Madhya Pradesh High Court

Kailash Chand And Anr. vs State Of Madhya Pradesh And Ors. on 19 April, 1994

Equivalent citations: AIR 1995 MP 1

Author: U Bhat

Bench: U Bhat, P Naolekar

JUDGMENT U.L. Bhat, C.J.

1. Certain common questions have been raised in these writ petitions and they have been heard together and are being disposed of by this common judgment.

2. Petitioners in various petitions are owners of motor vehicles such as trucks, jeeps, tractors, stage carriage vehicles etc. On the allegation that these vehicles have been used for removing forest produce contrary to law, they have been seized by Forest Officers or Police Officers and confiscation proceedings have been intiated orabout to be initiated against them. In most of the cases, action is being taken under the provisions of the Indian Forest Act, 1927 (for short, Central Act), as amended by the Indian Forest (M. P. Amendment) Act, 1983, (for short, 1983 Act). In a few of the cases, action is being taken under the M. P. Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969, i.e. M. P. Act 9 of 1969(for short, 1969 Act), as amended by the Amending Act 15 of 1987. In most of the cases, by interim orders, vehicles have been directed to be released on execution of bonds with or without sureties as the case may be Certain provisions of Sections 53 and 52C of the Central Act, as amended by the 1983 Act, are challenged in many of these cases, while in some of the cases, Section 15 of the 1969 Act, as amended, is challenged. Consequently, as a corrollary to the challenge of the above provisions, the seizures effected are also challenged.

3. Learned counsel for the petitioners made the following submissions:

(i) Section 52(3) of the central Act, as amended in M.P., is unjust, unfair and arbitrary and violates Article 14 of the Constitution.

(ii) Conferral of power of confiscation on authorised officer is arbitrary. He is made Judge in his own cause which violates principles of natural justice. There is violation of Articles 14, 19(1)(g) and 21 of the Constitution.

(iii) Section 52(3) of the said Act which provides for confiscation of the vehicle, is arbitrarary, unjust and unfair. It leaves no discretion to the Forest Officer to impose any penalty less than that of confiscation.

(iv) Section 52C of the said Act which bars jurisdiction of Courts in regard to disposal of property, is arbitrary and violates Articles 14, 19(1)(g) and 21 of the Constitution. Legislative encroachment into judicial powers is bad in law.

(v) Absence of provision for interim release of vehicles or time limit for keeping vehicles in custody renders the scheme of the Act arbitrary.

(vi) There is repugnancy between Sections 52(3) and 55(1) of the said Act.

(vii) Section 15 of the 1969 Act, as amended, is violative of Article 14 of the Constitution.

(viii) In cases governed by 1969 Act, as amended by Act 15 of 1987, release of vehicles cannot be refused on the basis of Section 52C of Central Act, as amended by 1983 Act in view of Section 22 of the 1969 Act.

(ix) Amendments to 1969 Act, introduced by Amending Act of 1987 have no retrospective effect.

4. The Central Act was enacted in 1927 with a view to consolidate the law relating to forest, the transit of forest produce and duty leviable on timber and other forest produced. According to Sub-section (2) of Section 1, the Act extends to the whole of India except the territories which immediately before 1st November, 1956, were comprised in Part B States. This provision was amended by M. P. Act No. 23 of 1958 to make it clear that the Act applies to the territories comprised in Madhya Bharat, Vindya Pradesh, Bhopal and Sironj Regions of the State of M.P. The Central Act has been extensively amended by the M. P. Amendment Act of 1983. A bird's eye view of the provisions of the Central Act and the changes brought about in the State is necessary to appreciate the contentions of parties.

5. 'Forest Officer' means any person whom the State Govt. or any empowered officer of the State Govt. may appoint to carry out all or any of the purposes of the Act or Rules to be done by a Forest Officer. 'Forest Offence' means an offence punishable under the Act or the Rules. Section 26 contains a list of acts prohibited in such forests. Section 29 deals with protected forests. Section 30 empowers the State Govt. to issue notification making reservation in regard to trees or protected forests. Section 32 empowers the State Govt. to make Rules for protected forests and the like. Section 33 prescribes penalties for acts in contravention of notification Under Section 30 or of Rules Under Section 32. The penalty is imprisonment for a term which may extend to six months or fine which may extend to Rs. 500.00 or both. Section 41 empowers the State Govt. to make rules to regulate transit of forest produce. Section 42 empowers the State Govt. to prescribe as penalty for the contravention of rules, imprisonment for a term which may extend to its 500.00 or both. Section 51 enables the State Govt. to make Rules and prescribe penalties in regard to certain matters.

6. Chapter IX of the Central Act deals with penalties and procedure. A comparative chart of the provisions of the Central Act, as it originally stood and the provisions of the Central Act, as amended in M.P. No. in 1983, is given below :

Provisions of the Central Act Provisions of the Central Act, as amended by M. P. Act No. 25 of 1983 with effect from 1-11-1993.

52(1). When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, boats, carts or cattle used in committing any such offence, may be seized by any Forest Officer or Police Officer.

52(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 sizing 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 to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

(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 Extra Assistant Conservator of Forests 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 or bulk or other geunuie difficulty, not practicable to produce 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 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.

Proviso -- same.

(3) Subject to sub-section (5), where the authorised officer upon production before him of property seized or 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, vehicls, boats, ropes, chains or any other article used in committing such offence. A copy of order of confiscation shall be forwarded without any undue delay to the conservator of Forests of the forest circle in which the timber pr 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 seized 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 subsection (3) of any tools, vehicles, boats, ropes, chains or any other article (other than timber or forest produces seized), shall be made if any person referred to in clause (b) of subsection (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 objects aforesaid for commission of forest offence.

52-B. Revision lies before Court of Session against order of Appellant Authority.

52-C. Bar to jurisdiction of Court etc. under certain circumstances --

(1). On receipt of intimation under subsection (4) of Section 52 about initiation of proceedings for confiscation of property by the Magistrate having jurisdiction to try the offence on account of which the seizure of property which is subject-matter of confiscation, has been made, no Court, Tribunal or Authority (other than the authorised officer, Appellate Authority and Court of Session referred to in Sections 52, 52A and 52B) shall have jurisdiction to make orders with regard to possession, delivery, disposal or distribution of the properly in regard to which proceedings for confiscation arc initiated under Section 52, notwithstanding anything to be contained in this Act, or any other law for the time being in force.

Explanation.--- Where under any law for the time being in force, two or more courts have jurisdiction to try forest offence, then receipt of intimation under sub-section (4) of Section 52 by one of the Courts of Magistrates having such jurisdiction, shall be construed to be receipt of intimation under that provision by all the courts and the bar to exercise jurisdiction shall operation all such Court.

(2) Nothing in sub-section (1) shall affect the power saved under Section 61.

