

**(1995) 05 PAT CK 0012**

**In the Patna High Court**

**Case No : Cr.W.J.C. No's. 567 of 1994 (R)**

Mohammad Akhtar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

**Date of Decision : 26-05-1995**

**Acts Referred:**

Bihar Forest Produce (Regulation of Trade) Act, 1984 — Section 1, 15, 18, 20, 21  
Constitution of India, 1950 — Article 226, 48A, 51A  
Forest Act, 1927 — Section 20, 29, 30, 32, 44  
Penal Code, 1860 (IPC) — Section 120B, 33, 379, 41, 411

**Citation : (1996) 1 PLJR 77**

**Hon'ble Judges : Nagendra Rai, J**

**Bench : Single Bench**

**Advocate :** S.K. Sinha, in Cr.W.J.C. No. 567 R, T.A. Baja and B.K. Dubey, in Cr.W.J.C. No. 582 R; Kalyan Roy and K.K. Singh, in Cr.W.J.C. No. 693 R, D. Jerath and A. Kumar, in Cr.W.J.C. No. 757 R, Deepak Kumar and M.K. Dey, in Cr.W.J.C. No. 767 R and L.N. Mishra and S. Nayak, in Cr.W.J.C. No. 9 R, for the Appellant; Government Pleader No. 1 and Government Advocate, for the Respondent

**Final Decision : Dismissed**

## Judgement

Nagendra Rai, J.—All these matters are connected matters and as such they have been heard together and are being disposed of by this common order at the stage of admission itself.

2. In all the cases the Petitioners have filed the application for the release of their vehicles, which have been admittedly seized either by the police officials or by the forest authorities in exercise of power u/s 52 of the Indian Forest Act as amended by Bihar (Amendment) Act, 1989 (Bihar Act 9/90) (hereinafter referred to as the Bihar Amendment Act) for illegal transportation of Katha (Catechu) and Khair wood in contravention of provisions of the Indian Forest Act as well as for quashing the confiscation proceeding pending before the authorised officer under the Act.

3. In Cr.W.J.C. No. 567/94, the Petitioner states that the owners of the vehicle bearing No. W.B.I. 6184 are Tabrej Ahmad and Mustaffa Hussain and in terms of agreement dated 3.1.94 the owners have given him the vehicle on hire on monthly payment of Rs. 5,500/-. According to the allegation the Range Officer Simariya at about 7.00 A.M. on 20.1.94 searched the vehicle in question and seized 160 Kgs. Katha biscuits. Nobody was present near the truck and no valid papers were there with regard to carrying out the Katha biscuits and as such the truck and the Katha biscuits were seized on the ground that the accused persons have committed the offence punishable under Sections 33, 41, 42 of the Indian Forest Act as amended by Bihar Amendment Act and under Sections 379, 411, 412, 413, 414, 120B of the Indian Penal Code. The Range Officer submitted a report to the Addl. Chief Judicial Magistrate, Chatra about the said fact and further stated that a detail report for the prosecution will be submitted. The confiscation proceeding being confiscation case No. 5/94 was also initiated by the authorised forest officer in terms of the provisions of the Forest Act as amended by the Bihar Amendment Act and in which notice has been issued to the Petitioner to show cause.

4. In Cr.W.J.C. No. 582/94 the Petitioner claims himself to be the owner of the truck bearing No. BHB 6555 which has been seized by the Range Officer, Gajendi on 24.8.94 at 11.00 A.M. while he alongwith other members was on patrolling duty he saw the truck in question going away speedily towards Chauparan on the Bhankar-Kamba road. He got the truck stopped. Two persons, namely, Driver and Khalasi were apprehended but the owner, namely the Petitioner managed to run away. On search one tonne of Khair wood and also Katha biscuits kept in a box inside the truck were found. The truck, Khair wood and Katha biscuits were seized and two persons were apprehended and after preparing the seizure list the Range Officer made a report to the Addl. Chief Judicial Magistrate, Kodarma about the aforesaid fact with further statement that a detail report will be submitted after enquiry. It further appears that confiscation proceeding being Confiscation Case No. 56/94 has been initiated by the authorised Forest Officer, Kodarma and information of the same has been given to the Court on 26.8.94. The Petitioner filed an application before the Addl. Chief Judicial Magistrate for release of the vehicle which was rejected on 6.9.93 on the ground that as the confiscation proceeding u/s 52 of the Indian Forest Act as amended by the Bihar Amendment Act is pending hence the application is not maintainable.

