

**(2001) 07 CAL CK 0004**  
**In the Calcutta High Court**  
**Case No : C.R.R. 472 of 2001**

|                                                  |            |
|--------------------------------------------------|------------|
| Deputy Field Director, Buxa Tiger Reserve (West) | APPELLANT  |
| Vs                                               |            |
| Tanuja Pramanik (Smt.)                           | RESPONDENT |

**Date of Decision :** 13-07-2001

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Forest Act, 1927 — Section 52, 59A, 59B, 59C, 59D

**Citation :** 107 CWN 467 : (2001) 2 ILR (Cal) 291

**Hon'ble Judges :** Debi Prosad Sengupta, J

**Bench :** Single Bench

**Advocate :** P.R. Mondal and Bandana Das, for the Appellant; Joymalya Bagchi, S.K. Majumdar, J.N. Chatterjee for Opposite Party No. 1, Debashis Roy, P. Sinha for Added Opposite Party and S. Moitra, for State, for the Respondent

**Final Decision :** Allowed

## Judgement

Debi Prosad Sengupta, J.—This revisional application is directed against an order dated December 13, 2000 passed by the learned Sub-Divisional Judicial Magistrate, Aliporduar, Jalpaiguri in C.R. Case No. 115 of 2000 (Forest Case No. 79/BTR (West) of 2000).

2. On April 23, 2000 a truck bearing No. WB 23/8304 loaded with Sal and Teak Logs without any valid papers were seized by the Dy. Ranger/Forester on Highway No. 31. Four persons including the driver and Khalasi of the said truck were arrested and the wooden logs were seized. The accused persons were forwarded to the court of learned Sub-Divisional Judicial Magistrate, Aliporeduar.

3, On November 27, 2000 the fact of seizure of the truck as well as the logs was reported to the Authorised officer and the Dy. Field Director, Buxa Tiger Reserve (West) and a confiscation proceeding was initiated in respect of the seized truck and the goods u/s 59A of the Indian Forest Act. Notices were directed to be issued u/s 59B of the said Act in the Forest Case No. 79/BTR (West) of 2000 to the owner of the seized truck directing her to showcase as to why the seized

truck would not be confiscated under the Forest Act. Thereafter the owner of the truck gave a reply to the showcase in the said Forest Case by stating that the truck carried goods in the route of Calcutta-Siliguri and that some miscreants hijacked the said truck and committed offence.

4. It appears that the Authorised Officer issued summons to the present opposite party No. 1 and others directing them to appear before him on September 29, 2000 in the said forest case No. 79/BTR(West)/2000.

5. Mr. Pulak Mondal the learned Advocate appearing for the Petitioner submits that on November 10, 2000 the present opposite party No. 1 moved an application under Article 226 of the Constitution of India being W.P. No. 18685 (w)/2000 in this Court with a prayer for direction upon the Respondents to release the vehicle as aforesaid in favour of the present opposite party No. 1 by furnishing necessary bond on security to the satisfaction of the authority. It further appears that by an order dated November 10, 2000 this Court disposed of the writ application by passing the following order:

The Petitioner shall be at liberty to apply before the criminal court for release of goods which were seized pursuant to Forest Case No. 79/BTR(West)/ 2000 by furnishing necessary bond to the satisfaction of the criminal court. this Court makes it clear that if any application is made before the criminal court for release of the goods/truck, the court will apply its mind independently and will not be influenced by any direction contained in this order. The writ application is thus disposed of. There will be no order as to costs.

6. After the said writ application was disposed of the present opposite party No. 1 filed an application before the learned Sub-Divisional Judicial Magistrate, Aliporeduar, for release of the seized truck bearing No. WB 23/8304. On such application the learned S.D.J.M., Aliporeduar, by his order dated December 13, 2000 allowed the prayer for release of the truck and directed the seized truck with papers to be returned to the opposite party No. 1 on furnishing a bond of Rs. 6 lakhs with one lawyers sureties of Rs. 1 lakh.

7. Mr. Pulak Mondal the learned Advocate appearing for the Petitioner submits that the learned Magistrate passed the order without any proper application of mind and without assigning any reason although in the order passed by this Court in the writ application this Court specifically directed the learned Magistrate to pass any order independently after application of mind and without being influenced by any direction passed by this Court, it is the further contention of the learned Advocate of the Petitioner that the provision of Section 59-G of the Indian Forest Act as amended by West Bengal Act XXII of 1988 exclude the power of criminal court as well as of the learned Magistrate to pass an order of release of the seized truck when a confiscation proceeding is pending against the seized truck. Mr. Mondal draws the attention of the court to the provisions of Section 59-G of the Indian Forest Act which runs as follows:

Notwithstanding anything to the contrary contained in this Act or in the Code of

Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, the Officer Authorised u/s 59A or the Authorised Officer specially empowered u/s 59C or the District Judge to whom an appeal may be preferred u/s 59D shall have and any other officer or authorised officer or court, tribunal or authority shall not have jurisdiction to make orders with regard to the custody, possession, delivery, disposal or distribution of any property or tools, ropes, chains, boats, vehicles or cattle seized u/s 52.

Referred to the aforesaid provisions of Section 59G of the Indian Forest Act Mr. Mondal submits that the learned Magistrate acted beyond jurisdiction in violation of the provisions of Section 59G of the said Act and passed the impugned order on total non-application of mind.

8. The learned Advocate appearing for the opposite party submits that the order passed by the learned Magistrate does not suffer from any illegality inasmuch as such order was passed by him pursuant to the direction of this Court. According to the learned Advocate of the O.P. this Court in writ jurisdiction granted liberty to the Petitioner to file appropriate application for return of the seized vehicle before the criminal court and pursuant to such order the present opposite party No. 1 filed an application before the learned Magistrate praying for return of the vehicle, which was allowed by the learned Magistrate.

9. I have heard the learned Advocates of the respective parties. I have also perused the connected papers which are annexed to this revisional application. In my considered view the impugned order passed by the learned S.D.J.M., Aliporeduar on December 13, 2000 suffers from serious illegality inasmuch as the order itself indicates that the learned Magistrate passed the said order without any application of mind as he was supposed to do as per direction of this Court. From the impugned order it appears that the learned Magistrate passed the said order of return of vehicle on the basis of the order passed by this Court in writ jurisdiction as if this Court directed the learned Magistrate to return the vehicle. It further appears that no reason has been given, no submission of the parties were recorded by the learned Magistrate in the impugned order. In my considered view such an order should not be allowed to stand.

10. In view of the discussion made above I allow this revisional application and set aside the impugned order dated December 13, 2000 passed by the learned S.D.J.M., Aliporeduar and direct the learned Magistrate to take the custody of the vehicle forthwith. I further direct the learned Magistrate to consider the application filed by the present O.P. No. 2 afresh and to pass a reasoned order after hearing of the parties. I further direct the learned Magistrate to pass the order on proper application of mind and without being influenced in any way by the orders passed by this Court. The learned Magistrate shall dispose of the application filed by the present O.P. No. 1 for return of vehicle with utmost expedition in accordance with law preferably within a period of two weeks from the date of communication of this order. The present application is accordingly allowed.