53. Any Forest Officer of a rank not inferior to that of a Ranger who, or whose subordinate has seized any tools, boats, carts or cattle under Section 52, may release the same on the execution by the owner thereof a bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

Same. (Except 'vehicle' has been substituted for 'carts').

54. Upon the receipt of any such report, the Magistrate shall, with all convenient dispatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

(Procedure is the same, but the following proviso added):

Provided that before passing any order for disposal of property, the Magistrate shall, satisfy himself that no intimation under sub-section (4) of Section 52 has been received by his Court or by another Court having.

jurisdiction to try the offence on account of which the seizure of property has been made.

55(1). All timber or forest produce which is not the property of Government and in respect of which a forest offence has been committed and all tools, boats, carts and cattle used in committing any forest offence, shall be liable to confiscation.

55(1). All timber or forest produce which in either case is not the property of the Govt. and in respect of which a forest offence has been committed and all tools, boats, vehicles, chains or any other article, in each case used in committing any forest offence, shall, subject to provisions of Sections 52. 52A. 52E and 52C, be liable to confisction upon conviction of the offender for such forest offence.

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

Same.

56. When the trial of any forest offence offence is concluded, any forest produce in respect of which such offence has been committed shall, if it is the property of Government or has been confiscated, be taken charge of by a Forest Officer, and in any other case, may be disposed of in such manner as the Court may direct.

Same.

59. The officer who made the seizure under Section 52, or any of his official superiors, or any person, claiming to be interested in the property so seized, may, within one month from the date of any order passed under Section 55, Section 56 or Section 57, appeal therefrom to the Court to which orders made by such Magistrates are ordinarily appealable, and the order passed on such appeal shall be final.

Same.

61. Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the State Government from directing at any time the immediate release of any property seized under Section 52.

Same.

62. Any Forest Officer or Police Officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Same (But punishment) enhanced to imprisonment for one year or fine of rupees one thousand).

64 and 65. Power to arrest without warrant and release on bond is same with the Magistrate.

Same.

67. The District Magistrate or any Magistrate of the First Class, specially empowered in this behalf by the State Government may try summarily under the Code of Criminal Procedure, 1898, any forest offence punishable with imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or both.

Same. (But sentence enhanced to imprisonment for one year and fine of Rs. 1,000.00.)

7. Let us examine the scheme of the provisions of the Central Act. Forest Officer or Police Officer is empowered to seize forest produce together with tools, boats etc. used in committing a forest offence when there is reason to believe that a forest offence has been committed. The property seized should be given a mark and report of seizure made to the Magistrate concerned. If the forest produce is Govt. property and the offender is unknown, report is to be made to the superior officer. The Forest

Officer may release the property on execution of bond stipulating production before appropriate Magistrate. Upon receiving the report, the Magistrate shall take such measures for arrest and trial of the offender and disposal of the property. Forest produce which is not involved in a forest offence and which is not the property of Govt., is liable to confiscation in addition to any other punishment prescribed for the offence. When the trial is concluded, the property, if it is the property of the Govt. and has been confiscated, shall be taken charge by a Forest Officer and in other cases, may be disposed of according to directions of the Court. Orders relating to confiscation and disposal are appealable before the appellate forum and the appellate order shall be final. Any empowered officer can direct immediate release of the property seized. Forest Officer or Police Officer who vexatiously and unnecessarily seizes the property, shall be punished. Forest and Police Officer have power to arrest without a warrant and release the arrested person on bond. Summary trial is also contemplated.

8. The changes brought about by the 1983 Act are far reaching and significant. This Act has introduced special provisions enabling authorised officer to confiscate forest produce or the tools, vehicles etc. seized by Forest Officer or Police Officer. Property seized should be produced before the authorised officer (an Officer not below the rank of Extra Assistant Conservator of Forests), or where it is not practicable to produce the property before him, a report has to be made to him about the seizure. If it is intended to launch criminal proceedings immediately, report of seizure has to be made to the Magistrate concerned. The authorised officer may order confiscation of the forest produce and tools, vehicles etc. after sending an intimation in the prescribed pro forma about the initiation of confiscation proceedings to the Magistrate concerned, issuing notice in writing to the offender, granting opportunity of making representation to the offender and persons having interest in the property and giving all concerned an opportunity of hearing. Under the circumstances mentioned in Section 52(5), namely, where tools, vehicles etc. have been used without knowledge or connivance of the persons concerned or of his servant or agent and all reasonable precautions have been taken against the use of the tools, vehicles etc. for commission of the forest offence, no order of confiscation can be passed. Order of confiscation passed by an authorised officer can be challenged in appeal before the Conservator of Forests and the appellate order can be challenged in revision before the Sessions Court whose decision shall be final. On receipt of intimation Under Section 52(4) from the authorised officer about the initiation of confiscation proceedings, the Magistrate shall have no jurisdiction to make orders with regard to the property. The provisions in Sections 53 and 61 regarding release have not been amended. Where the Magistrate receives a report (evidently Under Section 52(2), i.e. where immediate criminal prosecution is intended), the Magistrate shall take measure for arrest and trial of the offender and disposal of the property, provided that disposal of property cannot be made if intimation Under Section 52(4) has been received. Liability to confiscation upon conviction of the offender is made subject to the provisions of Sections 52A, 52B and 52C which contemplate confiscation order by the authorised officer subject to appeal and revision. The punishment for vexatious and unnecessary seizure has been enhanced by the 1983 Act.

9. The broad scheme of the Central Act is to secure punishment of the offender at the hands of the criminal court, the power of confiscation being incidental and ancillay to conviction. The scheme of the amended provisions partially separates the process of confiscation from the process of prosecution. On receipt of the property or report of the seizure from the Forest Officer or Police

Officer, the authorised officer can initiate confiscation proceedings. The production or report is to be made before the authorised officer and if immediate launching of criminal proceedings is intended the report is to be sent to the Magistrate concerned. The power of the criminal court regarding disposal of property is made subject to the jurisdiction of the authorised officer with regard to that aspect, the jurisdiction of criminal court in regard to arrest and trial of the offender is unaffected. It is affected only in regard to disposal of property.

10. Point No. (i): The first contention urged is that the provisions relating to the scheme of confiscation by authorised officer are arbitrary and violative of Article 14 of the Constitution. According to the petitioners, there are two modes of confiscation prescribed, one through the instrumentality of the authorised officer and the other of the Magistrate, the choice of the mode is left to the Forest Officer or Police Officer, there are no guidelines prescribed in the matter, confiscation proceedings by the authorised officer are more disadvantageous to the persons proceeded against than the procedure of trial of the offender which may result in confiscation and, therefore, the provisions are arbitrary. It is also contended that under the provisions of the Central Act as amended by the 1983 Act, a Magistrate can take cognizance only on receipt of report and riot Under Section 190 of the CFP. Code.