5. In Cr.W.J.C. No. 693/94 the Petitioner claims himself to be the owner of the truck bearing registration No. HR-26-4966 which was seized by Gopal Chandra, Forest Officer of Gajendi on 11.10.94. In course of patrolling at Ranchi-Patna High Way, the forest officer noticed a truck going away with high speed. He followed the truck and intercepted it. The occupants of the truck attempted to run away but two of them were apprehended. Khair wood was found on the truck but no papers were produced and on the other hand they stated that the same was brought from Bishunger Forest. Accordingly, the truck was seized on the ground that offence u/s 33/41/42 of the Indian Forest Act has been committed

by them. The Forest Officer sent a report to the Addl. Chief Judicial Magistrate stating the aforesaid facts. It was also stated therein that a detail report will be sent later on and the step for initiation of confiscation proceeding, is also being taken. On 18.10.94 the District Forest Officer, Kodarma Informed the Addl. Chief Judicial Magistrate that the confiscation proceeding has already been started for confiscation of the truck in question. The Petitioner filed an application for release of the truck before the Addl. Chief Judicial Magistrate, Kodarma, who has rejected the same by order dated 24.10.94.

6. In Cr.W.J.C. No. 757/94 the Petitioner claims to be the owner of the truck bearing No. BB-26H/8706. He has challenged the order of confiscation dated 17.11.94 passed by the authorised forest officer u/s 52(3) of the Indian Forest Act as amended by the Bihar Amendment Act. It appears that the truck in question was seized with Katha (Katechu) and no valid papers were found and as such the truck and Katha (Katechu) were seized. The Petitioner came to this Court in Cr.W.J.C. No. 466/94 (R) which has been admitted and the truck in question has been ordered to be released on furnishing security to the satisfaction of Divisional Forest Officer.

7. In Cr.W.J.C. No. 767/94 (R) the Petitioner states that he is the owner of the truck bearing No. BPU 9321. According to the allegation the officer Incharge Kodarma police station alongwith police personnel was on duty on 28.9.94. In the morning they received an information that one truck loaded with Khair wood is coming. Thereafter, they intercepted the truck and on search Khair wood was found loaded on the truck. No valid papers for carrying out the aforesaid Khair wood were produced. Not only the truck loaded with Khair wood was seized but also an F.I.R. was lodged being Kodarma P.S. Case No. 229/94 u/s 33 of the Indian Forest Act and under Sections 379/411 of the Indian Penal Code. The confiscation proceeding was started by the authorised forest officer and information to that effect was also given to the Court of Addl. Chief Judicial Magistrate, Kodarma. An application for release of the truck was filed before the Addl. Chief Judicial Magistrate which was rejected by order dated 8.12.94.

8. In Cr.W.J.C. No. 9 of 1994 the Petitioner claims to be the owner of truck bearing No. BRM 9637. According to the allegation it appears that on 12.10.94 the truck in question was searched by the authorised forest officer in the night and on search 4 tonnes of Katha wood was found. Five persons were apprehended but three persons managed to run away. No valid papers were produced. Thereafter, the truck and forest produce were seized, A report to this effect was made to the Addl. Chief Judicial Magistrate. It was also stated there that steps are being taken to initiate a confiscation proceeding. Thereafter, a confiscation case No. 63/94 was initiated on (sic).10.94 and a notice was issued to the Petitioner. The Petitioner appeared and during the tendency of the confiscation case filed application for release of the vehicle, which was rejected by the authorised officer, on 30th November, 1994.

