to pay or if he intends to delay the payment of the costs. One unfortunate and unhappy feature of administration of civil law in our land, is apart from delays and objections of frivolous and vexatious nature, justice is made available, if at all, at a very high and exorbitant price".

34. The Hon'ble Member of Lok Sabha thus articulated that omitting sub-section (3) would encourage delay in realization of decree costs. A reference to the Report of Law Commission and the views expressed in Debate on the Bill, as extracted in the *Law Commission Report* (supra), would indicate that the consequences of deletion of sub-section (3) of section 35 were very much considered by the Parliament. When the idea of deletion is not to encourage interest on costs as a source of income to the litigants, the Parliament did not choose positively to prohibit interest on costs by inserting suitable clause in section 35.

35. It is to the reciprocal advantage of the Courts of all nations to enforce foreign rights as far as practicable. To this end, broad recognition of substantive rights should not be defeated by some vague assumed limitations of the Court. When substantive rights are so bound up in a foreign remedy, the refusal to adopt the remedy would substantially deprive parties of their rights. The necessity of maintaining the foreign rights outweighs the practical difficulties involved in applying the foreign remedy. In India, although the interest on costs are not available due to exclusion of section 35(3), the same does not mean that Indian Courts are powerless to execute the decree for interest on costs. Indian Courts are very much entitled to address the issue for execution of the interest amount. The right to 8% interest as per the Judgments Act, 1838 of UK can be recognized and as well as implemented in India.

36. Therefore, we are of the considered opinion that the Execution Petition filed by the Respondents for execution of the order dated 19th October, 2006 passed by the English Court is maintainable under the relevant provisions. Therefore, we do not find any reason to interfere with the impugned order. Resultantly, the appeal is dismissed with costs.

Appeal dismissed.

FOREST OFFENCE : LEGALITY OF CONFISCATION ORDER OF VEHICLE USED IN CRIME

(Vijay Kumar Shukla, J.)

VIJAY KUMAR ARYA *Petitioner.*

vs.

CONSERVATOR OF FOREST, BETUL and others *Respondents.*

(a) Forest Act (16 of 1927) [M. P. Amendment Act (25 of 1983)], S. 52 and Constitution of India, Arts. 226 and 227 — *Allegation that offending vehicle owned by petitioner was found involved in illegal and illicit transportation of forest produce — Confiscation order — Validity — Brother of*

W. P. No. 7740 of 2005 decided on 28-3-2017. (Jabalpur)

petitioner has admitted commission of forest offence and involvement of vehicle in question in said offence — Petitioner could not produce any document relating to his ownership of vehicle in question — Brother of petitioner is a habitual offender of forest offence — His house is adjoining to house of petitioner — No material has been adduced to prove that reasonable and necessary precautions were taken by petitioner in order to prevent use of vehicle for commission of forest offence — Impugned order upheld — Writ Petition liable to be dismissed. (Paras 8, 10, 16, 20 and 21)

(b) Forest Act (16 of 1927), S. 52 — *Forest offence — Confiscation of vehicle used in commission of forest offence — Release of vehicle — Requirement — Owner has to prove that his vehicle was used in said offence without his knowledge or connivance — He is also obliged to prove that all reasonable and necessary precautions were taken by him against use of vehicle for commission of offence — Owner has to discharge onus regarding both requirements of provision.* (Para 15)