11. The scheme of the Central Act is to ensure that an offender is prosecuted before the Magistrate concerned and on his conviction, the forest produce or other properties seized become liable for confiscation. On receipt of the report Under Section 52(2), it is the duty of the Magistrate to take measures for arrest and trial of the offender and disposal of the property. Power has been conferred on Forest Officer or Police Officer to arrest without warrant. Thus, the offences under the Act are cognizable offences as defined in Section 2(c) of the Cr.P. Code (for short, the Code). Sub-section (2) of Section 4 of the Code states that offences under laws other than Indian Penal Code shall be investigated, enquired into, tried and otherwise dealt with according to the provisions of the Code, but subject to any enactment for the time being in force regulating the manner or place of investmenting, inquiring into, trying or otherwise dealing with such offences. Since the offences under the Forest Law are cognizable, provisions of Chapter XII of the Code are also attracted in relation to officers-in-charge of police stations. By virtue of Section 154, such a police officer, on receiving information relating to commission of a cognizable offence, is bound to reduce it in writing, enter the substance thereof in the prescribed book and by virtue of Section 157 of the Code, bound to prepare first information report and proceed to investigate the facts on sending the F.I.R. to the Magistrate. A Forest Officer who detects a forest offence, has also the power and responsibility of invoking jurisdiction of Criminal Court. Section 52(2) of the Amend-ed Act requires the seizing officer to make a report of seizure to the Magistrate "where it is intended to launch criminal proceedings against the offender immediately." If on seizure property Under Section 52(1) of the Act, the Forest Officer has all the necessary facts and materials to warrant immediate launching of criminal proceedings, he is bound to report the seizure to the Magistrate. Where the facts and, evidence available with him are not adequate to launch criminal proceedings immediately, he is not required to report seizure to the Magistrate. In such circumstances, he has to fall back upon Section 190 of the Code and in due course, lodge a complaint before a Magistrate. Where the report is received Under Section 52(2), the Magistrate has to proceed Under Section 54. Where a complaint is received Under Section 190 of the Code, he has to proceed in the manner contemplated by the

Code. Learned counsel for the petitioners contends that Section 52(2) refers to "where it is intended to launch criminal proceedings against the offender immediately" and this is entirely a matter in the discretion of the seizing officer, leading to arbitrary exercise of power. We are unable to agree with this interpretation of the provision in Section 52(2). The expression 'intended' cannot be read as indicative of mere discretion of the officer concerned. The intention to launch criminal proceedings immediately is not dependent on the whims and fancies of the officer concerned; it is dependent on the objective factors present by way of facts, evidence and information available in each case. Whether criminal proceedings can be launched immediately or not is of course a matter for decision of the officer concerned, but the decision rests entirely on the evidence before the Officer. This is more or less on par formation of opinion on the part of a Police Officer under Section 170(3). The emphasis in the provision is on the immediacy of launch of prosecution. We are, therefore, unable to agree that the seizing officer has been given unguided discretion to launch prosecution or otherwise or launch prosecution immediately or otherwise.

12. It would be worthwhile to notice the reasons which prompted the M.P. amendments to the Central Act. The following is the English translation of the relevant portion of the Statement of Objects and Reasons in support of the 1983 Act:

"The illegal trading in forest produce has gone up as a result of soaring price of forest produce as also as a result of increase in the fast means of transportation, particularly in the last 10 years. It has come to be known that the real culprits who are normally influential persons, keep themselves in the background and the work of illegal felling of forest produce and collection thereof, is taken by hired labourers who are ordinarily very poor and work for a meagre gain. The forest produce is brought by these hired labourers to some places from where during nights, carts or boats are kept ready for loading. It is, therefore, proposed in order to curb such malpractices that responsible Forest Officers should be invested with the power of confiscation of the property used in commission of forest offences, saving the provision of judicial review and without prejudice to the power of the Magistrate to punish the offenders."

13. The Supreme Court, in D.F.O. and another v. G. V. Sudhaker Rao and others, AIR 1986 SC 328 : 1986 Cri LJ 357, had occasion to consider similar provisions in the Andhra Pradesh Forest Act, 1967. The occasion arose on account of prayer of the offender for stay of confiscation proceedings till the disposal of the criminal case. The Court noticed the provisions of the unamended Act which were more or less similar to the provisions of the Central Act and the amending provisions of Act 17 of 1976 which are more or less similar to the provisions in the amendments introduced by the 1983 Act. The Court observed at page 330 :

"The change in the law was brought about with a view to prevent the growing menace of ruthless exploitation of Govt. Forest by illicit felling of teak and other valuable forest produce by unscrupulous traders, particularly from Reserved Forests by providing for a machinery for confiscation of illegally felled trees or forest produce by forest authorities..... There was no provision in the Act enabling the Forest Officers to confiscate such timber or forest produce and implements etc. used for committing forest offences even in a case where he was satisfied that a forest offence had been committed. In view of this, the Forest Dept. was finding it difficult to curb the forest

offences effectively and quickly in spite of the fact that large scale smuggling of forest produce was on the increase. Hence, it was thought necessary to empower officials of the Forest Dept. seizing any property under Sub-section (1) of Section 44, instead of merely making a report of seizure to the Magistrate also to order confiscation of timber or forest produce seized with all the tools, boats, vehicles etc. used in committing such offences. The intendment of the Legislature in enacting Act 17 of 1976 was, therefore, to provide for two separate proceedings before two independent forums in the Act, one for confiscation by a departmental authority exercising quasi-judicial powers conferred under Sub-section (2A) of Section 44 of the goods forming the subject matter of the offence and the other for the trial of the person accused of the offence so committed..."

The Court referred to the confiscation provisions containing adequate safeguards for the persons who may be subjected to order confiscation, the provision for revision before an officer not below the rank of Conservator of Forests and of appeal to District Court whose decision is to be final. The court also referred to the amendment which took away the power of the Magistrate to order confiscation where an order of confiscation has already been passed by the authorised officer. Rejecting the contention that there may be conflict of jurisdiction of the authorised officer and the Magistrate, the Court observed :

"It would, therefore, appear that there can be no conflict of jurisdiction between the authorised officer acting under Sub-section 2-A of Section 44 of the Act to direct confiscation of the property seized under Sub-section (1) on his being satisfied that a forest offence has been committed and the Magistrate making an order for confiscation of the property so seized on confiscation of an accused for a forest offence Under Section 45. The power of confiscation conferred on the authorised officer under Sub-section (2A) of Section 44 of the Act is separate and distinct from the power of the Magistrate to direct confiscation on conviction of an accused Under Section 45....."

