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**(1987) 12 BOM CK 0031**

**In the Bombay High Court**

**Case No :** Criminal Revision Application No. 393 of 1987

State of Maharashtra

APPELLANT

Vs

Arjun Tabadu Mahajan and Others

RESPONDENT

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**Date of Decision :** 08-12-1987

**Acts Referred:**

Forest Act, 1927 — Section 26(1), 55

**Citation :** (1988) 1 BomCR 603 : (1988) MhLj 191

**Hon'ble Judges :** V.P. Tipnis, J

**Bench :** Single Bench

**Advocate :** P.M. Vyas, P.P, for the Appellant; R.B. Raghuvanshi, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

V.P. Tipnis, J.—This revision application by the State Government challenges the order dated 16th October, 1987 passed by the learned Additional Sessions Judge, Dhule, in Criminal Appeal No. 96 of 1987.

2. Range Forest Officer, Shahada, Dhule Forest Division, Dhule, filed a complaint before the learned Judicial Magistrate, First Class, Shahada, for an offence u/s 26(1)(d) of the Indian Forest Act, 1927, against 49 persons. In the complaint, he mentioned that the accused persons have permitted their cattle numbering in 260 to graze in the reserved forest and have caused damage to the extent of Rs. 1,50,000/-. Due to the said trespass and grazing of the cattle, the grass in the reserved forest is consumed and the land is deteriorated. Young saplings in the specially cultivated nursery have been destroyed. Even the branches of the trees have been consumed by the cattle. The whole process has affected adversely the environment and the forest. The complaint further mentions that on 4th October, 1987, the accused were found grazing their cattle in the reserved forest. They were chased, they left the cattle and went away and, therefore, all the cattle were seized. The complaint further mentions that the said cattle should be forfeited u/s 55 of the Indian Forest Act.

3. It appears that the learned Magistrate asked the accused whether they have received the copies of the complaint and whether they have understood the particulars of the offence explained to them and whether they plead guilty to the same. All the accused answered in the affirmative to all the questions. The learned Judicial Magistrate, First Class, Shahada, observed that the accused have pleaded guilty. He found them guilty u/s 26(1)(d) of the Indian Forest Act as sentenced them to suffer simple imprisonment till rising of the Court and to pay a fine of Rs. 50/- each and in default to suffer simple imprisonment for seven days. The learned Magistrate further ordered that the cattle seized in the case are confiscated to the State and the complainant is given charge therefore in order to dispose of the forfeited cattle as per the law.

4. Aggrieved by the said order, the respondents preferred Criminal Appeal No. 96 of 1987 to the Sessions Court at Dhule. Before the learned Sessions Judge, the Advocate for the respondents did not press any point except that of forfeiture of the cattle. The learned Sessions Judge held that the requirement of section 55 is that firstly the offence must be committed in respect of all timber of forest produce which is not the property of the Government, and secondly, that all tools, boats, vehicles and cattle which are used in respect of the said offence are only liable for forfeiture, if the Court convicts the accused. The learned Additional Sessions Judge further found that the offence u/s 26(1)(d) is not against the timber or wood. As such, the offence is not covered by section 55 of the Act, and hence, the order of the learned Magistrate forfeiting the cattle is improper and illegal. Accordingly, the learned Additional Sessions Judge allowed the appeal and by his judgement and order dated 16th October, 1987, set aside the order of the learned Magistrate with regard to forfeiture of the cattle and directed that the seized cattle should be returned to its owner.

5. Shri Vyas the learned Public Prosecutor for the State, submitted that the interpretation of the provisions of section 55 and other provisions of the Indian Forest Act done by the learned Additional Sessions Judge is not correct and on proper interpretation, the learned Magistrate was right in forfeiting the cattle. Shri Raghuvanshi, the learned Counsel appearing for the respondents, firstly contended that the order of the learned Additional Session Judge, Dhule, is right and his interpretation of section 55 is also correct. Alternatively, he submitted that even if there is power in the Court to forfeit the cattle, in the facts and circumstances of the case, the cattle should not be forfeited and the ends of justice would be met if some order for compensation u/s 26(1)(d) of the Act is passed.