9. Learned Counsel for the Petitioners contended that provisions of the Indian

Forest Act as amended by Bihar Amendment Act will not apply in case of Katha and hair wood in view of the provisions contained u/s 32(1) of the Bihar Forest Produce (Regulation of Trade) Act hereinafter referred to as the Trade Act), which provides that provisions of the Indian Forest Act shall not apply to specified forest produce in respect of matters for which the revisions are made under the Trade Act. If there are provisions for confiscation by a Magistrate trying the case under the Trade Act, no confiscation proceeding under the Indian Forest Act as amended by Bihar Amendment Act is maintainable and that view of the matter the release of vehicles could not be denied on the ground of tendency of the confiscation proceeding under the Indian Forest Act. The learned Counsel for the Petitioners relied upon a Division Bench judgment of this Court in Cr.W.J.C. No. 201/93 (R) (Kedar Sao and Ors. v. The State of Bihar and Ors.) disposed of on 3rd September, 1994.

10. Learned Counsel for the State on the other hand contended that Section 32 of the Trade Act bars the application of the Forest Act only with regard to specified Forest produce in respect of matters for which the provisions have been made under the Trade Act. Under the Trade Act there is no provision of confiscation by the Forest Authorities and as such the proceeding for confiscation under the Forest Act is maintainable. It has also been contended that the Trade Act only regulates the trade and other related matter of the specified forest produce whereas the Forest Act contains a provision relating to the Forest, Transit of forest produce and the duty leviable on timber and other forest produce. No provision has been made under the Trade Act with regard to all the matters covered by the Forest Act in respect of the specified forest produce. For example, a person may remove the forest produce as defined under the Forest Act which is also a specified forest produce under the Trade Act for the purposes other than the trade or transport of the forest produce from a reserved area or protected area without transit, permit in violation of the rules made under the Forest Act and in such a case the steps for prosecution as well as conviction may be taken against him under the provisions of the Forest Act for the simple reason that there is no provision under the Trade Act covering the aforesaid matters. The scope and ambit of operation of the Forest Act is wider than the Trade Act and there is no provision under the Trade Act covering all the matters covered by the Forest Act. This apart the act and omission may constitute an offence under both the Acts. In such a case a person may be prosecuted under both the Acts for the simple reason that all the matters covered by the Forest Act are not covered by the Trade Act.

11. It is to be mentioned at the outset that a Division Bench of this Court in the case of Kedar Sao (supra) has dealt with the matter argued by the Petitioners in these cases and has held that the Trade Act has been enacted to provide control over the transactions of specified forest produce and that the Khair is one of the specified forest produce and as there are elaborate provisions under the Trade Act for forfeiture of vehicle used in committing the offence under the Trade Act and in view of the specific provisions contained in u/s 32 of the Trade Act the

provisions of the Forest Act regarding confiscation of the vehicle by authorised officer is not applicable and as such the confiscation proceeding initiated either for confiscation of the vehicle or specified forest produce by the authorised forest officer under the Act is not permissible in law.

12. Learned Counsel for the State informed that the State has filed SLP before the Supreme Court and the operation of the judgment of this Court in Kedar Sao's case has been stayed.

13. I heard the Counsel for the parties and reserved the order as I have doubt about the correctness of the view taken in the case Kedar Sao (supra). Initially, I intended to refer the matter to a larger Bench as according to me the law was not correctly laid down by the Division Bench. However, as the operation of the judgment has been stayed, I am disposing of the these applications finally, in view of the urgency of the matter.

14. Before proceeding to discuss the point raised on behalf of the Petitioners, I may mention that there is world wide awareness to protect the forest as destruction of forest will disturb the environmental and ecological balance. Even the law makers having noticed the importance of protection of forests have amended the provisions of the Constitution incorporating certain duties on the State and the Citizens to protect the forests. Articles, 48A and 51A were inserted in the Constitution by 42nd amendment in 1976.

Article 48A provides that the State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.

Article 51A (G) inter alia provides for imposing the duty on every citizen of India to protect and improve the natural environment including forests etc.

15. These amendments in the Constitution emphasize the fact that forests have to be protected to save the nation from destruction. Even Parliament and State Legislature have made several Legislations to protect the forest and to maintain the environment and ecological balance.