The Court approved the view taken in State of Andhra Pradesh v: P. K. Mohamed, (1978) 1 APLJ 391, that when seized property is produced before the authorised officer along with a report, the Magistrate could not have jurisdiction to pass an order of disposal under the Code. Reference was made to Sections 451, 452 and 457 of the Code for disposal of the property. The Court observed that the general provisions of Sections 452 and 457 must "necessarily yield where a statute makes a special provision with regard to forfeiture of the property and its disposal." Reference was made to the decision of a Division Bench of the Andhra Pradesh High Court in Smt. Haji Begum v. State of Andhra Pradesh, 1979 Cri LJ NOC 42 (Full report in 1978 (2) APLJ 191), where it was held that the power of the authorised officer and that of a Magistrate Under Section 45 were mutually exclusive and, therefore, there could not be simultaneous proceedings for confiscation before the authorised officer under Sub-section (2A) of Section 44. It was noticed that this decision was reversed by the Supreme Court. The Supreme Court approved the view taken in a later decision of the Andhra Pradesh High Court in Mohd. Yasin v. Forest Range Officer, Flying Squad, Rayachoti (1980) 1 Andh LT 8, that merely because there was acquittal of the accused in the trial before the Magistrate due to paucity of evidence or otherwise, did not necessarily entail in nullifying the order of confiscation of the seized timber or forest produce by the authorised officer based on his satisfaction that forest offence had been committed in respect thereof and formed this view.

14. It is thus, clear that there could be parallel proceedings before the authorised officer and the Magistrate and where there is confiscation proceeding, the authorised officer has power to pass order in regard to confiscation and conviction or acquitted by the Magistrate has no bearing on the sustain-ability of such an order. It may be said that where confiscation proceeding does not result in order of confiscation, the Magistrate could, in case of conviction, order confiscation, though such contingencies may be rare.

15. We are not impressed with the sub-mission that initiation of confiscation proceedings is a matter of choice on the part of forest officer, police officer or authorised officer. Seizing officer has to report to the authorised officer or the Magistrate as the case may be Under Section 52 of the amended Act. If the authorised, officer has reason to believe that a forest offence, has been committed in respect of the seized property upon production thereof or upon, receipt of the report, he has no discretion not to initiate confiscation proceedings, and is bound to initiate confiscation proceedings subject, of course, to the provisions of Sub-section (4) of Section 54. We have also indicated that there is no choice available to the seizing officer whether or not to prosecute the offender. Where the seizing officer sends report to the Magistrate, the Magistrate is empowered to proceed. Even otherwise, under the provisions of the Code, the Police Officer has to register a case (since it is cognizable offence) and the Forest Officer, being a public officer, is required to discharge his duties in a lawful manner and to bring to the notice of the Magistrate the commission of cognizable offence by way of a complaint.

16. Thus, we see that in the generality of cases, confiscation will be by the authorised officer. Magistrate's power of confiscation is subject to power of confiscation of the authorised officer. It is rarely that the Magistrate will have to exercise power of disposal of property. Hence it is not possible to agree that the forum of confiscation proceedings or invocation of jurisdiction of either authority is left to the whims and fancies of the seizing or authorised officer.

17. Learned counsel for the petitioners have referred us to a few decisions dealing with statutes Which provide for special forum and procedure. The decision in The State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75 : 1953 Cri LJ 510, dealing with West Bengal Special Courts Act which left it entirely to the discretion of the State Government to direct certain types of cases to be tried by special courts, held that the provisions are violative of Article 14 on the basis of discretion being unregulated and unguided. The provisions of Saurashtra State Public Safety Measures Ordinance were considered in Kathi Raning Rawat v. State of Saurashtra, AIR 1952 SC 123 : 1952 Cri LJ 805. The Court indicated that all legislative differentiation is not discriminatory. Power of State to regulate criminal trials by constituting different courts with different procedures according to the needs of different parts of the State is an essential part of police power. Though differing procedures might involve disparity in treatment of persons tried under them, such disparity, by itself, is not sufficient to outweigh the presumption, of valid classification unless the degree of disparity goes beyond what the reason for its existence demands such as amounting to denial of fair trial. Legislation for purposes of dealing with complex problems that arise out of an infinite variety of human relations, cannot but proceed upon some sort of selection or classification of persons upon whom the legislation is to operate. If the policy is clear and definite and has an effective method of carrying out that policy, a discretion is vested upon a body of administrators or officers to make

selective application of the law to certain classes or groups of persons, statute itself cannot be said to be discriminatory. The power given to the authority would import a duty on it to classify subject matter of legislation in accordance with the objective of the law and it is not unguided discretion. If on the other hand, the act does not disclose a definite policy or objective and confers authority on another to make selection at his pleasure, the act would be arbitrary. In Suraj Mall Mohta and Co. v. A. V. Visvanatha Sastri, AIR 1954 SC 545, the court dealt with the provisions of Taxation of Income (Investigation by Commission) Act, 1947, which conferred on Govt. the power to refer to the commission for investigation and report any case or points in a case. It was held that one of the provisions, namely Section 5(4) violates Article 14 on the ground that there is no ground of appeal or second appeal or revision provided and the constitution of commission itself is not a safeguard of substitute for deprivation of right to approach a superior forum.

18. In Kangshari Halder v. State of West Bengal, AIR 1960 SC 457 : 1960 Cri LJ 654, the Court considered the provisions of the W. B. Tribunals of Criminal Jurisdiction Act, 1952. The object of the Act was to provide for speedy trial of specified offences in the interest of security of the State, maintenance of public peace and tranquillity and due Safeguarding of industry and business. This object was to be effectuated by appointing Special Tribunals to try the specified offences which have taken place in disturbed areas. It was held that having regard to the policy and object of the Act as revealed from the preamble and the provisions thereof, the impugned provisions cannot be held to be arbitrary. In Gopikishan v. Asstt. Collector Customs Raipur, AIR 1967 SC 1298 : 1967 Cri LJ 1194, the Court considered the powers of seizure dealt with Under Section 105 of the Customs Act. Seizure can be made only on the basis of existence of facts indicated therein. The provisions contain a policy and effective checks on exercise of power. No doubt power can be abused, but the abuse could be controlled by other means. If the existence of belief is questioned in any collateral proceedings, the officer has to produce relevant evidence to sustain his belief. He has to send a copy of record to the Collector forthwith and the Collector could interfere in the matter. The Court observed that more effective control is found in Section 136(2) of the Act creating liability on the officer for punishment by way of sentence of imprisonment. The Court took the view that liability for prosecution is an effective check on arbitrary act.

