



Sr. No. 101

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU****OWP No. 499/2014**

Reserved on:- 05.02.2026
Pronounced on:05.03.2026
Uploaded on:- 05.03.2026

1. **Mohd. Ashraf Dar, Age 52 years**
S/O Mohd. Shaban Dar.
2. Ghulam Hassan Dar, Age 65 years
S/O Ali Mohd. Dar.
3. Mohd. Jabbar Dar, Age 53 years
S/O Gh. Ahmed Dar,
All residents of Dogripura,
Tehsil and District Pulwama

....Petitioners

Through :- Mr. Jagpaul Singh, Advocate.

Versus

1. State (now UT) of Jammu & Kashmir
through Commissioner/Secretary,
J&K Forest Department,
Jammu.
2. Principal Chief Conservator of Forests
(Appellate Authority), J&K, Jammu.
3. Divisional Forest Officer
(Authorized Officer), Jammu.
4. Deputy Director, Forest Protection Force,
Gamma Unit-J1, Sidhra.

....Respondent(s)

Through :- Mr. Vishal Bharti, Dy. AG.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE**JUDGMENT**

1. The petitioners, through the medium of this petition, *inter alia*, have prayed for the following reliefs:

(i) *Commanding the respondent no.2 & 3 to release the trucks/vehicles No.JK013B-4498, JK03B-9023 and JK13A-4510 in favour of petitioners subject to any condition this Court may deem fit and proper;*



(ii) Commanding on the respondents to pay the damages to the petitioners as compensation for keeping the aforesaid Trucks in their custody without any right or reason;

(iii) Any other order which this Court may deem fit and proper in the circumstances of the case may also be passed in favour of the petitioners.”

2. Facts giving rise to the filing of this petition, briefly stated, are that the trucks bearing Nos. JK03B-9023, JK13A-4510 & JK13B-4498 owned by the petitioners were seized by the Forest Protection Force (FPF) Jammu on 07.02.2012 at about 8.30 PM at National Highway Bye Pass Road near Sidhra Bridge Jammu, loaded with unfinished willow clefts, being driven without seeking due permission as provided under Section 3 of Willow (Prohibition on Export) Act; that Forest Protection Force (FPF), Jammu seized the said trucks under Sections 6, 13, 16 & 39 of the J&K Forest Act (Amended), 1997 and Sections 3 and 5 of J&K Willow (Prohibition on Export and Movement) Act, 2000, with unfinished willow clefts, loaded in the said trucks; that Deputy Director, Forest Protection Force intimated Divisional Forest Officer, Jammu regarding the seizure of the said trucks alongwith the un-finished willow clefts.

3. The Divisional Forest Officer, Jammu as Authorised Officer, after intimating the learned Chief Judicial Magistrate Jammu and Conservator of Forests East Circle Jammu, initiated confiscation proceedings in respect of the said trucks and willow clefts; that the authorized officer after hearing the parties, confiscated the said vehicles alongwith willow clefts on 04.04.2012; that the petitioners challenged the order dated 04.04.2012 of the Divisional Forest Officer (Authorized Officer) Jammu before the Chief Conservator of



Forests, J&K, Jammu (Appellate Authority), who vide order dated 22.08.2012 upheld the order passed by the Authorized Officer.

4. Aggrieved of both the orders passed by Authorised Officer confiscating the vehicles and by the Appellate Authority upholding the confiscation order, the petitioners moved this court by way of filing OWP Nos. 1244/2012, 1245/2012 & 1246/2012, wherein, as an interim direction, this court on 09.11.2012 directed the respondent No.3- Authorised Officer, to file personal affidavit with regard to the averments and the grounds taken by the petitioners in their writ petitions; that pursuant to filing of detailed affidavit by respondent No.3, the Court vide common judgment dated 31.12.2012 directed the respondent No.3 to pass fresh orders after considering the objections and the material placed on record; that in compliance to the judgment dated 31.12.2012, the respondent No.3 as Authorized Officer on 13.05.2013 observed that the seized willow clefts were being transported outside the State, in violation of the provisions of The Willow (Prohibition on Export and Movement) Act and again ordered for the confiscation of seized willow clefts along with trucks in question.

5. Thereafter, the petitioners assailed the order dated 13.05.2013 passed by the respondent No.3 Authorized Officer before the Appellate Authority i.e. respondent No.2 but much to the dismay of the petitioners, the Appellate Authority vide its order dated 24.10.2013, upheld the confiscation order dated 13.05.2013 passed by the respondent No.3 and dismissed the appeal filed by the petitioners-appellants.

