

"Summary of Papers written by Judicial Officers on the subject precaution to be taken while releasing property under the forest Act, Wild Life Protection Act & Essential commodities.":-

1] Chapter 34 of the Code of Criminal Procedure deals with disposal of property. Section 451 of the Code takes care of custody and disposal of property pending trial whereas Section 452 spells out provisions for disposal of property at the conclusion of trial. Section 457 of the Code deals with property seized by police but not produced before the Court. These three Sections mainly deal with disposal of property before commencing trial, pending trial and at the time of conclusion of trial. Aforesaid provisions of the Code of Criminal Procedure are general in application. However, there is bunch of laws which are brought on statute book for dealing with offences which affected society at large in seriously adverse manner. These laws operate in the fields of Essential Commodities, Forest and Wild Life Protection. Since the subject covered in the said laws affected society at large, need was felt that regular law relating to disposal of property should not be applicable in those offences. The Parliament in its collective wisdom decided to tighten provisions regarding release of property under aforesaid Special Legislation. The concept of confiscation of seized property was also introduced.

This paper deals with different aspects of release of property under Special Legislations such as Essential Commodities Act, Wild Life Protection Act and Forest Act.

2] Section 6-A of the Essential Commodities Act mandates that where any essential commodity seized in pursuance of order made under Section 3 of the Act, report of such seizure is required to be made, without unreasonable delay, to the Collector of the district. It is immaterial whether or not the prosecution is initiated. It is Collector who is empowered to pass order in respect of seized essential commodity. The seizure is not related only to essential commodity but it can take within its sweep any animal, vehicle, vessel used for conveyance of essential commodity.

The question which needs to be addressed is whether or not the Magistrate has jurisdiction under the said Act to release property seized for contravention of order made under Section 3 of the Essential Commodities Act. Section 6-E of the said Act makes it clear that whenever confiscation proceedings under Section 6-A are pending, in that situation, only the Collector or the State Government shall have power to pass order in respect of the said essential commodity or vehicle as the case may be. The said Section further makes it clear that jurisdiction of the Court is barred. Under such circumstances, whenever confiscation proceedings are initiated, Judicial Magistrate loses his jurisdiction under Section 451 and 457 of the Code of Criminal Procedure to deal with such property.

3] In case of State of Mah. -vs- Manishkumar Babulal biyani reported in 1998(1) Mh.L.J. 431

Wherein the Honourable Bombay High Court has held that the provisions of Section 6-E and 7 of the Essential commodities Act ... 3....

show that the jurisdiction of the Court or Tribunal or nay other authority is ousted only if the essential commodity is seized and confiscation proceeding under Section 6-A is pending before the Collector and /or before the State Government under Section -C.

4] Recently, Chattisgarh High Court in case of *Vishnu Prasad Waishnav ..vs.. State of Chattisgarh* (decided on 17.12.2014) has decided an issue whether or not Judicial Magistrate First Class has jurisdiction to release vehicle which is used in commission of offence under Essential Commodities Act. After referring to several judgments of the Honourable Supreme Court, Honourable Chattisgarh High Court has held that whenever any essential commodity is seized under an order made in exercise of powers conferred by Section 3 of the Essential Commodities Act, in relation thereto, no Court, Tribunal or Authority shall have jurisdiction to make any order with regard to possession, delivery, disposal, release or distinction of such essential commodity saved and except the Collector pending confiscation under Section 6-A of the Essential Commodities Act, therefore, in the matter of making orders with regard to disposal of seized vehicle in pursuance of the order made under Section 3 of the Act, only the Collector or Judicial Authority as case may be shall have jurisdiction to make order with regard to disposal of such vehicle.

5] Section 52 of the Indian Forest Act deals with seizure of property. Under provisions of Section 52 of the said Act, any forest officer or police officer, if he has reason to believe that a vehicle has

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been or is being used for transport of forest produce in respect of which there is reason to believe that forest offence has been or is committed, may require driver or in-charge of the said vehicle to stop the said vehicle. The said officer can examine contents of said vehicle and inspect all records relating to such forest produce. Clause 2 of Section 52 makes it further clear that whenever offence is in relation to seizure made in respect of forest produce then it is obligatory for such officer to report seizure to authorized officer under Section 61-A of the Act. In other cases, report is to be made to the Magistrate having jurisdiction to try the offence on account of which seizure has been made.