19. In M. Chagganlal v. Greater Bombay Municipality, AIR 1974 SC 2009, the controversy regarding two procedures has been dealt with at length. Where a statute provides for more drastic procedure different from the ordinary procedure and covers the whole field covered by ordinary procedure without any guidelines as to class of cases in which such procedure is to be resorted to, it may be arbitrary. Even provision for appeal may cure the defect. If from the preamble, the surrounding circumstances as well as the provisions, necessary guidelines can be inferred, Article 14 is not attracted. The mere fact of availability of two procedures will not vitiate the law. The Court held that merely because one provides the forum of civil Court while the other provides the forum of Administrative Tribunal, it cannot be said that the latter is more drastic or onerous. The fact that the Legislature considered that the ordinary procedure is insufficient and ineffective in evicting unauthorised persons and provided special speedy procedure itself indicates a clear guidance to the authority. In case of Commissioner of Sales Tax v. Radhakrishnan, AIR 1979 SC 1588 the dual procedure prescribed for collection of sales tax under Section 46 of the M.P. General Sales Tax Act, 1958 was upheld on the ground that clear guidance is available from the policy of the law in regard

to the exercise of discretion. In graver cases, the officer will be justified in taking the drastic remedy and resorting to prosecution in the Criminal Court Under Section 49 satisfied that such a course is necessary for the collection of the tax expeditiously. See also Ashoka Marketing Ltd. v. Punjab National Bank, AIR 1991 SC 855.

20. Considering the provisions involved in the case in the light of the principles referred to above, we are not satisfied that there is any arbitrariness involved, We have already indicated that in the generality of cases, confiscation proceedings are to be initiated by the authorised officer. Criminal prosecution is not an alternative to confiscation proceedings. The two proceedings are parallel proceedings, each having a distinct purpose and object. 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. The object of the prosecution is to punish the offender. Thus, the contention that two procedures are prescribed for the same purpose and to cover the same area is not tenable. The contention that the procedure for confiscation is more drastic than the procedure for prosecution is equally untenable. In one case, confiscation may result if the authorised officer is satisfied that a forest offence has been committed. In the other, the Magistrate must be satisfied that the charge has been established beyond reasonable doubt. It cannot be said that there is no safeguard for the persons subjected to confiscation procedure. The Magistrate is informed about the confiscation proceeding. Show cause notice is given inviting representation. Hearing is given. The expression 'hearing' is one of broad import. It includes opportunity to adduce evidence also. Appeal lies to a Superior Officer, namely, Conservator of Forests. Revision lies to the Sessions Court whose decision is final. The existence of these substantial safeguards negatives any possibility of denial of justice. We, therefore, repel the contention of the petitioners and hold that the provision in Section 52(3) is not arbitrary. We are fortified in this view by the observations in Sharad Kumar v. State of Orissa, AIR 1992 Orissa 128.

21. Point No. (ii): It is contended that Authorised Officer is an officer of the Forest Dept. and he is made a Judge in his own cause and this is viciative of principles of natural justice. 'Forest Officer' means any person empowered to carry out all or any of the purposes of the Act or to do anything required by the Act or the Rules. The power to seizure vests with Forest Officer or Police Officer. The power to confiscate is vested neither with the Forest Officer nor with the Police Officer. It is Vested with the Authorised Officer, i.e., an Officer not below the rank of an Extra Assistant Conservator of Forests duly authorised by the State Government. The departmental Head is the Chief Conservator of Forests. Thus, it can be seen that the post of Asstt. Conservator of Forests is a fairly high rank post in the Departmental hierarchy. It is not possible to presume that an Assistant Conservator of Forests will act in favour of the Forest Officer's action. The Authorised Officer, while discharging his statutory function in regard to confiscation cannot be regarded as Judge in his own cause. The doctrine of bias can have no application in relation to the procedure. There cannot be any apprehension or real likelihood of bias or whittling down of purity of administration of justice. It is noteworthy that the decision of the Authorised Officer is subject to appeal before the Conservator of Forests and to revision before the Court of Session. The appellate and revisional authorities have ample power to correct order of confiscation. We reject the contention that the provision of confiscation violates principles of a natural justice. There is nothing in the provision which even remotely can be regarded as violative of Article 19(1)(g) or Article 21 of the Constitution.

22. Point No. (iii) : Learned counsel for the petitioners contended that Section 52(3) of the Act contemplates only confiscation of the produce, tools, vehicles etc. as mandatory and no discretion is vested with the Authorised Officer to impose a lesser penalty commensurate with the gravity of the offence and, therefore, the provision is arbitrary. The assumption that confiscation is mandatory or is intended to be a punishment for the offender is erroneous. The scheme of the Central Act contemplating successful prosecution of the offender leading to confiscation has been drastically modified by the 1983 Act to provide for an additional procedure for confiscation, a procedure which is less cumbersome and more expeditious than the procedure of prosecution and at the same time, assuring necessary safeguards to the affected persons. The scheme of the Central Act provides for prosecution incidentally leading to confiscation of property. The scheme of the amendments introduced by the 1983 Act prescribes an independent procedure for confiscation. The intention is to ensure that the vehicle used in the trasaction is no longer available for such misuse and to act as deterrent for the offender and others. These objects can be well served by confiscating the vehicle. The order of confiscation has far reaching consequences vis-a-vis the offender inasmuch as he will be deprived of his tools or valuable vehicle. This, however, cannot mean that order of confiscation should be regarded as a judgment of conviction or imposition of punishment.

23. Section 52 contemplates an order of confiscation being passed by the Authorised Officer upon his satisfaction that "a forest offence has been committed in respect of the property seized." On such satisfaction, he may, by order in writing and for reasons to be recorded, confiscate the forest produce so seized together with tools, vehicles, boats, ropes, chains and other articles used in committing such offence. Learned counsel appearing for some of the petitioners argued that whenever requisite satisfaction is present, it is obligatory for the Authorised Officer to pass an order of confiscation. We do not understand the expression 'may' used in the provision as creating a mandatory obligation. Power conferred under the provision is discretionary. In State of Andhra Pradesh v. Bathu Prakasa Rao etc. AIR 1976 SC 1845 : 1976 Cri LJ 1387, considering similar provision of the Essential Commodities Act, it has been held that it confers only discretionary power. The discretion is not unregulated or uncanalised. The power conferred on the Authorised Officer is power coupled with public duty. It is for the Officer having regard to the policy and provisions of the Act to consider whether confiscation is to be ordered in a given case. A variety of circumstances such as the nature and gravity of the offending act, the circumstances of offender, the circumstances in which the act took place, the nature and quantity of the forest produce involved in the offence, suspicion of the vehicle being continuously misused etc. have to be considered. Consideration as to whether in a given case speedy action in the matter of investigation is necessary or whether it can be left to the more elaborate procedure of a Criminal Court has to be taken into account in arriving at a decision. In Ram Sarup v. Union of India, AIR 1965 SC 247 : 1965 (1) Cri LJ 236, while considering the choice of forum of trial by the Court Martial or by ordinary Criminal Court, the Supreme Court indicated that though Section 125 of the Army Act does not contain specified guidelines, there are sufficient materials in the Act which guided the exercise of the discretion. In Commissioner of Sales Tax v. Radhakrishan, AIR 1979 SC 1588 : 1979 Tax LR 1843, the Court, while considering the two procedures for recovery of sales tax prescribed in the M.P. General Sales Tax Act, 1959, namely, levy of penalty by the Commissioner and initiation of prosecution by the Commissioner, noticed the absence of express guidelines governing the choice and indicated that guidelines have to be implied from the policy of the Act itself. It will be

advantageous to quote the following observations made by the Court (at page 1593 of AIR SC):

