly, Mr. Pradhan contended that the provisions relating to confiscation proceeding as provided under Section-56 of "the Act" presented a complete code by themselves and were self-contained and there was no need to import "the 1980 Rules" to make those provisions operational. Rather, he submitted that "the 1980 Rules" was relevant vis-?-vis Section-72 of the Act dealing with power to compound forest offences. Actually "the 1980 Rules" elaborated the procedure of compounding and helped to carry out the provisions of Section-72 of the Act. In such background Mr. Pradhan submitted that the referred question may be answered in negative.

9. With regard to first submission of Mr. Dhal, learned counsel for the petitioner in connection with phrase "reason to believe" and "the 1980 Rules" helping to understand the meaning of above phrase by providing for enquiry under Rule-4 of "the 1980 Rules", this Court is of the opinion that such submission lacks substance. It seems Mr. Dhal has missed the fact that the phrase "reason to believe" occurs at sub-section (1) of Section 56 of "the Act" dealing with seizure of property, whereas the confiscation proceeding comes at a much later stage when the offender does not agree to get the offence compounded. The provision covering confiscation proceeding are dealt with by sub-sections (2-a), (2-b) and (2-c) of Section 56 of "the Act". After production of the property seized, if the Authorised Officer is satisfied that a forest offence has been committed in respect of the same, he can initiate the confiscation proceeding. At this stage the phrase "reason to believe" has no role to play. Therefore, the decision cited by Mr. Dhal explaining the meaning of the phrase "reason to believe" though are unexceptionable, are of no use to the petitioner. Further, by the time sub-section (2-a) of Section 56 of "the Act" comes into play, the forest produce along with all tools, ropes, chains, vehicles, etc. used in committing forest offence must have been seized under Section 56(1) of "the Act" much earlier and should have been produced before the Authorised Officer. Thus, by the time the stage under sub-section (2-a) of Section 56 of "the Act" arrives, the Authorised Officer must have got with him report of seizure and seizure list. The report is ordinarily expected to contain facts of the case and nature of forest offence. From this the Authorised Officer can be satisfied that whether a forest offence has been committed with regard to forest produce produced before him. For this, no enquiry is necessary. And if he Authorised Officer himself is the officer, who has seized the forest produce then at the time of seizure he must have been prima facie satisfied that a forest offence has been committed. He can make use of such satisfaction when the stage of sub-sections (2-a) of Section 56 "the Act" is reached, for initiating a confiscation proceeding. Thus, either way a detailed enquiry is not necessary. Even otherwise the enquiry under Rule 4 of "the 1980 Rules" can not be pressed into service as the language used therein refers to post-detection enquiry and not an enquiry to detect forest offence. Detection of a forest offence itself presupposes, the existence of a forest offence. Therefore, such an enquiry cannot be said to be a must in order to come to a conclusion that a forest offence has been committed. Thus, neither for sub-section (1) of Section 56 of "the Act" nor for sub-section (2-a) of Section 56 of "the Act" such an enquiry has any relevance. That enquiry is to be confined for the limited purpose of the operation of "the 1980 Rules" to which we will advert a little later. With regard to argument of Mr. Dhal that "the 1980 Rules" being a rule promulgated under Section 82(1)(d) of "the Act" help in carrying out the provisions of "the Act", we are of the view that when "the 1980 Rules" came into force, the sub-sections (2-a), (2-b)& (2-c) of Section 56 of "the Act" dealing with confiscation proceeding had no existence. These came much after in 1983 vide "the 1983 Act". Thus, these rules as Mr. Pradhan rightly contended cannot have any application for carrying out the mandate of subsections sections (2-a), (2-b)& (2-c) of Section 56 of "the Act".

Having regard to language used in "the 1980 Rules", it can only be interpreted as a rule, whose main aim is to carry out the objectives of Section 72 of "the Act" as the said rules mainly deal with procedure for compounding the forest offence and steps to be taken when such compounding is not possible. For all these reasons, "the 1980 Rules" cannot have any application to a confiscation proceeding before the Authorised Officer under Section 56 of "the Act".

