

(1990) 04 OHC CK 0014

In the Orissa High Court

Case No : Criminal Juri. Case No. 2406 of 1983

State of Orissa

APPELLANT

Vs

Abhaya Charan Choudhury and Others

RESPONDENT

Date of Decision : 13-04-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451, 457
Orissa Forest Act, 1972 — Section 56, 56(1), 56(2), 57, 59

Citation : (1990) 3 OCR 379

Hon'ble Judges : J.M. Mahapatra, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : Additional Government Advocate, for the Appellant; K.K. Jena, A.K. Mohapatra and B.M. Patnaik, for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—The order of the Magistrate releasing the truck in favour of the person who claimed to be the owner of the truck and the order of the Sessions Judge affirming the same are being challenged in this writ application filed by the Divisional Forest Officer, Angul Division, inter alia, on the ground that the vehicle having been seized by the Forest Officer and having been produced before the competent authority for the purpose of confiscation, the, Criminal Court will have no jurisdiction to pass an order of release, merely because of the fact that the accused was produced before the Criminal Court.

2. In the counter affidavit filed on behalf of the opposite parties, a stand has been taken that in view of Sections 451 and 457 of the Code of Criminal Procedure the Criminal Court assumes jurisdiction to release the truck during the pendency of the Criminal case before the Magistrate and consequently there has been no error of jurisdiction committed by the Magistrate as well as by the Sessions Judge in directing release of the truck in question. The correctness of the rival submissions depends upon the interpretation of the provisions of Sections 56 and 57 of the Orissa Forest Act which were brought into the statute

book by amendment. u/s 56(1), if a Forest Officer or a Police Officer has reason to believe that a forest offence has been committed in respect of any forest produce, then such produce together with all tools, ropes, chains, boats, vehicles or cattle used in committing of any such offence may be seized. Under Sub-section (2) of Section 56, the officer who seizes the property has the duty to make a report of such seizure to the Magistrate having jurisdiction to try the offence. Section 57 authorises the forest officer not inferior to the rank of a Range Officer to release the property seized u/s 56 of the Act on the execution by the owner thereof of for the production of the property so released if and when required by the Magistrate having jurisdiction to try the offence on account of which the seizure has been made. u/s 59, the property seized u/s 56 is liable for confiscation and such confiscation is in addition to any other punishment provided for such offence. In view of the aforesaid specific provisions in the Forest Act and power to release the property seized having been conferred on the Forest Officer u/s 57 of the Act, the question that arises for consideration is whether the Criminal Courts can at all have any jurisdiction over the selfsame materials and whether in exercise of powers u/s 451 and 457 Code of Criminal Procedure, the Magistrate can direct release of the property in question. This question came up for consideration before me when I sat single in *Sarat Kumar Malu Vs. State of Orissa*, . After analysing the provisions of the Forest Act and the Code of Criminal Procedure and relying upon the decisions of the Supreme Court in the case of *State of Andhra Pradesh v. Smt. Maji Begum and Anr.* in Civil Appeal No. 1216 of 1979, it was held that when any forest produce together with the vehicle used in committing any forest offence is seized by any forest officer in exercise of his powers u/s 56 of the Act, then the power to release the property seized lies with the authorities prescribed in the four corners of the provisions of the Forest Act and not with a Magistrate in exercise of his powers under the provisions of the Code of Criminal Procedure. Obviously this decision has not been noticed either by the Magistrate directing release of the vehicle or by the Sessions Judge confirming the order of the Magistrate. This view of mine has again been reaffirmed in another case arising out of a similar provisions of Andhra Pradesh Forest Act, 1947 in the case of *Divisional Forest Officer and Anr. v. G.V. Sudhakar Rao and Ors.* (1985) 4 S.C. 573. In view of the aforesaid authoritative pronouncement of the Supreme Court we, have no doubt in our mind to held that if the seizure is made under the provisions of Section 56 of the Forest Act and the property seized is produced before the Divisional Forest Officer for initiation of a proceeding of confiscation, then merely because the factum of seizure is reported to the Magistrate the Magistrate will have no jurisdiction to invoke the provisions of the Code of Criminal Procedure for interim release of the property in question. On the other hand, the special law providing the special forum for such release, namely. Section 57 of the Orissa Forest Act would apply and it would be the Forest Officer who alone would be competent to release the property on such terms and conditions as it thinks fit and proper. The orders of the Magistrate under Annexures 4 and 5 as well as that of the Sessions Judge under Annexure-6 must be held to be without jurisdiction.

3. There is no dispute in the present case that after seizure of the truck in question u/s 56 of the Act the truck together with the goods was produced before the Divisional Forest Officer, Angul as per Annexure-1 and the factum of such seizure was reported to the Sub-Divisional Judicial Magistrate and the accused was produced before the Magistrate as per Annexure-2. The Forest Officer also intimated the Magistrate under Annexure-3 that the vehicle has been produced before the Authorised Officer for necessary action in a confiscation proceeding in this view of the matter, the Magistrate had no jurisdiction to direct release of the vehicle in exercise of powers u/s 451 of the Code of Criminal Procedure. Further, in *Sarat Kumar Malu Vs. State of Orissa*, I had also indicated that Section 451 of the Code of Criminal Procedure will have no application where the vehicle in question has not been produced before the Magistrate and Section 457 also will have no application. As the vehicle had not been seized by any police officer but had been seized by a Forest Officer. In the present case also, the vehicle has not been produced before the Magistrate. Therefore, even u/s 451 Code of Criminal Procedure, the Magistrate could not have directed release, of the vehicle in question on that score also the order of the Magistrate directing release of the truck as well as the order of the Sessions Judge confirming the same is without jurisdiction.

4. It would accordingly quash Annexures 4, 5, and 6 and direct that opposite party No. 1 should produce the vehicle before the Authorised Officer who may take such steps as he deems proper in the confiscation proceeding in accordance with law The interim order passed by this Court with regard to release of the vehicle stands vacated.

5. The writ application is accordingly allowed but in the circumstances without any order as to costs.

J.M. Mahapatra, J.

6. I agree.