"In considering the validity of a Statute, the presumption is in favour of its constitutionality and the burden is upon him who attacks it to show that there has been a clear transgression of constitutional principles. For sustaining the presumption of constitutionality, the Court may lake into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived. It must be always be presumed that the Legislature understands and correctly appreciates the need of its own people and that discrimination, if any, is based on adequate grounds. It is well settled that Courts will be justified in giving a liberal interpretation to the section in order to avoid constitutional invalidity. These principles have given rise to rule of reading down the section if it becomes necessary to uphold the validity of the sections."

Considering the dual procedures prescribed by the Act, the Court opined that one of the procedures can be read as being applicable to cases in which the stringent step of prosecution is considered not necessary.

24. In Slate of Kerala v. Sukumara Panicker, 1987 (2) KLT 341, a Full Bench of the High Court of Kerala considered the provisions of the Kerala Forest Act, 1961. The Court noticed the permissive language used in Section 61A(2) of the Act and observed :

"It is for the Officer concerned to consider in each case having regard to all the circumstances, whether confiscation of the vessel is to be made. But it leaves no room for doubt in our mind that the power vested in the authorised officer under Section 61A of the Act should be exercised bearing in mind the policy and purpose and background of the Act which we have enumerated hcreinabove. Illicit removal of the Government property is a matter which should be viewed with serious concern. Section 61A itself was enacted to effectively check such illicit removal and with a view to provide deterrent provisions for effectively preventing such illicit removal.

Any act done or conduct pursued in the matter of illicit removal should be so effectively dealt with which will also prevent recurrence."

Referring to the value of the seized contraband being negligible compared to the value of the vehicle, the Court observed :

"In our view, at the most, the factor may not be totally an irrelevant one in adjudicating the question as to whether the vehicle may be confiscated in exercise of the powers under Section 61 A(2) of the Act, in all the circumstances of the case. But this is again a matter to be primarily considered by the authorised officer in the tight of the policy, object and purpose of the Act taken as a whole, which we have enumerated above."

25. In State of M.P. v. Azad Bharat Finance Co., AIR 1967 SC 276 : 1967 Cri LJ 285, the Court considered Section 11(d) of the Opium Act, 1878, as applicable to Madhya Pradesh which stated, inter alia, that 'the property detailed hereinbelow shall be confiscated' and held (at page 278):

"In our opinion, the High Court was correct in reading Section 11 of the Madhya Bharat Act as permissible and not obligatory. It is well settled that the use of the word 'shall' does not always mean that the enactment is obligatory or mandatory; it depends upon the context in which the word 'shall' occurs and the other circumstances. Three considerations are relevant in construing Section 11. First, it is not denied by Mr. Shroff that it would be unjust to confiscate the truck of a person if he has no knowledge whatsoever that the truck was being used for transporting opium. Suppose a person steals a truck and then uses it for transporting contraband opium. According to Mr. Shroff, the truck would have to be confiscated. It is well recognised that if a statute leads to absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. Secondly, it is a penal statute and it should, if possible, be construed in such a way that a person who has not committed or abetted any offence should not be visited with a penalty. Thirdly, if the meaning suggested by Mr. Shroff is given, Section 11(d) of the Madhya Bharat Act may have to be struck down as imposing unreasonable restrictions under Article 19 of the Constitution.

Bearing all these considerations in mind, we consider that Section 11 of the Madhya Bharat Act is not obligatory and it is for the Court to consider in each case whether the vehicle in which the contraband opium is found or is being transported should be confiscated or not, having regard to all the circumstances of the case."

26. Learned counsel for the petitioners have invited our attention to the decision in Gurdev Singh Rai v. Authorised Officer, AIR 1992 Orissa 287, under Section 56(2a) of the Orissa Forest Act. The Court noticed that while providing for confiscation, the Legislature did not provide for any lesser penalty by way of fine. The Court thought that this was a lacuna in the Act and resolved to read into the statute words which are not there, namely, words providing for alternative penalty for levy of fine. We have given our serious thought to the ratio and the reasoning of the Orissa High Court. With respect, we are unable to agree with the same. We are quite conscious that interpretative process leading to absurdity should ordinarily be avoided and where two interpretations are possible, one which furthers the object of the statute should be preferred. In extreme cases, it may be quite open to a Court to read into the statute words which are not there, but we do not think that this exercise can be taken to the limit suggested by the Orissa High Court by introducing levy of fine which the Legislature never thought of. The omission to provide for imposition of fine by the Authorised Officer may not be a lacuna. It may be a result of deliberate policy on the part of the Legislature. What the Legislature intended was confiscation of the forest produce or the implements or vehicles used for commission of a forest offence. The provision for confiscation of the vehicle is introduced not to punish the offender or the abettor, but to remove the vehicle out of circulation and as deterrent. Choice is given to the Criminal Court to impose sentence of imprisonment or fine or of both as punishment for the penal offence. A choice is quite unnecessary to be provided in regard to confiscation. Either the article is to be confiscated or it is not to be confiscated depending on the facts and circumstances of each case. If imposition of fine is considered adequate, criminal prosecution could be pursued with vigour and the Authorised Officer could very well refrain from ordering confiscation.

27. Order of confiscation is not mandatory in all cases where the Authorised Officer is satisfied about commission of the forest offence and use of the vehicle in the commission of the offence. There may be circumstances which justify the order of confiscation; at the same time, there may be circumstances which do not justify the order of confiscation. The failure to provide for imposition of fine by the Authorised Officer does not create any infirmity in the statutory provision.

28. Confiscation proceeding is quasi-judicial proceeding and not a criminal proceeding. Proof beyond reasonable doubt and proof of mens rea are foreign to the scope of the confiscation proceeding. Confiscation proceeds on the basis of the 'satisfaction' of :he Authorised Officer in regard to the commission of forest offence. This of course does not mean that innocent owner of the vehicle will be subjected to unjust action. Sub-section (5) of Section 52 protects owners of tools, boats, ropes, chains, vehicles etc. If the person concerned proves to the satisfaction of the Authorised Officer that such tools, vehicles, etc. 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 for commission of forest offence. This is a safeguard against arbitrary action. Absence of power in the Authorised Officer to impose fine as an alternative to confiscate does not render Section 52(3) unjust or unfair or arbitrary. Point answered accordingly.