6] Under Maharashtra amendment to Section 61-A, whenever forest offence is committed in respect of timber, sandal wood, firewood, charcoal or with regard to any other notified forest produce, in that situation, such material will have to be produced before officer authorized by the State Government in this behalf. Under Section 61-G of the Forest Act, jurisdiction of Magistrate to deal with such property is barred. So, whenever any forest produce is seized and it falls in category of Section 61-A, in that situation, jurisdiction of Magistrate is barred.

7] In case of *The Authorized Officer and Assistant Conservator of Forests .vs. Sudhakar Jaisingh Chauhan* reported in *2007 All Maharashtra Law Reporter (Criminal) 181*, Division Bench of Honourable Bombay High Court has held that in order to find out whether or not confiscation proceedings have initiated, the Magistrate should not proceed to pass any order unless notice is given to authorized officer.

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8] Section 50 of the Wild Life Protection Act empowers Chief Wild Life Warden, authorized officer, forest officer or police officer not below the rank of a Sub-Inspector to seize animal, meat, trophy, vehicle vessel or weapon used for commission of offence under Wild Life Protection Act. Under Section 4 of the Act, as soon as things are seized, the same shall be forwarded to the Magistrate under intimation to Chief Wild Life Warden. Under Sub-section 6, where any meat, trophy is seized under Section 51, the same can be disposed off under orders of Assistant Director of Wild Life Preservation or any officer authorized by Chief Wild Life Warden. Honourable Supreme Court has discouraged release of property in Wild Life cases. In *State of U.P. vs. Lalloo Singh* reported in 2007 All Maharashtra Law Reporter (Criminal) 2076 (S.C.), Honourable Apex Court has observed that seized property becomes property of State Government when it is used for commission of offence and therefore in appropriate case when material is placed before the Magistrate, prayer for release or custody may be rejected.

9] In case of *State of Maharashtra vs. Gajanan D. Jambhulkar* reported in 2002 Criminal Law Journal 349, Honourable Bombay High Court has made certain observations regarding manner in which discretion to release property is required to be exercised. In paragraph No.9, Honourable Bombay High Court has observed that if the material prima facie does indicate involvement of the vehicle in commission of offence under the Wild Life Protection Act, the Magistrate would not be justified in ordering the release of vehicle as said vehicle would be liable for forfeiture at the conclusion of trial. Honourable Bombay High Court has cautioned that liberal approach in

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matter of release of vehicle would not only encourage but perpetuate the commission of more offences with regard to Wild Life.

9A] *Under The Wild Life Protection Act* :Custody (superdari) of vehicle imposition of condition of furnishing bank guarantee during pendency of case for custody (superdari) of vehicle is not improper.

The Rajasthan High Court in *Ayyub*, held that forest officers have got power to give ‘superdari’ only for captive animal or wild animal but not the vehicle and the power of Magistrate to release the seized vehicle on execution of surety bond is unaccepted. According to the Court, “A bare perusal of the provisions of the Wildlife Protection Act and the Forest Act goes to show that authorized forest officers may give any captive animal or wild animal for custody on the execution of a bond for the production of such animal if and when so required. Thus, the forest officers under sub Section (3A) of S. 50 have got power to give on ‘Superdari’ only captive animal or wild animal and not the vehicle. Therefore, it cannot be accepted that the Magistrate had power to release this jeep only on execution of surety bond.

9b] The main object of the Act 1972 is to preserve and protect wild animals, birds and plants. Liberal approach in such matters with respect to the property seized, which is liable to confiscation, is uncalled for as the same likely to frustrate the provisions of the Act. The liberal approach in such matters would perpetuate the commission of more offences with respect to wild animals etc. and therefore, the Court may release the vehicle during pendency of the case and furnishing a bank

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guarantee should be the minimum condition. Thus, there is no illegality in the impugned order with regard to imposing a condition of furnishing bank guarantee of Rs. 40,000/. (*Ayyub vs State of Rajasthan, 2003 CRI. L. J. 2954*), (*Raj. HC, Jaipur Bench*)

and

(P.M.Dunedar)

District Judge-1

Additional Sessions Judge,
Gadchiroli.