(क) वन अधिनियम (1927 का 16) (म. प्र. संशोधन अधिनियम (1983 का 25), धारा 52 एवं भारत का संविधान, अनुच्छेद 226 एवं 227 — अधिहरण आदेश — वैधता — अभिकथन कि अर्जीदार के स्वामित्व का उल्लंघनकारी यान वन उत्पाद के अवैध एवं विधि विरुद्ध परिवहन में संलिप्त पाया गया — अर्जीदार के भाई ने वन अपराध करने एवं उक्त अपराध में प्रश्नाधीन यान की संलिप्तता स्वीकार की है — अर्जीदार प्रश्नाधीन यान के उसके स्वामित्व के संबंध में कोई दस्तावेज प्रस्तुत नहीं कर सका — अर्जीदार का भाई वन अपराध का अभ्यस्त अपराधी है — उसका मकान अर्जीदार के मकान से सटा हुआ है — यह साबित करने के लिए कोई सबूत प्रस्तुत नहीं किया गया कि वन अपराध करने के लिए यान के उपयोग को रोकने के लिए अर्जीदार द्वारा कोई युक्तियुक्त एवं आवश्यक पूर्व सावधानी ली गई — आक्षेपित आदेश कायम — रिट याचिका खारिज की गई। (पद 8, 10, 16, 20 एवं 21)

(ख) वन अधिनियम (1927 का 16), धारा 52 — वन अपराध — वन अपराध करने में प्रयुक्त यान का अधिहरण — यान विमुक्त करना — आवश्यक शर्तें — स्वामी को साबित करना होगा कि उसकी जानकारी अथवा सहमति के बगैर उक्त अपराध में यान को प्रयुक्त किया गया था — वह यह भी साबित करने के लिए बाध्य है कि उसने अपराध किये जाने के लिए यान के प्रयोग के लिए सभी युक्तियुक्त एवं आवश्यक पूर्व-सावधानी बरती थी — स्वामी को उपबंधों की दोनों आवश्यक शर्तों के संबंध में दायित्व का निर्वहन करना ही होगा। (पद 15)

For petitioner : *Bhagwan Singh Thakur*
For respondents/State : *Smt. D. K. Bohre, Government Advocate*

List of cases referred :

1. *Kailash Chand and another vs. State of M. P. and others, 1994 MPLJ Online 3 = AIR 1995 M. P. 1* (Paras 9, 19)
2. *Commissioner, Prohibition and Excise, A. P. and another vs. Sharana Gouda, (2007) 6 SCC 42* (Para 19)

ORDER :— In the instant petition preferred under Articles 226/227 of the Constitution of India, the petitioner has taken an exception to the orders contained in Annexure-P/1, Annexure-P/2 and Annexure-P/6, passed by the Specified Officer and the Appellate Authority under the provisions of the Indian Forest Act, 1927 (for brevity 'the Act') whereby the vehicle being found involved in illegal and illicit transportation of forest produce has been directed to be confiscated for commission of forest offences. The orders impugned in this writ petition have been passed in exercise of power conferred under section 52 of the Act. Being dissatisfied with the aforesaid orders an appeal preferred by the petitioner under section 52-A of the Act also faced dismissal.

2. Feeling aggrieved by the orders passed by the aforesaid authorities, the petitioner preferred a revision before the learned Additional Sessions Judge, Betul, forming the subject-matter of Criminal Revision No. 6/2005 whereby the learned Additional Sessions Judge also declined to interfere with the orders of confiscation and dismissal of appeal.

3. The factual expose adumbrated in a nutshell, is that the petitioner is engaged in petty business of oil and grain merchant. He is also a cultivator having an HMT tractor and trolley, bearing Registration No. MP-05-1319-1320. It is urged that the said tractor was purchased after availing loan from a Bank and thereafter registered in the name of the father of the petitioner-Shri Barikram alias Chhadami Arya. It is further submitted that the petitioner owes a big joint Hindu family property. It is submitted that on the basis of an agreement (Annexure-P/4), the responsibility of the maintenance of the agricultural fields and cultivation was assigned to the present petitioner and he was looking after and taking care of the said works. Besides, that he was also doing petty business of oil and grain merchant etc.

