

**(2018) 10 J&K CK 0035**

**In the Jammu And Kashmir High Court**

**Case No :** Letters Patent Appeal No. 151 Of 2018, IA No. 1 Of 2018

**M/s Trikuta Katha Industries @APPELLANT@Hash State Of Jammu & Kashmir And Ors**

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**Date of Decision :** 11-10-2018

**Acts Referred:**

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 120B, 409, 420  
Jammu And Kashmir Forest Act, 1987 — Section 6, 15, 16, 26, 34

**Citation :** (2018) 10 J&K CK 0035

**Hon'ble Judges :** Dhiraj Singh Thakur, J; Sindhu Sharma, J

**Bench :** Division Bench

**Advocate :** M. A. Goni, A. S. Kotwal, Raman Sharma, H. A. Saddiqui

**Final Decision :** Disposed Off

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## **Judgement**

1. The present Letters patent Appeal (LPA) is preferred against the judgment and order dated 13.09.2018 passed in IA No. 1/2018 in OWP No. 1043/2018.

2. Briefly stated, the material facts are that the petitioner-appellant herein is a Katha Manufacturing Industrial Unit, who approached the writ Court with a grievance that a Special Investigation Team (SIT) of the Police department had lodged an FIR against the appellant's Unit without any just cause or reason and in that view of the matter, the appellant was not permitted to transport finished goods in the form of Katha, Kutch and Liquid Katha. In those circumstances, it was inter alia averred that a Mandamus be issued commanding the respondents to grant transportation permission of Khair Wood which had been felled as also the permission to transport the finished goods in the form of Katha, Kutch and liquid Katha from the appellant's Unit to locations outside the State.

3. A detailed response was filed by the Forest Department as also the Home Department wherein it was stated that the appellant was facing investigation in FIR No. 29/2018 dated 20.04.2018 registered with Police Station, Lakhampur for commission of offence under Sections 420/409/120-B RPC read with Sections 6/15/16 of Forest Act. It was stated that an SIT has been constituted to investigate the matter and the same was at the initial stage. It was also stated

that the goods were seized from the premises of the appellants which were far in excess of the quantities prescribed in terms of SRO No. 111 of 2016 and, therefore, the matter, being serious, was being investigated thoroughly.

4. In the background of the aforementioned facts, the matter appears to have been considered by the learned Single Bench of this Court, which was of the opinion that the petitioner-appellant herein had a remedy to seek the release of his property under Section 34 of the J&K Forest Act, 1987, inasmuch as, the property had been seized in terms of Section 26 of the Forest Act.

5. Feeling aggrieved of the judgment and order (supra), the petitioner-appellant herein has preferred the present LPA. His precise case is that the learned Single Judge was not right in holding that the goods have been seized in terms of Section 26 of the Forest Act and, therefore, the remedy which was stated to be available to the appellant was actually not available in terms of Section 34 of the Forest Act. It was stated that on the date of filing of the petition and even on the date when the order had been passed by the writ Court on 13.09.2018, no seizure had at all been effected and it was only subsequent thereto, the Police came and seized the material on 29.09.2018.

6. Learned counsel for the respondents, however, disputes the aforementioned fact.

7. We need not to go into the issue as to whether seizure was, in fact, effected on 29.09.2018 or on or before 13.09.2018. Admittedly, the Police has seized the material from the premises of the appellant's Unit. The remedy which the learned Single Judge thought was available in terms of Section 34 of the Forest Act, may actually not be available. It was, in this context, stated by Mr. Goni, learned Sr. Advocate that he would have to avail the remedy before the concerned Magistrate for release of the goods seized in the shape of raw material and finished products.

8. The apprehension of the learned counsel for the appellant is that even when he might succeed in getting the goods released from the concerned Magistrate, he may not be permitted to transport the goods which are perishable in nature for which appropriate directions are sought from this Court.

9. With a view to support and buttress his case, reliance is placed upon an interim order dated 13.09.2018 passed by a learned Single Bench of this Court in OWP No. 1132/2018 titled M/s Jammu Industries IGC v. State of J&K and ors. It was prayed that a similar order be passed that in the eventuality of the goods being released by the concerned Magistrate, the same may also be permitted to be transported in line with the order dated 13.09.2018 passed in the aforementioned writ petition.

10. We are of the opinion that the aforesaid order was made on a concession by the learned counsel for the respondents which concession in the present case is not forthcoming.

11. Having considered the matter in its entirety, we are of the opinion that while the appellant may have a remedy to approach the concerned Magistrate for release of goods, it may be premature for us to issue a direction for permission to transport the finished goods in the shape of Katha, Kutch and liquid Katha.

12. However, learned counsel for the respondents submits that in the eventuality of the release of the seized goods by the concerned Magistrate, the issue of transportation of the same would be considered in accordance with the rules by the competent authority of the forest Department.

13. Ordered accordingly.

14. The order of consideration with regard to the transportation, in the eventuality of the goods being released by the concerned Magistrate, shall be passed within two weeks as stated by the learned counsel for the respondents Mr. H. A. Saddiqui, learned Sr. AAG.

15. With the foresaid directions, this appeal stands disposed of.