6. It is in this backdrop, the petitioners have approached this court by way of filing the instant writ petition, assailing the impugned order, on the following grounds:



- a.** That the orders passed by the respondents are illegal and arbitrary in nature as there is nothing on record to suggest that the willow clefts in question were being transported either with knowledge or with the consent of the owners of the vehicles;
 - b.** that the petitioners have no knowledge about loading of the willow clefts in their Trucks nor they know that the Trucks were proceeding towards Kathua with Willow Cleft load;
 - c.** that the impugned orders have been passed by the respondents in clear violation of the relevant provisions of law i.e. Section 3 of The Willow (Prohibition on Export and Movement) Act;
 - d.** that the respondents have confiscated the trucks along with loaded unfinished willow clefts in a casual and routine manner without even bothering whether the willow clefts were being transported to any place outside the State of J&K;
 - e.** that the impugned orders are not passed on facts as required by law nor are they supported by applicable law;
 - f.** that there was no export of the willow clefts as they are seized within the jurisdiction of State of J&K;
 - g.** that the respondents have wrongly invoked Section 39 of the J&K Forest Act, which pertains to presumption that the possession of the Forest Produce is illegal but in the case of the petitioners, it is not the forest produce rather it is willow clefts;
 - h.** that no criminal action was initiated by the respondents against the petitioners/drivers, at the time of alleged seizure, no FIR was lodged against them and no criminal proceedings were initiated, therefore, in absence of criminal proceedings, no confiscation proceedings may have initiated.”
- 7.** Pursuant to notices, objections on behalf of respondent nos. 1 to 3 stand filed, inter alia, contending that the petitioners have raised disputed



questions of facts which cannot be decided in a writ petition, therefore, the writ petition is not maintainable and deserved to be dismissed; that the seizure of the trucks along with unfinished willow clefts illegally loaded in the aforesaid trucks and subsequent proceedings are legal and valid and in accordance with law; that no procedural or jurisdictional error has been committed either of the Authorized Officer or appellate Authority, as well reasoned order was passed by the Authorized Officer which was upheld by the Appellate Authority; that this court cannot sit as appellate authority to decide the settled issue raised in earlier writ petition of the petitioners when conclusion arrived is based on sufficient and relevant material; that the petitioners have approached this court with unclean hands and have suppressed the material facts. Lastly, it is prayed that the writ petition be dismissed being devoid of any merit and substance.

8. Learned counsel for the petitioners argued that no criminal proceedings got initiated against the petitioners and therefore no case arises for conviction; that the impugned orders have been passed by the respondents in clear violation of the Willow (Prohibition on Export and Movement) Act, more specifically, Section 3 of the Act; that there is nothing on record to suggest that the willow clefts in question were being transported either with the knowledge or with the consent of the petitioners, which is an important ingredient required for confiscation of the trucks; that the willow clefts were seized within the jurisdiction of State of J&K, therefore, there was no export of the willow clefts outside the State of J&K and for the sake of argument, even if it is assumed that the willow clefts were intended to be transported outside the State of J&K, the alleged act of the drivers then would only constitute preparation and not commission of the offence of exporting of the



unfinished willows clefts in violation of the J&K Willow (Prohibition on Export and Movement) Act, 2001. In support of his contentions, learned counsel for the petitioners has relied upon the judgment reported as 2011 (4) JKJ [HC].

9. Learned counsel for the respondents, *ex adverso*, has strongly opposed the plea raised in the petition by the petitioners; that the petitioners have raised disputed questions of fact, which cannot be decided in a writ petition; that the respondent No.3 conducted a detailed inquiry in compliance with the directions issued by this Court in OWP No.1244/2012 C/W OWP No.1243/2012, OWP No.1245/2012, OWP No.1245/2012 and OWP No.1246/2012 and filed an affidavit in which it was, *inter alia*, stated that seized willow clefts, in question, were being transported illegally outside the State of J&K in contravention of the provisions of the Jammu & Kashmir Willow (Prohibition on Export and Movement) Act, 2000; that the said trucks were without documents with regard to the goods contained in them; that the respondent No.3, in compliance to the directions passed by this Court in earlier writ petitions filed by the writ petitioners, passed fresh orders, after following due procedure and after giving adequate opportunity to the petitioners, but the petitioners failed to prove that the willow clefts were being transported in accordance with law and there was no contravention of the provisions of the J&K Willow (Prohibition on Export and Movement) Act, 2000.