4. It is submitted that on 5-3-2001 a false case was registered against the brother of the petitioner, namely, Rajesh Arya, alleging that he was found transporting 11 pieces of teak wood by the tractor trolley in question illegally. It was also alleged that he was involved in illicit transportation of forest produce and hence, committed offence punishable under the provisions of M. P. Vanopaj (Vyapar Viniyaman) Sansodhan Adhiniyam, 1986 and, therefore, the tractor trolley and the teak wood were seized. Statement of the forest guard concerned, was recorded and 'Panchnama' was prepared. Statement of the brother of the petitioner-Rajesh Arya was also recorded and a criminal case vide Case No. 83/2001 was also instituted against him. The bone contention of the petitioner is that he is the owner of the tractor-trolley in question and there was no cogent material to establish that it was involved in commission of forest offence with his knowledge or connivance, as envisaged under the Act and, therefore, the order of confiscation passed by the Specified Officer is illegal and arbitrary. It is also contended on behalf of the petitioner that the appellate authority and the revisional authority have also dismissed the appeal and the revision preferred by the petitioner, without appreciating the facts and evidence in proper perspective and law governing the filed.

5. Combating the aforesaid submissions made on behalf of the petitioner, the respondents submitted that there is no illegality or perversity of approach in the order of confiscation as well as the orders passed by the Appellate Authority and the Revisional Authority. It is strenuously urged that the impugned orders have been passed after affording adequate opportunity of being heard to the petitioner and on proper evaluation of the evidence brought on record. It is stated that on 5-3-2001 the Forest Guard, Krishnamurat Arya on receipt of an intimation went on patrolling at Chicholi, Betul Road and at a distance of about 2 km. from Chicholi, near Village Khapa intercepted the tractor-trolley in question whereby 3-4 persons along with the driver were found transporting forest produce in an illicit manner. The vehicle was found without any registration number and in the trolley 11 pieces of teak wood were founded loaded without hammer marks.

Accordingly, a case for commission of forest offence vide POR No. 83/1 was registered under the provisions of *M. P. Vanopaj (Vyapar Viniyaman) Adhiniyam* and the tractor-trolley in question was also seized. The matter was reported to the Police Station, Chicholi and with the help of the police the seized pieces of the teak wood were measured whereby it was found that they were in the quantity of 1.545 cub.mtr. The timber was seized and the old tractor, Model–HMT 3511 with Chassis No. 107667 and Engine No. 109093 was also seized.

6. Initially, no one claimed over the vehicle in question and, therefore, a public notice was issued in the daily newspapers. In consequence thereof, one Rajesh Arya appeared before the Authorised Officer on 28-3-2003 and confessed commission of the alleged offence. A copy of statement of Rajesh Arya has been filed and marked as Annexure-R/1. Statement of the petitioner, who is the brother of Rajesh Arya was also recorded. It is further submitted that a report was sought from the Office of the Regional Transport Officer to verify the claim of the petitioner as regards the ownership of the tractor-trolley in question. The petitioner had disclosed the registration of the tractor-trolley as MP-05-F-1319 and 1320, but upon an enquiry it was found that the registration number which was disclosed by the petitioner during course of proceedings, was that of a motorcycle and not of a tractor-trolley.

7. In this factual backdrop, it is asserted that the Authorised Officer after analysing the entire evidence on record in true perspective has rightly arrived at the conclusion that the tractor-trolley in question was found to be carrying 11 pieces of teak wood, admeasuring 1.545 cub.mtr. unauthorisedly. Accordingly, an order of confiscation was passed, which has been affirmed by the Appellate Authority as well as the Revisional Authority.

8. Considering the rival submissions raised at the bar, it is apposite to refer section 52 of the Act as amended by the Indian Forest Act (M. P. Amendment) Act 1983. The same is extracted hereunder in entirety :

> ***"52 Seizure of property liable to confiscation and procedure therefor.*** *— (1) When there is reason to believe a forest offence has been committed in respect of any forest produce, such produce, together with all tools, boats, vehicles, ropes, chains or any other article used in*

committing any such offence may be seized by any Forest-officer or Police Officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, either produce the property seized before an officer not below the rank of an Extra Assistant Conservator of Forest authorised by the State Government in this behalf by notification (hereinafter referred to as the authorised officer) or where it is, having regard to quantity of bulk or other genuine difficulty, not practicable to produce the property seized before the authorised officer, make a report about the seizure to the authorised officer or where it is intended to launch criminal proceedings against the offender immediately, make a report of such seizure to the magistrate having jurisdiction to try the offence on account of which the seizure has been made :