10. With regard to the second, fourth, fifth and last submissions of Mr. Dhal, learned counsel for the petitioner to the effect that the words - "Detection", "Enquiry" and "Disposal of Forest Offence" used in "the 1980 Rules" cover three different contingencies and therefore, "the 1980 Rules" cannot be interpreted so as to confine the same to facilitate the compounding only, rather all the above words and phrase should be given full effect and that true nature of a statute ought to be determined not by label of the statute but by its substance and further that the term "disposal" is of wide import, which would take within its ambit confiscation proceeding, which can be considered as one of the methods in which a forest offence is disposed of and that the meaning of term "enquiry" cannot be restricted by subsequent phrase "disposal of forest offence" and thus enquiry under "the 1980 Rules" is a must prior to initiation of confiscation proceeding, our answer is that there is no dispute that true nature of a statute ought to be determined not by its label but by its substance. Similarly, there is no dispute over the proposition that all the provisions of statute should be harmoniously interpreted and that each and every word of the statute has to be given effect to by taking a holistic view. In such background, let us scan "the 1980 Rules" so as to find out about the true meaning/interpretation of the terms "enquiry" and "disposal" and as to whether by taking a clue from their meaning it can be held that "the 1980 Rules" would apply to confiscation proceeding before the Authorised Officer under Section 56 of "the Act". At the cost of repetition, it may be stated that the provisions like Sub-sections (2-a), (2-b) & (2-c) of Section 56 of "the Act" were not there when "the 1980 Rules" were promulgated. At that point of time only the jurisdictional Magistrate having power to try the forest offence had the power to order confiscation at the conclusion of trial following the mandate of Section 58, unamended Sections 59 and 61 of "the Act". Further, "the 1980 Rules" nowhere refers to the word confiscation. This is because to our mind at that point of time State Government was well aware that enough provisions were there in "the Act" to take care of confiscation proceeding. Had the intention of the State Government been otherwise, they would have made some provisions in "the 1980 Rules" itself indicating their applicability in a certain way to confiscation proceeding then undertaken by the jurisdictional Magistrate. Further there was also no attempt to indicate about applicability of "the 1980 Rules" when "the Act" was amended in 1983 (vide "the 1983 Act"), introducing the provision for confiscation proceeding before the Authorised Officer nor "the 1980 Rules" were amended after 1983 to indicate about the applicability of the said Rules to the confiscation proceeding before the Authorised Officer. Even as on date neither Section 56 of "the Act" refers to "the 1980 Rules" nor the "the

1980 Rules" make any reference to any confiscation proceeding. It is in this background, we have to understand the meaning of the words "enquiry" and "disposal". A scanning of "the 1980 Rules" makes it clear that the same covers the subjects of detection of forest offence, enquiry into forest offence and disposal of forest offence. It mainly lays down the procedure on the above subjects. Rule 3 of "the 1980 Rules" indicates what procedure are to be followed once a forest offence has been detected and booked. Rule 4(1) of "the 1980 Rules" mainly speaks of preliminary enquiry by the Forester into forest offence after detection of the same when the offender does not agree for compounding of offence and payment of compensation. Rule 4(2) of "the 1980 Rules" speaks of "enquiry into the forest offence" thereafter by an officer not below the rank of a Range Officer and Rule 4(3) of "the 1980 Rules" speaks of submission of enquiry report and case record before the Divisional Forest Officer by Range Officer in all cases where D.F.O. is not competent to compound the offence and where the accused persons do not opt to compound the offence. Rules 5,6,7,9 and 10 of "the 1980 Rules" mainly deal with various procedural aspect relating to compounding proceeding. Rules 8 and 11 of "the 1980 Rules" deal with eventualities when the forest offence is not compounded. The plain language of Rule 4 makes it clear that the enquiry envisaged therein is in the nature of post-detection enquiry into a forest offence, where the matter is not legally compounded. Thus at the stage of activation of Rule 4 of "the 1980 Rules", there is no doubt about existence of a forest offence. Therefore, the enquiry envisaged under Rule 4 of "the 1980 Rules" cannot be treated as an enquiry to detect forest offence. Had it been the case then the proviso to Rule 4 would not have contained a provision for compounding. The existence of the proviso at that stage confirms at least prima facie existence of forest offence. Therefore, at the cost of repetition, we may say that enquiry under Rule 4 of "the 1980 Rules" is a post-detection enquiry into forest offence when there is no compounding and the enquiry report pursuant to such enquiry and case records are to be finally submitted to the Divisional Forest Officer, who ultimately forwards the offence report to the Magistrate under Rule 11 of "the 1980 Rules" for prosecution of the offender. Thus enquiry into forest offence under Rule 4 is a prelude to launching of prosecution and Rule 4 should be read along with Rule 11 in a harmonious manner to get a complete picture as described above. Thus, even if the word "enquiry" is given an independent interpretation, it no way helps the case of the petitioner. Therefore, such an enquiry cannot be sine qua non prior to initiation of confiscation proceeding as the enquiry proceeds on the assumption of existence of forest offence. Once existence of forest offence is not disputed, the Authorised Officer can proceed for confiscation of forest produce with all tools, chains, vehicles, etc. Besides, since sections (2-a), (2-b)& (2-c) of Section 56 of "the Act" came much later, on this ground also "the 1980 Rules" cannot be made applicable to confiscation proceeding before the Authorised Officer. With regard to submission of Mr. Dhal, learned counsel for the petitioner that the word "disposal" is of wide import and would take within its ambit confiscation proceeding, which can be considered as one of the methods in which forest