10. Mr. Bharti relying upon the judgment of the Apex Court in a case '*State of Madhya Pradesh & Ors. Versus Kallo Bai*' reported as (2017) 14 SCC 502 further argued that the criminal proceedings and confiscatory proceedings are independent and parallel to each other, as such, confiscatory



proceedings as conducted in the case, not being dependent on registration, prosecution or conviction in a criminal case, cannot be questioned, particularly in an admitted case that semi finished willow clefts were being transported, without any transit permit from Kashmir valley towards Punjab, in contravention of the Willow Act. Finally, it is prayed that the writ petition be dismissed and the impugned orders be upheld.

11. Section 3 of the Jammu & Kashmir Willow (Prohibition of Export and Movement) Act, 2000 provides for prohibition on the carriage and export of willow. It will be convenient to extract the same for reference as under:

- 3. *Prohibition on the carriage and export of willow-***
Notwithstanding any provisions to the contrary contained in any other law for the time being in force in the State and also notwithstanding any order, decree and judgment of any Court and any contract, practice or usage to the contrary, willow of any species in any form shall not be carried or exported to [except any place outside the State under general or specific orders of the Government or of an authority designated by it for the purpose and subject to such conditions as the Government may specify].

Section 4 of the Act deals with seizure and confiscation, which is also reproduced for ready reference as under:

4. *Seizure and confiscation.*

- (1) Any forest officer as defined, as such, in the Jammu and Kashmir Forest Act, Samvat 1987, any police officer not below the rank of Assistant Sub-Inspector and any officer not below the rank of Manager of the District Industries Centre designated for the purpose by the prescribed authority or any other person specially empowered in this behalf by the government may seize the willow and the carrier in which it is being carried, if he finds or has reasons to believe that the*



willow is being carried for export or attempted to be carried for export in violation of the provisions of Section 3 of this Act.

(2) The willow and the carrier seized under sub-section (1) shall be liable to confiscation, in the manner and in accordance with the procedure to be prescribed by the Government.

12. As per section 3 of the Willow (Prohibition on Export) Act, it is provided that the willow of any species in any form shall not be carried or exported to, except any place outside the State under general or specific orders of the Government or of an authority designated by it for the purpose and subject to such conditions as the Government may specify. And as per Section 4 of the Act, it has been provided that any forest officer as defined as such in the Jammu and Kashmir Forest Act, Samvat 1987, any police officer not below the rank of Assistant Sub-Inspector and any officer not below the rank of the Manager of the District Industries Centre designated for the purpose by the prescribed authority or any other person or any other person specially empowered in this behalf by the Government may seize the willow and the carrier in which it is being carried, if he finds or has reasons to believe that the willow is being carried for export or attempted to be carried for export in violation of the provisions of Section 3 of this Act.

13. In Sub Section (2) of Section 4 of the Act, it has been provided that the willow and the carrier seized under Sub Section (1) of Section 4 shall be liable to confiscation, in the manner and in accordance with the procedure to be prescribed by the Government. In exercise of powers conferred by Section 8 of the Act, the Govt. of Jammu & Kashmir vide SRO 308 dated 12.09.2003 in terms of sub-section (i) of Section 4 of Willow (Prohibition on Export) Act, directed that the manner and procedure prescribed for confiscation, under



Jammu & Kashmir Forest Act Samvat 1987 and the Rules made thereunder, shall mutandis apply for purposes of sub-section (2) of Section 4 of the said Act dealing with confiscation. Therefore, it is apparent on perusal of Section 4 of the J&K Willow Act that local Divisional Forest Officer as authorized officer had powers to confiscate the willow and the carrier seized under sub section (1) of Section 4. For the purpose of confiscation, the Govt. of J&K had made the provisions of the J&K Forest Act, 1987 applicable, for confiscation of the willow as well as carrier thereof.

14. There is a complete ban on movement and export of willow in any form, from the State except with the permission of the Authority and a permit for the purpose of export of willow clefts in semi finished form from the State which can be issued by the competent authority and in view of the fact that when the unfinished willow clefts, in all types of willows sawn, unsawn and unfinished cleft form, except finished end products, cannot be carried or exported. It is an admitted case that on 07.02.2012, willow clefts were recovered from three vehicles JK013-B/4498, JK03B/9093 & JK13A/4510 owned by the petitioners, on National Highway near Sidhra Bridge Jammu which were seized by Deputy Director, Forest Protection Force, who intimated the same to Divisional Forest Officer, Jammu regarding the seizure of the said trucks along with the unfinished willow clefts.