Provided that when the forest produce with respect to which offence is believed to have been committed is the property of Government and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

(3) Subject to sub-section (5), where the authorised officer upon production before him of property seized of upon receipt of report about seizure, as the case may be, is satisfied that a forest offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded confiscate forest produce so seized together with all tools, vehicles, boats, ropes, chains or any other article used in committing such offence. A copy of order on confiscation shall be forwarded without any undue delay to the Conservator of Forests of the forest circle in which the timber or forest produce, as the case may be, has been seized.

(4) No order confiscating any property shall be made under sub-section (3) unless the authorised officer —

(a) sends an intimation in form prescribed about initiation of proceedings for confiscation of property to the magistrate having jurisdiction to try the offence on account of which the seizure has been made;

(b) issues a notice in writing to the person from whom the property is seizure, and to any other person who may appear to the authorised officer to have some interest in such property;

(c) affords an opportunity to the persons referred to in clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation, and

(d) gives to the officer effecting the seizure and the person or persons to whom notice has been issued under clause (b), a hearing on date to be fixed for such purpose.

(5) No order of confiscation under sub-section (3) of any tools, vehicles, boats, ropes, chains or any other article (other than the timber

or forest produce seized shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorised officer that any such tools, vehicles, boats, ropes, chains or other articles were used without his knowledge or connivance or as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission of forest offence.

(6) The seized property shall continue to be under custody until confirmation of the order of the authorised officer by the Appellate Authority or until expiry of the period for initiating 'suo motu' action by him whichever is earlier, as prescribed under section 52-A.

(7) Where the authorised officer having jurisdiction over the case is himself involved in the seizure or investigation, the next higher authority may transfer the case to any other officer of the same rank for conducting proceedings under this section."

9. Validity of the amended provisions of the Act 1983 *vis-a-vis* the provisions of the Central Act was challenged in the case of *Kailash Chand and another vs. State of M. P. and others, 1994 MPLJ Online 3 = AIR 1995 M. P. 1,* on the ground that the amended provisions of confiscation with reference to the provisions of the Central Act are repugnant to the same and is arbitrary, being violative of the principles of natural justice and the fundamental rights guaranteed under Articles 19(1)(g) and 21 of the Constitution of India. It was also putforth that the powers conferred to the Authorised Officer for confiscation in absence of power to impose a fine as an alternative to confiscation, is unjust, unfair and arbitrary. It was further submitted that the State amendment is repugnant to the provisions of section 52 of the Central Act in absence of any provision of interim release of the confiscated vehicles.

The Division Bench of this Court upheld the validity of the State Amendment of the M. P. Amendment Act, 1983, and the petitions were dismissed. As regards confiscation proceedings, it was held that the confiscation is a *quasi judicial* proceeding and not a criminal proceeding proved beyond reasonable doubt and proof of *mens rea* are foreign to the scope of confiscation proceedings. Confiscation proceedings were on the basis of the satisfaction of the Authorised Officer in regard to commission of the forest offence.

10. In the present case, the brother of the petitioner admitted commission of the forest offence and involvement of the vehicle in question in the said offence. He endeavoured hard to contend that the vehicle was involved without knowledge of the brother of the petitioner. The petitioner contended that the vehicle in question was taken by his brother without his knowledge and he had lodged a report regarding theft in the Police Station. Counsel for the petitioner placed heavy reliance on Annexure-P/10, dated 6-3-2001. From a perusal of Annexure-P/10, it is evident that it does not bear any acknowledgement of the Police Station concerned. The date is mentioned as 6-3-2001 whereas the incident for commission of the alleged forest offence had taken place on 5-3-2001. The said document cannot be given credence to in absence of any proof by