offence can be disposed of, we are of view that a scanning of "the 1980 Rules" both in its letter and spirit do not support such contention. Firstly, the above rule nowhere makes any reference to any "confiscation proceeding". Secondly acceptance of such submission would mean reading something into the statute, which is not permissible, Moreover the word "disposal" has to be read in the context in which it is used, i.e., disposal of forest offence not disposal of confiscation proceeding. Further a conclusion of confiscation proceeding before an Authorised Officer cannot dispose of the matter relating to forest offence. Specific provisions for disposal of matter relating to forest offence has been provided either by way of trial as per Sections 58, 59(2),71 of "the Act" or by way of compounding the offence as per Section 72 of "the Act" read with Rules 5,6,7 and 10 of "the 1980 Rules". Therefore, the submission that disposal of forest offence can be done by way of confiscation is without any merit. The decision cited by Mr. Dhal in Tata Engineering and Locomotive Co. Ltd. v. State of Bihar (supra) are factually distinguishable. In that case, the Hon''ble Supreme Court was dealing with provisions of Bihar Saw Mills (Regulation) Act, 1990 in the background of claim of the appellant that the provisions of the above noted Act and Rules made there under were not applicable to them and they were not liable to take out any licence under the Act and Rules for running saw mills as such activity was ancillary to their main business by manufacturing of vehicles and that by running such saw mills, the appellant company was not involved in the timber trade itself and used the timber for its own use. There the State contended that the above noted Act was enacted for regulating the trade by sawing and the establishment and operation of saw mills and saw pits and protection and conversation of forests and environment and thus the provisions of the Act required liberal construction so that the object of protecting the forest could be furthered. In such background, the Hon''ble Supreme Court held that to be too literal in interpreting the words would amount to see the skin and miss the soul and the context and the scheme should be kept in mind. Accordingly, the Hon''ble Supreme Court held that the appellant being a bulk consumer of huge quantity of timber and wood, which it utilized in its saw mill, it was necessary for the appellant to obtain licence so that the Forest Department could effectively keep track of their purchases and utilization and thereby ensuring that their activities in no manner helped/encouraged even indirectly illicit felling of trees. It is in this context, the Hon''ble Supreme Curt gave a wide meaning to the word "disposal" used in Rule 7 and refused to accept the interpretation of the appellant that it would only mean disposal by way of sale goods. Here the text and context of "the 1980 Rules" are totally different. The word "disposal" has been used in the phrase "disposal of forest offence" and therefore, the same cannot be read to mean disposal of confiscation proceeding. Further, as indicated earlier "the 1980 Rules" itself nowhere refers to any confiscation proceeding. Therefore, the word disposal cannot be given a broad meaning to take within its sweep disposal of confiscation proceeding. Further, it is well settled as per the decision of the Hon''ble Supreme Court as rendered in Divisional Forest Officer and Another Vs. G.V. Sudhakar Rao and Others, AIR 1986 SC 328 : (1986) CriLJ