15. The Divisional Forest Officer, Jammu on receipt of the aforestated information, being an authorized officer under the J&K Forest Act proceeded to undertake the confiscation proceedings and vide order dated 04.04.2012 confiscated the vehicles owned by the petitioners who challenged the same in statutory appeal before the Chief Conservator of Forests, J&K, Jammu, who dismissed the appeal vide order dated 22.08.2012 upholding the order passed



by the authorized officer which was challenged before this Court in three writ petitions filed by the petitioners in the year 2012 and this court vide order dated 09.11.2012 directed authorized officer to file personal affidavits and later on, vide common judgment passed in all the petitions on 31.12.2012 authorized officer was directed to pass fresh orders, after considering the objections and the material placed on record. The authorized officer after consideration of the matter, again ordered the confiscation in terms of order dated 13.05.2013, which on being assailed before appellate authority was upheld vide order dated 24.10.2013.

16. The procedure for confiscation which has been made applicable to the J&K Willow (Prohibition on Export and Movement) Act, 2000 with regard to confiscation is Section 26 of the Forest Act, being relevant for the convenience of reference is extracted as under:

26. Seizure of property liable to confiscation

- (1) When there is a reason to believe that a forest offence has been committed in respect of any forest produce, such produce together with all tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other article used in committing any such offence may be seized by a Forest Officer or Police Officer.*
- (2) Any 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, make a report of such seizure before an officer not below the rank of the Divisional Forest Officer (hereinafter referred to as 'authorised officer'): Provided that when the forest produce with respect to which such offence is believed to have been committed is the property of the 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 receipt of report about seizure, 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, arms, boats, carts, equipment, ropes, chains, machines, vehicles or any other articles used in committing such offence. Copy of the order of confiscation shall be forwarded without any undue delay to the person from whom the property is seized and to the Conservator of 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 writing about the proceedings for confiscation of the property to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made but no order to be passed;. (b) issue a notice in writing to the person from whom the property is seized and to any other person who may appear to the authorised officer to have some interest in such property; (c) gives to the officer effecting the seizure and the person or persons to whom notice 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, arms, boats, carts, equipment, ropes, chains, machines, vehicles or any other article (other than 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, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any 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 the use of objects aforesaid or commission of forest offence.
- (6) Where the cattle are involved in the commission of a forest offence, the same after seizure by any officer, as the case may be, shall be entrusted to any responsible person under a proper receipt on an undertaking to produce the same when required in case there is no cattle pound within a radius of five kilometers from the place of such offence: Provided that notwithstanding anything contained in section 30, in case of unclaimed cattle a Forest Officer not below the rank of Range Officer, after giving sufficient publicity in the vicinity of the place of offence for the owner to come forward to claim the cattle within seven days from the date when such publicity has been given, may dispose them of by public auction. The provisions of the Cattle Trespass Act, Samvat 1977, shall apply in respect of the charges to be levied for the upkeep and fee of the cattle.



17. The procedure provided under Section 26 of the Forest Act with regard to confiscation is also subject to Section 28 of the Act, which provides as to how seized forest produce, tools, etc. which are not government property are to be dealt with.

Section 28 of the Forest Act reads as under:

“28. Forest produce, tools, etc, when liable to confiscation.-

All timber or forest produce which in either case is not the property of the Government and in respect of which a forest offence has been committed and all tools, boats, carts motor vehicles, machines, ropes, chains, equipments, arms, cattle or any other articles in each case used in committing any forest offence shall, subject to the provision of Sections 26, 26-B and 26-C, be liable to confiscation upon conviction of the offender for such offence.

Such confiscation may be in addition to any other punishment prescribed for such offence.

18. The government property in respect whereof offences under the Forest Act alleged to have been committed, is open to confiscation even before conviction under the Forest Act, has been held by this Court in the case titled ‘State of J&K v. Thakur Motors & Anr’, (2011 (4) JKJHC). Para 19 of the aforesaid decision being relevant is reproduced here under:

“19. The view taken by the learned Sessions Judge that confiscation of timber was permissible only after conviction for offences under the Forest Act, is on the face of it, erroneous, in that, the provisions of Section 28 of the Forest Act, referred to by the learned Judge, are subject to the provisions of Section 26 of the Act, in terms whereof confiscation of Government Property in respect whereof offences under the Forest Act appear to have been



committed, is open to confiscation, even before conviction under the Forest Act.”