the petitioner. The counsel for the State was right in his part submitting that there are material contradictions in the statement recorded by the Prescribed Authority on 18-8-2001 and the so called report, dated 6-3-2001 (Annexure-P/10). It was strenuously urged by the counsel for the State that from the statement of the petitioner it is manifest that he was aware of and having knowledge about the incident. Counsel for the State further submitted that in one statement the brother of the petitioner had accepted that he had committed another offence pertaining to forest offence and he has used the vehicle belonging to the petitioner in the said forest offence. He also stated that the petitioner was also a co-accused in the said offence.

11. The important aspect in the present case is to be noted that the house of the petitioner is adjoining to the house of his brother, Rajesh Arya, who was found to be a habitual offender in respect of forest offences. The Specified Officer had taken into consideration the evidence – oral and documentary as well, while passing the impugned order of confiscation. The relevant portion of the order is extracted as under :

> "अपराधी राजेश व बारीक राम आर्य, सा. चिचोली द्वारा प्राथमिक जांच के समय अपने बयान परिक्षेत्र अधिकारी चिचोली के समक्ष दिये गये । राजेश आर्य सा. चिचोली प्राधिकृत अधिकारी एवं उपवनमंडलाधिकारी चिचोली के समक्ष राजसात की कार्यवाही के दौरान कभी अपना पक्ष प्रस्तुत करने हेतु कभी भी उपस्थित नही हुए । इस संबंध में उन्हें उपस्थित होने हेतु बार बार सूचना उनके निवास स्थान पर भेजी गई । इस तरह श्री राजेश आर्य व बारीक राम आर्य सा. चिचोली द्वारा भी अपराध में लिप्त तथा कथित ट्रेक्टर एवं ट्राली के स्वामित्व के संबंध में एवं उसके उपयोग के संबंध में प्रमाणित नहीं किया जा सका ।
>
> अपराधी राजेश आर्य, सा. चिचोली के भाई विजय आर्य द्वारा वनमंडल कार्यालय पश्चिम बैतूल में आवेदन पत्र प्रस्तुत कर तथा कथित वाहन क्र. एम.पी. 05 एफ 1319 एवं 1320 पर उनका स्वाामित्व होने के संबंध में आवेदन पत्र सहपत्र ।
>
> राजेश आर्य, अपराधी द्वारा स्वयं स्वीकार किया है कि खेड़ी ग्राम के निकट आर.टी.ओ. द्वारा मेटाडोर से सागौन लकड़ी ले जाते समय जप्त की थी । यह लकड़ी उनके द्वारा सहयोगियों से करवाई थी । जिसका प्रकरण ताप्ती परिक्षेत्र दक्षिण (सा.) वनमंडल में पंजीबद्ध है ।
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> एक अन्य बयान में राजेश आर्य द्वारा स्वीकार किया है कि दि. 3-11-2000 को उनके खेत के पास के नाले से 19 नग एवं 30 नग खेत के मकान में जप्त हुए थे । ये लकड़िया थी उनके द्वारा (राजेश आर्य) चोरी कर बड़े भाई (विजय आर्य) के ट्रेक्टर से लाया था । एवं माल मुलताई ले जा रहा था जो रास्ते में पकड़ा गया । इस प्रकरण में श्री विजय आर्य भी सह अपराधी है ।

इससे यह प्रमाणित होता है कि श्री विजय आर्य को मौन स्वीकृति लकड़ी चोरी के कार्य में रहती है। चूंकि राजेश आर्य के बयान के अनुसार स्पष्ट होता है कि उनके द्वारा लकड़ी चोरी के कार्य हेतु बार बार उक्त ट्रेक्टर का उपयोग किया जा रहा है।''

