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**(1994) 08 MP CK 0017**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Petition No. 121 of 1984**

Om Prakash Agrawal and Another

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

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**Date of Decision : 04-08-1994**

**Acts Referred:**

Forest Act, 1927 — Section 55

Madhya Pradesh Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 — Section 22

**Citation :** (1994) 2 MPJR 145 : (1995) 40 MPLJ 355 : (1995) MPLJ 355

**Hon'ble Judges :** U.L. Bhat, C.J.; M.V. Tamaskar, J

**Bench :** Division Bench

**Advocate :** K. Shrivastava, for the Appellant; A. Choudhary, A.A.G., for the Respondent

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## **Judgement**

U.L. Bhat, C.J.

First petitioner is the owner of a truck of which second petitioner is the driver. According to them, one Kanwal Singh cut the trees in his land as per licence issued by the competent authority and entrusted them to first petitioner for being transported to Raipur as firewood. Firewood was transported on several occasions as per transit passes issued by the competent authority. In the midnight intervening 27th and 28th of December, 1983, the truck with firewood stopped at Urdana Forest Check Post. The Forest Officers believed that the date found in the transit pass was manipulated by overwriting. Suspecting commission of a forest offence, the truck and the contents were seized. First petitioner and the department compounded the offence for a total amount of Rs. 700/-. Thereafter, second respondent, Divisional Forest Officer, passed an order confiscating the truck, giving an opportunity to the first petitioner to pay Rs. 70,000/- and take back the truck. This order has been challenged in the writ petition.

By virtue of an interim order passed by this Court, the truck has been released to the first petitioner on his executing a bond for Rs. 50,000/-.

An Authorised Officer could exercise power of confiscation with regard to a forest offence committed in December 1983 only by virtue of the provisions of the Indian Forest Act, 1927 as amended by M. P. Act No. 25 of 1983. Confiscation could be ordered only after following the procedure prescribed therein which is required to be initiated by notice to the first petitioner. There is no dispute that no such notice was issued and no opportunity was given to the first petitioner to show cause against confiscation. In these circumstances, the order of confiscation cannot stand.

The question arises whether confiscation proceedings can be initiated in regard to forest offence committed in December 1983. We have pointed out that law then applicable was the Indian Forest Act, 1927, as amended by M. P. Act No. 25/83. Learned counsel for the petitioner has invited our attention to the decision of a Division Bench in Swaroopchandra Garg v. State of M. P. and others AIR 1984 M. P. 7 to contend that confiscation could not be ordered under the provisions of the Central Act. The forest offence in that case was committed on 4-10-1982. The Court after referring to Section 55(1) of the Central Act as amended, which provided for confiscation, observed :

"Now, in respect of transit or sale of specified forest produce, provisions are made in the State Act. Section 22 of the State Act provides that the provision of the Central Act would not apply to specified forest produce in respect of the matter for which provisions are contained in the State Act. Therefore, in respect of transit or sale of specified forest produce, the provisions of the Central Act are not applicable".

The Court also noticed that as the State Act, namely, M. P. Van Upaj (Vyapar Viniyaman) Adhiniyain (9 of 1969) then stood, there was no provision for confiscation of vehicle used in the commission of forest offence.

Section 22 of the State Act (9 of 1969) as it then stood read as under:

"22(1) Nothing contained in the Indian Forest Act, 1927 (No. 16 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 law, rule, order or any other thing having a force of law in any region of the State shall apply to the specified forest produce in respect of matters for which provisions are contained in this Act".

The provision clearly indicates that the provisions of the Indian Forest Act would not apply to specified forest produce only in respect of matters for which provisions are contained in the State Act. Confiscation of vehicle or even confiscation of forest produce by authorised officer or Forest Officer was not a matter provided in Act No. 9 of 1969 as it stood before it was amended in 1987. Therefore, in regard to confiscation of forest produce or vehicle by authorised officer or forest officer as a consequence of forest offence committed in 1982 or 1983 provisions of Indian Forest Act could be invoked. The forest offence in

Swaroopchandra Garg's case was committed in 1982, i.e. even before the Indian Forest Act was amended by Act No. 25 of 1983. It was only by the amendment of 1983, that the provisions regarding confiscation were incorporated in the Indian Forest Act. When the forest offence in Swaroopchandra Garg's case was committed, even the Indian Forest Act did not contain any provision for confiscation by an authorised officer or Forest Officer. The matter has been dealt with and clarified by a later Division Bench decision in M. P. No. 490 of 1984, and connected cases with reference to a seizure made after 1983 and before 1987. Swaroopchandra Garg's case must be understood in the light of the particular facts of that case.

Learned counsel for the petitioner invited our attention to the decision of a Division Bench in Swaroopchandra Garg Vs. State of M.P. and Others, The forest offence in that case was committed on 18-11-1983, that is, after the Indian Forest Act was amended by M. P. Act No. 25/83 but the confiscation order challenged in that case was passed under the provisions of M. P. Act No. 9 of 1969. The Court indicated that the order of confiscation was without jurisdiction as M. P. Act No. 9 of 1969 as it stood on the relevant date did not provide for confiscation by Forest Officer and provided for confiscation of only forest produce by order of criminal Court. The Court referred to Swaroopchandra Garg's case. Confiscation was effected in Kirodimal Agrawal's case only under the provisions of the Act No. 9 of 1969. Therefore, the question whether confiscation proceedings could be initiated under the provisions of the Central Act as amended by M. P. Act No. 25 of 1983 did not arise for consideration in that case.

In regard to the forest offence involved in the present case, confiscation proceedings could have been initiated under the provisions of the Indian Forest Act as amended by M. P. Act No. 25/83.

We set aside the impugned order confiscating the vehicle, leaving it open to the authorities concerned to decide whether at this instance of time it is appropriate to initiate confiscation proceedings. The petition is disposed of accordingly. No costs. Security deposit, if any, shall be refunded to the petitioner.