16. Forest was earlier in the State list as entry No. 19. It was transferred to concurrent list as entry 17(A) by Constitution (42nd Amendment) Act, 1976. The Indian Forest Act has been enacted to consolidate the law relating the forests, the transit of forest produce and the duty leviable on timber and other forest produce the power is vested in the State Government to reserve the forest under Chapter-II of the Act as well as to declare protected forests under Chapter IV of the Act. The State Government has been empowered u/s 30 of the Act to issue notification for declaring any trees or class of trees in a protected forest to be reserved from a date fixed by the notification and to declare any portion of such forest specified in the notification shall be closed for such term not exceeding 30 years and to prohibit, from the date so fixed, the quarrying of stone, or burning of lime or charcoal, removing of any forest produce etc. Section 32 under the aforesaid chapter empowers the State Government to make regulation with

regard to cutting, sawing, conversion and removal of trees and timber and for other purpose mentioned in the said section. Section 33 provides for punishment for contravention of the terms of the notification 30 or provisions of the rules u/s 32.

17. Chapter VII of the Act provides for control of timber and other forest produce in transit. Section 41 empowers the State Government to make rules to regulate transit of forest produce and 42 prescribes penalty for breach of the rule, made u/s 41 of the Act.

18. Under Sections 41, 42 and 46 the State Government has made rule known as Bihar Timber and Other Forest Produce Transit Regulation Rule, which prohibits transportation, export and import of forest produce including the Katha without a valid permit obtained by the concerned forest officials. Other rule has also been made in exercise of the power under the said provisions with regard to the forest produce.

19. Chapter IX of the Forest Act provides for the penalty and procedure. Section 52 of the Forest Act empowers the forest officer police officer to seize forest produce and the tools etc. if they have reason to believe that very offence has been committed in respect of any forest produce. After the seizure the forest officer seizing the property shall make report of such seizure to the Magistrate having jurisdiction to try the offence.

20. Section 53 empowers the forest officer not below the rank of ranger to release the property seized on the execution of the bonds by owner for the production of the property before the Magistrate having jurisdiction to try the offence as and when the same is required.

21. Section 54 provides that after receipt of the report the Magistrate is empowered to take such measures as may be necessary for the arrest and trial of the offence and the disposal of the property according to law.

22. Section 55 provides that all the forest produce which is not the property of the government in respect of which a forest offence has been committed and all the tools, boats, carts and cattle used in commission of forest offence shall be liable to confiscation. Such confiscation may be in addition to any punishment prescribed for such offence.

23. After going through the provisions of Sections 52 to 55 it is clear that after the seizure of the property the report has to be made to the Magistrate and the Magistrate will take steps for the trial of the offender and the disposal of the property. He is also empowered to confiscate the forest produce as well as the tools etc. and such confiscation may be in addition to any other punishment prescribed for the alleged offence. It is to be mentioned that there is no provision for confiscation of vehicle u/s 55 of the Forest Act.

24. The State Legislature having noticed the ruthless exploitation of the forest produce by unscrupulous traders, with a view of check the illegal felling of forest

produce and its removal has brought amendment in the Indian Forest Act by the Bihar State Amendment Act, 1989 (Bihar Act 9/90). The amended provisions provide stringent punishment under the various sections and also incorporated the provisions for confiscation of the forest produce, vehicle, tools etc. used in commission of the forest offence by the authorised officer. The relevant amended provisions for the purpose of this case as contained in Sections 52, 52A, 52B, 52C and 52D are reproduced below:

**52. Seizure and its procedure for the property liable for confiscation.-**

(1) When there is reason to believe that forest offence has been committed in respect of any forest produce, such produce, together with all tools, arms, boats, vehicles, ropes, chains or any other article 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, either produce the property seized before an officer not below the rank of the Divisional Forest Officer authorised by the State Government in this behalf by notification (hereinafter referred to as the authorised officer) or where it is, having regard to quantity of bulk or other genuine difficulty, not practicable to produce the property seized before the authorised officer, or where it is intended to launch criminal proceedings against the offender immediately, 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 immediate superior.

(3) Subject to Sub-section (5), where the authorised officer upon production before him of property seized or upon receipt or report about seizure, as the case may be, is satisfied that a forest offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded, confiscate forest produce so seized together with all tools, arms, boats, vehicles, ropes, chains or any other Article used in committing such offence. The Magistrate having jurisdiction to try the offence concerned may, on the basis of the report of the authorised confiscating officer, cancel the registration of a vehicle used in committing the offence, the licence of the vehicle driver and. the licence of the arms. A copy of carder on confiscation shall be forwarded without undue delay to the Conservators of Forests of the forest circle in which the forest produce as the case may be, has been seized.