12. The Specified Officer has further taken into consideration the report submitted by the Regional Transport Officer in which it was found that Engine No. 109093 and Chassis No. 107667 of the seized vehicle do not tally with the registration number of the vehicle which has been claimed by the petitioner as MP-05-F-1319 and 1320 of the tractor and trolley respectively, as this number is registered for a motorcycle and not for a tractor-trolley. Paras 6, 7 and 8 being relevant of the conclusions arrived at by the Specified Officer based on the Regional Transport Officer's report, are extracted hereunder :

''6. क्षेत्रीय परिवहन अधिकारी, होशंगाबाद द्वारा वाहन के स्वामित्व एवं पंजीयन के संबंध में श्री विजय आर्य व बारिक राम आर्य के होने बाबत् पुष्टि नहीं की है।

7. अपराध में संलिप्त जप्तशुदा ट्रेक्टर एवं ट्राली एच.एम.टी. 3511 जिसका इंजिन नंबर 109093 है तथा चेसीस नंबर 107667 है, का पंजीयन क्र. एम.पी. 05 एफ 1319 एवं 1320 होने बाबत् पुष्टि, क्षेत्रीय परिवहन अधिकारी होशंगाबाद की टीप से नहीं होती है। उक्त नंबर एम.पी.-05 एफ 1319 एवं 1320 पर मोटर सायकल पंजीकृत है, न की ट्रैक्टर एवं ट्राली।

8. विजय व. बारीक राम आर्य नि. चिचोली द्वारा भी उक्त वाहन के स्वामित्व के संबंध में प्रमाण प्राधिकृत अधिकारी के समक्ष प्रस्तुत नहीं किए है।''

13. The petitioner could not produce any document relating to his ownership of the vehicle in question. Further, there is no illegality or any infirmity in the conclusions arrived at by the authorities that as if the vehicle in question belongs to the petitioner then it can easily be inferred that there was an implied consent of the petitioner for commission of the alleged offence. These findings have been affirmed by the Appellate Authority as well as Revisional Authority in the orders impugned in this writ petition.

14. Once again I propose to refer to the provisions of section 52 of the Act which has been reproduced in earlier paragraph *in extenso*. The scheme of section 52 provides *'seizure of property liable to confiscation and procedure therefor'*. Sub-section (1) confers the power on a forest officer or a police officer to seize the forest produce, and all tools, boats, vehicles, ropes, chains or any other article used in committing such offence, if he has reason to believe that a forest offence has been committed in respect of any reserved or protected forest. Sub-section (2) requires a prompt intimation and production of the seized articles before the Authorised Officer or where it is intended to launch a criminal proceeding against the offender and to submit a report of such seizure to the Magistrate of competent jurisdiction, on account of which the seizure has been made. Powers conferred in sub-section (3) of section 52 of the Act, are subject to the provision of sub-section (5) where the Authorised Officer has been conferred with a power to confiscate the forest produce so seized together with all tools,

vehicles and other ancillary articles used for commission of the offence, and he is under the obligation to forward the copy of the of confiscation without any delay to the Conservator of Forest of the forest circle. Sub-section (4) of section 52 puts a check in exercise of power of confiscation under sub-section (3). It engrafts that the order of confiscation shall be made under sub-section (3), unless the conditions enumerated in sub-clauses (a) to (d) of sub-section (4) are fulfilled. It requires that an intimation has to be sent in quite promptitude to the Magistrate about the proceedings for confiscation of the property. A notice is to be issued in writing to the person from whom the property is seized and to any other person who may appear before the Authorised Officer some interest in such a property. Besides, an opportunity of being heard has to be afforded to such person before passing the order.

15. In the present case, there is no allegation that the conditions enumerated in sub-section (4) of section 52 of the Act, have not been complied with before passing the order of confiscation. Notice and adequate opportunity of hearing was afforded to the petitioner. If sub-section (5) of section 52 of the Act is read in its true sense, it is found that it is not only, that the owner has to prove to the satisfaction of the Authorised Officer that the tools, vehicles and other articles used in commission of the offence without his knowledge or connivance, but he is also under the solemn obligation to prove that he had adopted all reasonable and necessary precautions against the use of the objects for commission of the forest offence. The owner has to discharge his onus in regard to both the requirements of the provision.