29. Point No. (iv) : The scheme of the Central Act, as amended by the 1983 Act ensures that in the generality of cases, confiscation can be ordered by the Authorised Officer, subject of course to the result of the appeal and revision. Section 52C involving bar of jurisdiction under certain circumstances has been incorporated by the 1983 Act. According to Sub-section (1), on receipt of intimation by the Magistrate under Section 52(4) of the Act about initiation of proceedings of confiscation, no Court, Tribunal or Authority other than the Authorised Officer, Appellate Authority or Court of Session referred to in Sections 52, 52A and 52B shall have jurisdiction to make orders with regard to possession, delivery or disposal or distribution of the property which is subject matter of confiscation proceedings notwithstanding anything to the contrary in the Act or any other law. Sub-section (2) saves the power of empowered officer under Section 61 to direct immediate release of any property seized under Section 52. According to the learned counsel for the petitioners, Section 52C encroaches into the judicial power of the Magistrate and is unconstitutional as it renders the power of the Magistrate subject to that of the Authorised Officer, a mere departmental officer. The provision is said to encroach on the power of Magistrate under Sections 451 and 457 of the Code; Section 5 of the Cr.P.C. states that nothing contained in the Code shall, in the absence of specific provision to the contrary, affect any special law or local law for the time being in force or any special jurisdiction or power conferred, or any special form of procedure prescribed by any other law for the time being in force. The Forest Act is certainly a special law within the meaning of Section 5 of the Code. It necessarily follows that Sections 451 and 457 of the Code can have no application in the face of the impugned provisions of the Act, except to the extent permitted under those provisions.

30. Learned counsel appearing for both sides have relied on a few decisions which we shall briefly advert to. One of the decisions relied on by the petitioners is in Re Special Courts Bill, 1978 AIR 1979 SC 478, with specific reference to observations in paragraphs 83, 84 and 94. The former two

paragraphs deal with contention of invalid classification and unguided discretion. Observations in para 94 deal with the absence of power to transfer power from one special Court to another. This case has no relevance with argument under consideration. In Utkal C. & J. (P) Ltd. v. State of Orissa, AIR 1987 SC 2310, the Court upheld the Ordinance validating a prior notification issued under the Act which had been held by the Supreme Court not to apply in respect of Sal Seeds grown or found in Government forests. The Court, in para 14, held that while it is impermissible for a statute to merely declare without anything more or overrule or reverse any judicial decision, it is always within the power of the Legislature to render ineffective judgments or orders of the Court by changing their basis or removing the basis of ineffectiveness or invalidity of action and such legislation cannot be regarded as encroachment of judicial power. This decision has also no relevance to the matter under consideration.

31. In D, Shanthalakshmi v. State of Tamil Nadu, AIR 1983 Mad 232, the Madras High Court held that the provision enabling an Officer of the State Government to detain S. L. Cart or other vehicle used in the Commission of an offence under the Madras Prohibition Act till the case is disposed of by the Court and that no interim order regarding disposal of the property shall be passed by the Court till the case disposed of is invalid, as they are arbitrary. A citizen may be deprived of his lawful possession of the property concerned till the case is disposed of by the Highest Court of the land and the provision makes no distinction between the cases of small quantity of liquor being transported by one of the consumers holding permit and the detention of the property or vehicle would cause enormous loss to the nation. In our opinion, the backdrop of the above decision is different from the backdrop of the present case. Under the impugned provisions in the present case, the officer seizing any property shall report to Authorised Officer, or if immediate prosecution is intended, to the Magistrate. The Authorised Officer has jurisdiction to initiate confiscation proceedings. When confiscation proceeding is initial-ed. it is the Authorised Officer who has legal seizin of the property. It must follow that he has incidental or ancillary power of passing an order of temporary custody or possession of the property. Similarly, the Appellate Authority and the Revisional Authority also must be taken to have such incidental and ancillary power. Under Section 61 of the Act. an empowered officer can, at any time, direct release of seized property. This provision is saved by Section 52C of the Act. Even the Forest Officer of the particular rank has power to release the property on bond, as could be seen from Section 53 of the Act. Where no confiscation proceeding is initiated, the Magistrate himself can exercise the powers vested in him under the Cr.P.C. as in such a contingency, the scheme providing for confiscation proceeding does not apply. The jurisdiction of the Magistrate to pass order regarding temporary custody or disposal of property is taken away only in cases where confiscation proceeding is initiated, followed by intimation. The ban on jurisdiction is partial and not total or absolute. Therefore, the principle laid down in D. Shanthalakshmi's case (supra) is inapplicable to the present case.

32. Reliance is placed on a decision of this Court in Vasant v. State of M.P., AIR 1980 MP 106 (sic), which struck down the provisions of Sections 11A(3), 118, 41 proviso, 42 proviso of the M.P. Ceilings on Agricultural Holdings Act, 1960, as constituting an encroachment on judicial power. The effect of the provisions was to ensure that notwithstanding any order of decision by a Court or an appellate authority, the person aggrieved shall not be entitled to the land, but only to compensation. It was held that these provisions have the effect of modifying an order or decision of a Tribunal or a Court

in exercise of judicial power without changing the basis of the order or decision. This decision is also inapplicable to the provision under consideration in the present case.

33. We may refer to the decision in Ashok Marketing Limited, AIR 1991 SC 855, where the Court held that the provisions of Public Premises (Eviction of Unauthorised Occupants) Act. override the provisions of Delhi Rent Control Act. The Public Premises Act invests power with an executive officer to pass order of eviction, while under the Rent Control Act, the power vests with a quasi-judicial authority. Nevertheless, it was held that the Public Premises Act overrides the Delhi Rent Control Act. We will also advert to the decision of a Division Bench of this Court in B. Johnson Bernard v. C. S. Naidu, 1985 MPLJ 675 ; AIR 1986 MP 72. Act No. 27 of 1983 and Act No. 7 of 1985 which amended the M.P. Accommodation Control Act, 1961 by providing a special forum and procedure for eviction of tenants of specified categories of landlords on the ground of bona fide need has been sustained in this decision even though the Special Authority is the Rent Controlling Authority, while the Authority in relation to other grounds of eviction is Civil Court. The Court observed :

"It is settled that merely because the other forum is manned by an executive officer, instead of a Judicial Officer, it cannot be said that it results in violation of Article 14. It is also settled that mere availability of two procedures, one under the ordinary law and the other under the impugned provisions do not, by themselves, attract the vice of discrimination, unless one of them is so harsh or onerous as to suggest that a discrimination would result, if resort is made to it, instead of the ordinary remedy under the general law."

The impugned provision does not offend Articles 14, 19(1)(g) or 21 of the Constitution. Point answered accordingly.