(4) No order confiscating any property shall be made under Sub-section (3) unless the authorised officer:

(a) sends an intimation about initiation of proceedings for confiscation of

property to the magistrate having jurisdiction to try the offence on account of which seizure has been made;

(b) issues a notice in writing to the person from whom the property is seized, and to any other person who may appear to the authorised officer to have some interest in such property;

(c) affords an opportunity to the persons referred to in Clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation; and

(d) gives to the officer effecting the seizure and the persons or person to whom notice has been issued under Clause (b), a hearing on date to be fixed for such purposes.

(5) No order of confiscation under Sub-section (3) of any tools, arms, boats, vehicles, ropes, chains or any other Article (other than the forest produce seized) shall be made if any person referred to in Clause (b) of Sub-section (4) proves to the satisfaction of authorised officer that any such tools, arms, boats, vehicles, ropes, chains or other Articles were used without his knowledge or connivance or as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission of forest offence.

#### 52A. Appeal against the order of confiscation.-

(1) Any person aggrieved by an order of confiscation may, within thirty days of the order, or if the fact of such order has not been communicated to him within thirty days of date of knowledge, of such order, prefer an appeal in writing, accompanied by such fee payable in such form as may be prescribed alongwith the certified copy of order of confiscation to the District Magistrate (hereinafter referred to as Appellate Authority) of the District in which the forest produce has been seized.

(2) The Appellate Authority referred to in Section 52-A, may, where no appeal has been preferred before him "suo motu" within thirty days of date of receipt of copy of order of confiscation by him, and shall on presentation of memorandum of appeal issue a notice for hearing of appeal or, as the case may be, of "suo motu" action to the officer effecting seizure and to any other person (including Appellant, if any) who in the opinion of the Appellate Authority, is likely to be adversely affected by the order of confiscation and may send for the record of the case.

Provided that no formal notice of appeal need be issued to such amongst the Appellant, officer effecting seizure and any other person likely to be adversely affected as aforesaid as, may waive the notice or as may be informed in any other manner of date of hearing of appeal by the appellate authority.

(3) The Appellate Authority shall send intimation in writing of lodging of appeal



or about "suo motu" action to the authorised officer.

(4) The Appellate Authority may pass such order Of Interim nature for custody, preservation or disposal (if necessary) of the subject matter of confiscation, as may appear to be just or proper in the circumstances of the case.

(5) The Appellate Authority, having regard to the nature of the case of the complexities involved, may permit parties to the appeal to be represented by their respective legal practitioners.

(6) On the date fixed for hearing of the appeal "suo motu" action, or on such date to which the hearing may be adjourned the Appellate Authority shall peruse the record and hear the parties to the appeal if present in person, or through any agent duly authorised in writing or through a legal practitioner, and shall thereafter proceed to pass an order of confirmation, reversal or modifications of order of confiscation:

Provided that before passing any final order the Appellate Authority may if it is considered necessary for proper decision of appeal or for proper disposal of "suo motu" action make further inquiry itself or cause it to be made by the authorised officer, and may also allow parties to file affidavits for asserting or refuting any fact that may arise for consideration and may allow proof of facts by affidavits.

(7) The Appellate Authority may also pass such orders of consequential nature as it may deem necessary.

(8) Copy of final order or an order of consequential nature, shall be sent to the authorised officer for compliance or for passing any order appropriate in conformity with the order of Appellate Authority.

52-B. Petition for revision before Secretary, Forest and Environment Department, Government of Bihar, against the order of the Appellate Authority.-

(1) Any party to the appeal, aggrieved by final order or by order of consequential nature passed by the Appellate Authority, may within thirty days of the order sought to be impugned, submit a petition for revision to the Secretary, Forest and Environment Department, Government of Bihar.

(2) The Secretary, Forest and Environment Department, Government of Bihar may confirm, reverse or modify any final order of consequential nature passed by the Appellate Authority.