19. The seized Willow clefts in the case on hand were not Government property, as such, the confiscation proceedings U/S 26 of the Forest Act are to be subject to Section 28 of the Forest Act, which provides the mechanism as to how seized property including the carrier are to be dealt with, while exercising confiscatory jurisdiction by the Authorized Officer. Section 28 of the Forest Act, explicitly provides that the seized property and the carrier are to be confiscated, upon conviction of the offender for such offence.

20. As is borne out of the pleadings and the submissions made, the factual background of the case is that willow clefts in semi-finished form were found to be transported in the vehicles of the petitioners, without any permission or transit transportation permit from the competent authority, which were seized on 07.02.2012 loaded in petitioners' trucks at Sidhra Jammu on National Highway on way to Punjab by Forest Protection Force and the matter was reported to Authorized Officer. The Authorized Officer, on his part, informed learned Chief Judicial Magistrate Jammu, regarding his intent to initiate confiscation proceedings. It is an admitted case that the matter was not reported to Police for investigation, as such, no criminal case was registered.

21. On a harmonious construction of Sections 3 and 4 of the Willow (Prohibition on Export) Act 2000 read with SRO 308/2003 dated 12.09.2003 and Sections 26 and 28 of the J&K Forest Act, it crystallizes that the confiscatory jurisdiction can be exercised by the Authorized Officer, upon conviction of the offender and not earlier to it or without it. The Apex Court in a case titled '*Principal Chief Conservator of Forests Vs. J. K. Johnson*',



reported as **AIR 2012 SC 61** has been pleased to hold that the provisions of the Act do not permit Specified Officer to deal with the property seized for commission of the offence until and unless final decision in the criminal proceedings are not taken. The legislative intent must have been to confiscate the vehicle after trial in respect of offence committed under the Act is over. Before that confiscation may prejudicially affect the property and its owner. If as contended in the impugned order, seizure of property merely on accusation would make the property confiscated, it would have the result of depriving an accused of his property without proof of his guilt. This interpretation would mean that a specified officer under the Act merely be seizure of property of an accused would deprive him of his property which he might be using for his trade, profession or occupation. This would be a serious encroachment on the fundamental right of a citizen under Article 19(1)(g) of the Constitution to carry on his trade, occupation or business.

22. Even otherwise, if the confiscation proceedings are treated to be final before the criminal proceedings then the confiscated vehicle is if auctioned in the interregnum period (between confiscation and completion of trial) then how the property of the acquitted person in the criminal trial would be returned back or compensated would be the question. Same is the case with the vehicle being decayed and got rusted after confiscation, if subsequently, the accused is acquitted from the allegations of forest offence in the criminal trial. Therefore, the legislative intent is clear that the confiscation proceedings can only be held and culminated after criminal trial for commission of forest offence is over. Initially a Full Bench of Hon'ble Madhya Pradesh High Court in the case of Madhukar Rao laid down the principle, that once the criminal case was pending, confiscation proceedings should not be held and finalized. The



judgment rendered by the Full Bench was affirmed by the Supreme Court in the case of '*State of M.P. V. Madhukar Rao*' holding that the provisions of Section 50 of the Wild Life (Protection) Act, and the amendment made to the said Act [Section 39 (1) (d)] do not in any way affect the powers of the Magistrate to pass interim order with regard to release of the vehicle and it is further held that when the criminal case is pending, final order with regard to confiscation, of the vehicle should not be passed. This principle laid down in the case of Madhukar Rao was again reiterated and affirmed by the Supreme Court in the case of '*Principal Chief Conservator of Forests Vs. J. K. Johnson*', **AIR 2012 SC 61** holding that the provisions of Act do not permit Specified Officer to deal with the property seized for commission of the offence until and unless final decision in the criminal proceedings are not taken.

23. The contention of the learned State counsel and reliance on the judgment of State of Madhya Pradesh & Ors. Versus Kallo Bai [**2017 (4) SCC 502**] that confiscation of vehicle prior to conviction in criminal trial is permissible, seems to be misplaced, for the reason that the aforestated enunciation has been in view of the provisions of Madhya Pradesh Van Upaj (Vyapar Viniyam) Adhiniyam, 1969, wherein independent power of confiscation to authorized officer even prior to establishment of guilt by the criminal court has been given by Section 15. There is no such provision in the J&K Forest Act, for a non-governmental property, seized as in the case on hand, as provided in Section 28 of J&K Forests Act 1987. In the cases, where seized forest produce, is a government property, the confiscation can be ordered by the authorised officer, in independent or parallel confiscatory



proceedings to criminal proceedings, even before culmination of criminal trial or recording of conviction of the offender.