6. The interpretation placed on section 55 of the Indian Forest Act by the learned Additional Sessions Judge is not correct. Section 55 of the Indian Forest Act is as under :-

"Forest produce, tools, etc. when liable to forfeiture.---(1) All timber of forest produce which is not the property of Government and in respect of which a forest-offence has been committed, and all tools, boats, vehicles, and cattle used in

committing any forest-offence shall subject to section 61-G, be liable by order of the convicting Court to forfeiture.

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

A plain reading of the provisions of the said section 55 make it clear that all timber of forest produce which is not the property of the Government and in respect of which a forest offence has been committed, shall be liable by order of the convicting Court to forfeiture. The other part of the section states that all tools, boats, vehicles and cattle used in committing any forest offence shall, subject to section 61-G, be liable by order of the convicting Court to forfeiture. The provisions of sub-section (2) make it clear that such forfeiture may be in addition to any other punishment prescribed for such offence. Therefore, all tools, boats, vehicles, and cattle used in committing any forest offence are liable for forfeiture. "Forest offence" has been defined in section 2(3) of the Act to mean an offence punishable under the Act or under any rule made thereunder. Therefore, the offence u/s 26(1)(d) is also forest offence and any cattle used in committing any forest offence is liable for forfeiture. It is pertinent to note that the words used in section 55 are not "any such offence" but "any forest offence" and, therefore, all tools, boats, vehicles and cattle mentioned therein which are liable for forfeiture cannot be restricted only to such of them which is concerned with forest offence committed in respect of only timber of forest produce. Thus, it is clear that the learned Magistrate had jurisdiction and power to forfeit the cattle used in committing an offence u/s 26(1)(d) of the Act.

7. These offences and the penalties prescribed are with the avowed purpose of protecting the forest which need was never greater than now. u/s 26(1)(d), the Court is also given power to award compensation for damage done to the forest. Unfortunately, in the present case, the complainant has not adduced any evidence of actual damage caused to the forest. Looking into the provisions of the Forest Act, I think that for offences under the Act, the complainant should always give evidence of the actual damage caused to the forest with a view to enabling the Court to award proper compensation. That would also facilitate the Court to decide whether order of forfeiture u/s 55 should be passed or not. The words used in section 55 to the effect "shall be liable by order of the convicting Court to forfeiture", to my mind, clearly vest a discretion with the trial Court. The Court has authority to order forfeiture, but it is not a must in every case. The Court, after taking into consideration all the facts and circumstances of the case, has to pass the order u/s 55. All these provisions make it all the more necessary that the complainant should adduce proper evidence and proper orders of compensation as well as forfeiture should be passed by the Court trying such cases.

8. In the facts of the case before me, all the accused persons have pleaded guilty. They were explained the particulars of the offences. They have also received the copies of the complaint. The complaint clearly refers to the damage

to the tune of Rs. 1,50,000/- caused due to posturing and trespassing of the cattle in Coop Nos. 3 and 4. It appears that apart from grass, young saplings and trees were also destroyed. Shri Vyas, the learned Public Prosecutor, also submitted that the Government had to spend thousand of rupees for feeding and maintaining the cattle during the last two months. Taking into consideration all the facts and circumstances of the case and taking into consideration the various provisions of the Indian Forest Act and the intention of the Legislature in enacting those provisions, I think that the order of the learned Magistrate forfeiting the cattle deserved to be upheld.

9. Accordingly, this revision application is allowed and the judgement and order dated 16th October, 1987, passed by the learned Additional Sessions Judge, Dhule, is quashed and set aside and the judgement and order of the learned Magistrate, Shahada, forfeiting the cattle to the State Government is confirmed. The rule is made absolute.

10. Shri Raghuvanshi, the learned Counsel for the respondents, applied for stay of the judgment for four weeks for moving the Supreme Court. This judgment is stayed for four weeks.