(3) Copies of the order passed in revision shall be sent to the Appellate Authority and to the Authorised Officer for compliance or for passing such further order or for taking such further action as may be directed by such Court.

(4) For entertaining hearing and deciding a revision under this section, the Secretary, Forest and Environment Department, Government of Bihar shall as far may be, exercise the same powers and follow the same procedure as exercised and followed while entertaining, hearing and deciding a revision under the Code

of Criminal Procedure, 1973 (Act No. 2 of 1974).

(5) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) the order passed under this section shall be final and shall not be called in question before the Court.

52-C. Bar of jurisdiction of Courts etc. in certain circumstances. (1) On receipt of intimation under Sub-section (4) of Section 52 about initiation of proceeding for confiscation of property by the magistrate having jurisdiction to try the offence on account of which the seizure of property which is subject matter of confiscation, has been made, no Court, or Tribunal (other than the authorised officer, Appellate Authority and Revision Authority referred to in Sections 52, 52A and 52B) shall have jurisdiction to make orders with regard to possession, delivery, disposal or distribution of the property in regard to which proceedings for confiscation or any other law for the time being in force.

52-D. Power of entry, inspection, search and seizure.-Notwithstanding anything contained in any other law for the time being in force any Forest Officer not below the rank of Range Officer of Forest or any Police Officer not below the rank of a Sub Inspector, may, if he has reasonable grounds to believe that any forest offence has been committed in contravention of this Act, enter upon, inspect and search any place, premises, appurtenances thereto, land vehicle or boat and seize any illegal forest produce and all tools, arms, boats, vehicles, ropes chains or any other article used in committing such offence.

25. From the aforesaid provisions it is clear that prior to the State amendment there was no provisions in the Indian Forest Act empowering an authorised forest officer to confiscate the forest produce with regard to which offence has been committed as well as vehicle, tools etc. used in commission of the offence. These provisions were brought by the State amendment, as stated above, for the object mentioned above.

26. The Bihar Forest Produce (Regulation of Trade) Act, 1984 was enacted to provide for regulation in the public interest the trade and other related matter of certain forest produce by creation of State Monopoly in such trade in the State of Bihar.

27. Section 2(4) of the Trade Act defines forest produce which means any forest produce as specified in the schedule. Katha is one of the specified forest produce in the schedule.

28. Provisions of Sections 1 and 5 of the Trade Act show that after issuance of notification under Sub-sections (3) and (4) of Section 1 with respect to any particular area and with regard to any particular forest produce no person other than the government and the officer of the State and an agent in respect of any unit in which the specified forest produce is grown and found shall purchase or transport or import or export such specified forest produce in and from such area.

29. Section 15 of the Trade Act empowers the forest officer or police officer or

any other persons authorised by the State Government to search as well as seize the specified forest produce and receptacles such as vehicle etc.

30. Section 18 of the Trade Act provides that the specified forest produce and property shall be kept in custody of the forest officer not below the rank of forest guard or any other person as mentioned therein until the compensation for compounding the offence is paid or until an order of the Magistrate directing its disposal is received.

31. Section 20 of the Trade Act provides for penalty which runs as follows:

If any person contravenes any of the provisions of this Act or rules made there under:

(1) he shall be punished with imprisonment which may extend to one year or fine which, may extend to two thousand rupees, or both:

Provided that penalties which are double of those mentioned above may be inflicted in case where the offence is committed after preparation for resistance to lawful authority or where the offender has been previously convicted of a like offence;

(2) the specified forest produce in respect of which such contravention has been made or such part; there of as the Court may deem fit, and any boat, tools, vehicle, animal, vessel, or other conveyance or any other Articles used in committing such offence shall be forfeited to Government and shall vest in Government free from all encumbrances:

Provided that if the Court is of the opinion that it is not necessary to direct confiscation in respect of whole, or as the case may be, any part of the specified forest produce or other property, it may, for reason to be recorded, refrain from doing so.

(3) Such forfeiture may be in addition, to any other punishment prescribed for such offence.