24. The criminal prosecution is distinct from confiscation proceedings. The two proceedings are different and parallel, each having a distinct purpose. The object of confiscation proceeding is to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence while the object of the prosecution is to punish the offender. The scheme of the J&K Forest Act prescribes an independent procedure for confiscation, in case, the seized produce is a government property, while as after conviction in the criminal case in case of a private property, regarding which, the offence may have been committed. The intention of prescribing separate proceedings is to provide a deterrent mechanism and to stop further misuse of the vehicle etc.

25. Protection of forests against depredation is a constitutionally mandated goal exemplified by Article 48-A of the Constitution of India, which provides that *'the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country'*. Besides, the aforesaid Directive Principle of State Policy, a fundamental duty upon every citizen is cast which is incorporated in sub-clause (g) of Article 51-A of the Constitution of India, which provides *'it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures'*. The avarice of humankind through the ages has resulted in an alarming depletion of the natural environment. The consequences of climate change are bearing down on every day of our existence. Statutory interpretation must remain eternally vigilant to the daily assaults on the environment. By isolating the confiscation



of forests produce and the instruments utilized for the commission of an offence from criminal trials, the legislature intended to ensure that confiscation is an effective deterrent. The absence of effective deterrence was considered by the legislature to be a deficiency in the legal regime, therefore, the provisions with regard to confiscation are an effective tool for protecting and preserving environment and these provisions must receive a purposive interpretation. For, it is only when the interpretation of law keeps pace with the object of the legislature that the grave evils which pose a danger to our natural environment can be suppressed.

26. Having regard to the foregoing reasons and observations made in the discussion hereinabove, this court, on its considered view, draws following conclusion:

- (i) Authorized Officer is competent to pass order of confiscation with regard to seized forest property, implements and its carrier, in independent and parallel proceedings to the criminal proceedings, without waiting for the conclusion of trial or conviction of the offender by the court of Magistrate, when forest offence is in respect of government property.
- (ii) Authorized Officer is not competent to pass confiscation order with regard to reported seized property in respect of a forest offence, in case of a non-government property, until and unless conviction of the offender is recorded by the Magistrate.

27. In the aforesaid backdrop, it is held that in the case of non-governmental property as the Willow clefts in the case on hand, confiscation

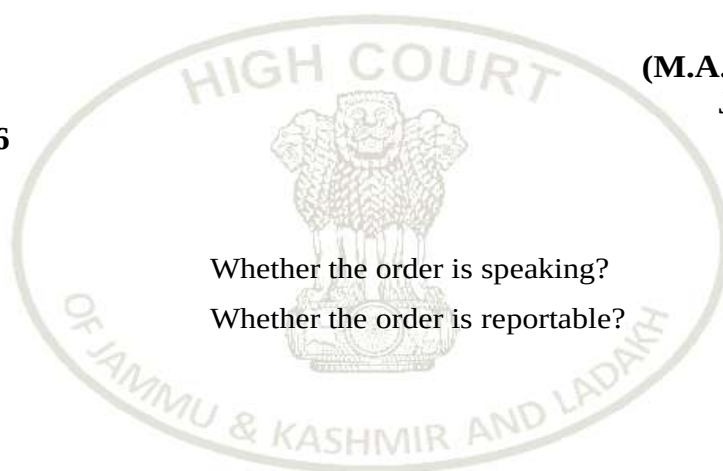


proceedings cannot be finalized or confiscation order passed, until the conviction of the offenders in the case.

28. Viewed thus, as there was admittedly neither registration of criminal case, nor conviction of the offenders, as such, the confiscatory proceedings finalized by the Authorized Officer vide impugned orders with regard to petitioners' vehicles being confiscated, were not legal or sustainable, without recording of conviction of the offenders.

29. As a result, the petition is **allowed** and the impugned orders passed by the Authorized Officer as well as Appellate Authority are hereby quashed and the petitioners' vehicle Nos. JK03B-9023, JK13A-4510 and JK13B-4498 are ordered to be finally released in their favour. The petition is, accordingly, disposed of, alongwith application(s).

Jammu:
05.03.2026
Raj Kumar



(M.A. Chowdhary)
Judge

Whether the order is speaking?

Yes/No

Whether the order is reportable?

Yes/No