34. Point No. (v) : According to learned counsel appearing for some of the petitioners, there is no provision for interim release of the vehicle, no provision prescribing time limit for disposal of confiscation proceedings, no time limit for keeping the vehicle in custody and these features render the scheme of the Act as amended, arbitrary and unjust. It is true that neither the Central Act nor the Central Act as amended in Madhya Pradesh, contains provisions prescribing time limit for keeping in custody the vehicle or for disposal of confiscation proceedings within any time limit. It has to be noticed that there is no time limit prescribed for disposing of criminal prosecution cither. It is known that there are over 15 lacs criminal cases pending in the subordinate Criminal Courts in the State. It is common experience that disposal of criminal cases takes long time. The alternative scheme of confiscation proceedings has been provided partly to overcome the adverse consequences resulting from delay in disposal of criminal prosecutions involving confiscation. Though the provisions do not prescribe time limit for termination of confiscation proceedings, yet it would be reasonable to except that the Authorised Officers who have to deal with confiscation proceedings whose number is small compared to the number of criminal prosecutions pending in the State would be in a position to dispose of the proceedings within a reasonable time. We have already indicated that Forest Officer of a particular level under Section 53 of the Act has power to release the property and that Forest Officer, the Appellate Authority and the Revisional Authority also have power to pass orders regarding temporary custody or disposal of the property. In this light, we reject

the contention of the petitioners and answer the point accordingly.

35. Point No. (vi) : Petitioners contend that there is no repugnancy between Sections 52(3) and 55(1) of the Central Act, as amended. Under Section 52(3), Authorised Officer can order confiscation of property on being satisfied that forest offence has been committed in respect thereof. Under Section 55(1), property is liable to confiscation upon the conviction of the offender. It is true, as pointed out by learned counsel, that the standard of proof required for confiscation in one case and that required for conviction in the other case is not the same. But for that reason, these provisions cannot be regarded as conflicting or repugnant to each other. Conviction may result in sentence of imprisonment involving deprivation of liberty and other serious consequences, while order of confiscation under Section 52 does not have such grave or serious consequences. The scheme of the Act providing for a separate confiscation procedure has a substantial public purpose to serve and is in tune with Articles 48A and 51A(g) of the Constitution of India. We find no repugnancy as contended. Point answered accordingly.

36. Point No. (vii) : We now turn to the provisions of the 1969 Act. This was enacted to 'provide for regulating in public interest threat to certain forest produce by creating monopoly of the State'. Sections 15 and 22(1) were substituted and Sections 15A to 15D were introduced by the amending Act 15 of 1987. In the 1969 Act, as it originally stood, there was no provision for confiscation of goods or vehicles, though there was provision for penal action and composition of offence. The substituted Section 15 is more or less on par with Section 52C of the Central Act, as amended by the 1983 Act. Sections 15A to 15D are more or less similar to Sections 52A to 52C of the Central Act as amended. Therefore, our observations and findings regarding the impugned provisions of the amended Central Act will apply to the amended provisions of the 1969 Act.

37. Section 22 of the 1969 Act, as it originally stood, stated that "nothing contained in the Indian Forest Act, 1927, shall apply to specified produce in respect of matters for which provisions are contained in this Act." Section 2(d) defines 'forest produce' as meaning the several species described therein. Section 2(d) defines "specified forest produce" as meaning the forest produce specified in the Notification issued under Sub-section 1(3) of the said specified area. In other words, the provisions of the Central Act did not apply to specified forest produce in respect of matters dealt with under the 1969 Act. It is necessary to bear in mind that the Central Act was drastically amended in M.P. State in 1983 introducing the alternative scheme for confiscation by Authorised Officer. Since the 1969 Act, as it originally stood, did not provide for confiscation by Authorised Officer, the provisions of the Central Act, as amended by the 1983 Act, applies to specified forest produce dealt with under the former Act. This position has been altered by the 1987 Act which introduced in the 1969 Act changes similar to those introduced in the Central Act by the 1983 Act. Section 22(1) of the 1969 Act, as amended by the 1987 Act, states that "matters relating to specified forest produce not provided for in the 1969 Act and provided for in the Indian Forest Act, 1927, shall be governed by the provisions of that Act." Since the scheme of confiscation procedure is introduced in the 1969 Act by the 1987 Act, only such provisions can be applied to specified forest produce in specified area after 1987. Therefore, after the 1987 Act, confiscation proceeding in relation to specified forest produce, as defined in the 1969 Act, has to be initiated under the provisions of that Act. The reasons which persuaded us to sustain the provisions of the Central Act, as amended by the 1983 Act would

apply also to the challenge against the parallel provisions of the 1969 Act, as amended by the 1987 Act. Point answered accordingly.

38. Point No. (viii) : It is contended by learned counsel for the petitioners who are sought to be dealt with under the amended provisions of the 1969 Act, that interim release of vehicle to them cannot be refused by the Magistrate on the strength of Section 52C of the amended Central Act, as that provision would be inapplicable. Section 15C of the amended 1969 Act bars jurisdiction of the Magistrate in the same way as Section 52C of the amended Central Act bars the Magistrate's jurisdiction. I Therefore, the Magistrate cannot invoke his powers under the Code of Criminal Procedurs on account of Section 15C of the amended 1969 Act. Point answered accordingly.

39. Point No.(ix): Petitioner in M.P. No. 1169/84 is a part owner of a tractor. A police case was registered on the ground that provisions of 1969 Act were violated using the tractor-cum-trolly on 17-3-1984. The tractor was seized thereafter. The Magistrate concerned declined to release the tractor on the ground that he has received intimation about the initiation of confiscation proceeding. Petitioner contends that forest produce involved in the case, being specified forest produce, as defined in the 1969 Act, provisions of the Central Act are rendered inapplicable by virtue of Section 22(1) of the 1969 Act. The seizure was long after the Central Act was amended by the 1983 Act and before the 1969 Act was amended. Therefore, the amended provisions of the Central Act could be invoked by the police officer concerned and on receipt of the intimation, the bar of jurisdiction of the Magistrate imposed by Section 52C is attracted. It is contended that the amending Act of 1987 has no retrospective effect. But this has no bearing on the petitioner's case, as the alleged forest offence was committed after the Central Act was amended and before the 1969 Act was amended. At the time of commission of the alleged offence, the 1969 Act did not provide for confiscation proceeding by Authorised Officer. Therefore, provisions of the amended Central Act relating to confiscation procedure by Authorised Officer are attracted. Petitioner cannot succeed on the ground that the 1987 Act has no retrospective effect. Point answered accordingly.

40. In view of our conclusions on the contentions raised by the petitioners, the petitions deserved to be and are hereby dismissed. There shall be no order as to costs. Security amount, if deposited, shall be refunded to the petitioners.