32. Section 21 of the Trade Act provides for disposal of produce and other seized property on conclusion of trial.

33. Section 32 of the Trade Act bars the applicability of the Indian Forest Act and other Acts to certain matters. The said section runs as follows:

32. Limitation of applicability of Indian Forest Act, 1927 and any other law or order.-

(1) Nothing contained in the Indian Forest Act, 1927 (XVI of 1927) shall apply to specified forest produce in respect of matters for which provisions are contained in this Act.

(2) Nothing contained in any other thing having force of law in any region of the State shall apply to the specified forests produce in respect of matters for which

provisions have been made in this Act.

34. I have elaborately referred to the provisions of both the Acts with a view to demonstrate that Forest Act controls large number of activities with regard to forest produce whereas the provisions of the Trade Act has a limited application with regard to matters connected with the trade of the specified forest produce.

35. As stated above, the question in the present case is as to whether in view of the provisions of Section 32 of the Trade Act the provisions contained in Sections 52 to 52D of the Forest Act with regard to confiscation is inapplicable with regard to the specified forest produce as defined under the Trade Act and the Vehicle used in carrying the specified forest produce.

36. From bare reading of Section 32 of the Trade Act is clear that the provisions of Indian Forest Act shall not apply to the specified forest produce in respect of matter for which the provisions has been made under the Trade Act. So the first question for determination is whether there is any provision for confiscation by the forest authorities under the Trade Act. The answer is no Prior to amendment of the provisions of the Forest Act by the Bihar Amendment Act there was no provision for confiscation of the forest produce or receptacles by the forest officials. Under the Trade Act also there is no provision for confiscation by the forest authority. The only power of confiscation or forfeiture was vested in the Magistrate under the Forest Act as well as under the Trade Act at the time of imposing punishment. It is specifically stated in Section 55 of the Forest Act that the punishment of confiscation may be in addition to other punishment prescribed for such offence. Similar provision has been incorporated in Section 20 of the Trade Act.

37. The proceeding for confiscation under the Forest Act as amended by the Bihar Amendment Act is altogether a separate proceeding wherein the confiscating authority is empowered to confiscate forest produce in respect of which forest offence has been committed as well as the vehicle etc. used in commission of the offence. It has nothing to do with the criminal proceeding before a Magistrate where on proof of the guilt an accused has to be convicted and awarded punishment. The confiscation/forfeiture may be also awarded in addition to other punishment.

38. In the case of Divisional Forest Official and Ors. v. G.V. Sudhakar Rao and Ors. 1986 S.C. 328, the question before the Supreme Court was whether the confiscation proceeding initiated with regard to the forest produce under the Andhra Pradesh Forest Act by the authorised officer shall be stayed during the tendency of the criminal case on the ground that both the proceedings could not proceed at the same time. The High Court stayed the proceeding of confiscation of the forest produce on the ground that once the criminal proceeding has been initiated the confiscation proceeding is not maintainable. Dealing with the aforesaid provisions the apex Court held in paragraph 12 of the judgment as follows:

A close, careful and combined reading of the various Sub-sections of Section 44, Section 45 and Section 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 proceeding before two different forums and there is no conflict of jurisdiction as Section 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 authorised officer under Sub-section (2A) of Section 44 of the Act on his being satisfied that a forest offence has been committed in respect thereof, is not dependent upon whether a criminal prosecution for commission of a forest offence has been launched against the offender or not. It is a separate and distinct proceeding from that of a trial before the Court for commission of an offence. Under Sub-section (2A) of Section 44 of the Act, where a Forest Officer makes report of seizure of any timber or forest produce and produces the seized timber before the Authorised Officer along with a report u/s 44(2), the Authorised Officer can direct confiscation to Government of such timber or forest produce and implements, etc., if he is satisfied that a forest offence has been committed, irrespective of the fact whether the accused is facing a trial before a Magistrate for the commission of a forest offence u/s 20 or 29 of the Act.

Thus, it is clear that confiscation proceeding pending before the authorised forest officer is separate proceeding and it has nothing to do with the criminal proceeding either under the Forest Act or under the Trade Act before the Magistrate.