16. In the present case, some evidence in the form of statements of the brother of the petitioner and the petitioner himself, were brought on record in order to establish that the petitioner had no knowledge or connivance with his brother for commission of the forest offence, but he had not brought an iota of evidence that he had taken all reasonable and necessary precautions against use of the vehicle in question for commission of the forest offence.

17. From the facts and evidence floating on the surface of the present case, it has been proved that the brother of the petitioner is a habitual offender of forest offence and his house is adjoining to the house of the present petitioner, however no material has been adduced to say that reasonable and necessary precautions were taken by the petitioner in order to prevent use of the vehicle for commission of the forest offence.

18. On a studied scrutiny of sub-section (5) of section 52 of the Act it is quite limpid that the owner has to prove both the constituents that the vehicle or articles were used for commission of the alleged offence without his knowledge or connivance; and that reasonable and necessary precautions were taken by him to prevent use of the vehicle. The burden is cast on the owner to establish that both the ingredients of sub-section (5) of section 52 of the Act are satisfied. The word 'unless' used in sub-section (5) of section 52 carries a significant meaning in the context of the provisions of section 52 of the Act, which clearly indicates that onus is on the owner of the vehicle who is claiming the defence available under sub-section (5) of section 52 of the Act. In the present case, the petitioner

has failed to prove the requirements of section 52, especially as regards reasonable and necessary precautions to be taken by him in order to prevent use of the vehicle in question for commission of the offence so alleged.

19. So far as contention of the petitioner that he had no intention or *mens rea* in the matter and the department could not prove the case against him beyond reasonable doubt, sans substance, as it has been held by a Division Bench of this Court in *Kailash Chand and another* (supra) that confiscation proceeding is *quasi judicial* in nature and not a criminal proceeding to prove beyond reasonable doubt and the proof of *mens rea* are foreign to the scope of confiscation proceedings. The same view has been expressed by the Apex Court in the case of *Commissioner, Prohibition and Excise, A. P. and another vs. Sharana Gouda, (2007) 6 SCC 42.* Confiscation proceedings were on the basis of 'satisfaction' of the Authorised Officer as regards commission of the alleged forest offence.

20. In view of the aforesaid discussion, when three authorities have found that the respondents-State have succeeded in proving the case against the present petitioner, there is no scope of interference in the instant writ petition in exercise of writ jurisdiction under Articles 226/227 of the Constitution of India, as there is no infirmity or perversity of approach in the orders impugned. After going through the complete records and appreciating the facts and circumstances of the case in proper perspective, this Court is of the considered opinion that the respondents/State have been successful in proving the case against the petitioner and the authorities have not committed any illegality in passing the impugned orders. I do not find any reason to unsettle the findings or interfere with the said findings ascribed by the authorities of the State.

21. *Ex consequenti,* the writ petition being sans merit, deserves to be and is hereby dismissed. No order as to costs.

Petition dismissed.

TENDER : NON AWARDING OF

(S. C. Sharma and Rajeev Kumar Dubey, JJ.)

MOHAMMAD ARIF SHAIKH *Petitioner.*

vs.

MADHYA PRADESH PASCHIM KSHETRA VIDYUT VITRAN CO. LTD. THROUGH MANAGING DIRECTOR *Respondent.*

Tender — *Notice inviting tender — Petitioner grievance that in spite of being lowest bidder, he was not awarded contract — Suppression of fact by petitioner in respect of his past litigation history — Petitioner has been debarred to take part in any contract for three years by State Control Body — Petitioner did not come with clean hands — Respondent-Company justified in awarding contract to second lowest bidder who accepted to carry out work by reducing price — Impugned order passed after giving opportunity of hearing to petitioner*

W. P. No. 7671 of 2016 decided on 1-2-2017. (Indore)