357 : (1986) 1 Crimes 313 : (1985) 2 SCALE 897 : (1985) 4 SCC 573 : (1985) 3 SCR 680 Supp : (1985) 3 SCR 680 that a confiscation proceeding is distinct and different from trial of an accused before a Court for commission of forest offence and the power of confiscation is not dependent upon whether a criminal prosecution has been launched or not. To be more clear while disposal of forest offence by way of trial before the Court mainly deals with the offender; the confiscation proceeding by way of a departmental action only deals with confiscation of property seized. Thus, the confiscation proceeding is an independent proceeding. In such background, disposal of forest offence cannot be read to mean disposal of confiscation proceeding. Further a reading of "the 1980 Rules" makes it clear that it mainly provides the procedure for disposal of forest offence by compounding, where such compounding is permissible under law and where such compounding is not possible, it permits a post-detection enquiry of forest offence, ultimately leading to submission of offence report to the jurisdictional Magistrate for trial. As indicated earlier, it is totally silent on any confiscation proceedings. Thus, the text and context do not permit here to give a go-by to the rule of literal interpretation. In this way the decision cited by Mr. Dhal, i.e., in Regional Provident Fund's case (supra) is factually distinguishable. Further that case involved an interpretation of a beneficial legislation unlike the present case. Thus "the 1980 Rules" have no application to the confiscation proceeding before the Authorised Officer conducted under Section 56 of "the Act".

11. With regard to third submission of Mr. Dhal, learned counsel for the petitioner, it would be sufficient to say in both cases referred to by Mr. Dhal, namely, Rabi Narayan (supra) and Sukanta Kumar Jena (supra), the applicability of "the 1980 Rules" was never disputed. Both the cases proceeded on the assumption that "the 1980 Rules" applied to confiscation proceeding under Section 56 of "the Act". But we have already indicated how "the 1980 Rules" have no application to confiscation proceeding under Section 56 of "the Act".

12. With regard to the sixth submission of Mr. Dhal that even under Section 56(2-a) of "the Act", the Authorised Officer has to be satisfied that a forest offence has been committed in order to move further and for this purpose enquiry under Rule 4 of "the 1980 Rules" is a must in order to arrive at the above conclusion, our view is that as indicated earlier the enquiry envisaged under Rule 4 is not an enquiry to detect a forest offence but a post-offence-detection enquiry. A harmonious reading of Rule 4 with Rule 11 of "the 1980 Rules" would indicate that ultimately such enquiry report can be used by the Divisional Forest Officer while forwarding of the offence report to the jurisdictional Magistrate for prosecution of the offender where compounding has not been done as required under law. Thus the enquiry under Rule 4 pre-supposes existence of a forest offence as it covers an enquiry into the forest offence after the same is detected. This being the position, it cannot be contended that an enquiry under Rule-4 is a must in order to satisfy that the Authorised Officer that a forest offence has been committed. In such background it cannot be contended that Rule 4 of "the 1980 Rules" or any other provision of "the 1980 Rules" can have any application to the

confiscation proceeding under Section 56 of the Act. Even otherwise for reaching the prima facie satisfaction that forest offence has been committed the report of seizure prepared at post-detection stage and the seizure list would be good enough for an experienced officer belonging to the rank of Assistant Conservator of Forest and above in reaching the conclusion as to whether a forest offence has been committed prima facie or not. For this no detailed enquiry is necessary. Thereafter if satisfied, he can start confiscation proceeding.

13. Further, it is to be noted that "the 1980 Rules" is a piece of delegated legislation, mainly connected with Section-72 of the Act. It is totally silent on confiscation proceeding to be conducted by Authorised Officer, provisions for which have been made clearly in sub-sections (2-a), (2-b) and (2-c) of Section 56 of "the Act". In such background, also "the 1980 Rules" cannot have any application to the confiscation proceeding before the Authorized Officer.

14. At the cost of repetition, it can also be stated that nothing prevented the legislature from making "the 1980 Rules" applicable to confiscation proceeding as contained in sub-sections (2-a), (2-b) and (2-c) of Section-56 of "the Act" which were brought in much later by making suitable amendments. Further, had there been any reference in the provisions under Section-56 of "the Act" dealing with the confiscation proceeding to "the 1980 Rules" then the things could have been different. But the very fact that though provisions for confiscation proceeding were introduced later on and the legislature have though it fit not to make reference therein to "the 1980 Rules", for the purpose of confiscation proceeding also is an indicator of the fact that the said Rule has no application to the confiscation proceeding.

15. For all these reasons, this Court holds that "the 1980 Rules" have no application to the proceeding before the Authorised Officer under Section-56 of "the Act". To be more clear since the Authorized Officer under Section-56 of "the Act" deals mainly with the confiscation proceeding, "the 1980 Rules" have no application to such confiscation proceeding.

16. Accordingly, the question referred to has been answered. This matter be placed before the appropriate Bench for disposal of the same on merits.