39. There is no provision of confiscation of the specified forest produce and the vehicles etc. by the authority under the Trade Act as such the confiscation proceeding under the Forest Act as amended by Bihar Amendment Act with regard to forest produce which is also a specified forest produce under the Trade Act as well as tools, vehicle etc. used for commission of offence under both the Acts is maintainable and Section 32 of the Act is no bar. Thus, there is no difficulty in holding that in absence of any provision with regard to confiscation by the authority under the Trade Act, the provisions with regard to confiscation under the Forest Act by the forest officer or authorised forest officer shall apply even with regard to forest produce which has been defined as specified forest produce under the Trade Act as well as to vehicles etc. used in commission of offences. Section 32 of the Trade Act does not bar the initiation and continuance of confiscation proceeding under the Forest Act by the authorised officer with regard to specified forest produce as defined under the Trade Act as well as vehicles etc. used for transporting the same provided the specified forest produce is a forest produce under the Act and offences under the Forest Act have been committed.

40. As noticed above the Forest Act covers wider field and the Trade Act has united operation. The act and omission may constitute an offence under both the

acts but on that ground the Forest Act may not be held to be inapplicable. Its applicability is excluded in term of Section 32 of the Trade Act only with regard to matters for which provision has been made under the Trade Act.

41. Once it is held that provision of confiscation as contained u/s 52 of the Forest Act as amended by the State amendment is applicable for confiscation to Katha and Khair wood and the vehicles used for transporting the same in conventions of the provisions of the Forest Act then in view of the provision of Section 52C of the Indian Forest Act as amended by Bihar Amendment Act the jurisdiction of the criminal Court to release the vehicle during the tendency of the confiscation proceeding is barred provided other requirement of said section is fulfilled. In that view of the matter, the learned Magistrates have rightly rejected the application filed by the Petitioners for release of the vehicles on the ground that once the confiscation proceedings have been initiated they have no power to release the same.

42. So far Cr.W.J.C. No. 567/94 (R) is concerned, the Petitioner has directly come of this Court. No doubt, in an appropriate case where no offence is made out this Court in exercise of its extraordinary power u/s 226 of the Constitution of India may release the vehicle but such circumstances will be far and few for the simple reason that this Court will not exercise its discretionary power to frustrate the provisions contained in Section 52 to 52D of the Indian Forest Act as amended by the Bihar Amendment Act.

43. After going through the allegations a prima facie case against the Petitioner is made out in the said case. This is not a fit case for release of the vehicle by the Court.

44. In Cr.W.J.C. No. 757/94 (R) the Petitioner has challenged the order dated 17.11.94 passed u/s 52 of the Indian Forest Act as amended by the Bihar Amendment Act. There is right of appeal and revision under the said Act and the appellate Court has also, power to release the vehicle. In my view, the Petitioner should approach the appellate Court against the order of confiscation. If such an appeal is filed the appellate Court will consider and dispose of the appeal on merits and will not dismiss the appeal on the ground of limitation as the Appellant has been prosecuting the writ application before this Court.

45. In all the other cases except Cr.W.J.C. No. 757/94(R) the confiscation proceeding is pending. The concerned Forest Officers are directed to dispose of the confiscation proceeding within a period of two months from the date of receipt/production of a copy of this order. In case the confiscation proceedings are not disposed of within a period of two months, it will be open for the Petitioners to approach this Court for issuance of necessary directions. So far Cr.W.J.C. No. 757/94(R) is concerned, as the confiscation order has already been passed he should file an appeal, as stated above.

46. Before parting with this case, I may mention the appealing submission has been made on behalf of the Petitioners that these vehicles are commercial

vehicles and if they are not released then apart from the loss to the owners the vehicles will not be fit for use in future. No doubt, the seizure of the vehicle will result in loss to the owners but that can be no ground for release of the vehicle when the question is to be considered in the light of the larger public interest. The forests and the forest produce are to be protected for maintaining the environmental and ecological balance. Learned Counsel for the State informed that in the districts falling within the jurisdiction of the Ranchi Bench more than 40,000 cases under the Forest Act are pending. This itself shows the magnitude of the crime committed with regard to the forest produce. To prevent the increase of the crime under the Forest Act it is necessary that stringent measures as permissible in law are to be taken and the provisions of confiscation as provided under the Indian Forest Act as amended by the Bihar Amendment Act are to be implemented with full force.

47. In the result, all the applications are dismissed with the aforesaid direction and observation.