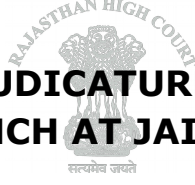


**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



1. S.B. Criminal Miscellaneous (Petition) No. 2097/2024

Rameshwar S/o Balchand, R/o Rawali Ramganjmandi District
Kota (Raj).

----Petitioner

Versus

State Of Rajasthan, Through PP

----Respondent

Connected With

2. S.B. Criminal Miscellaneous (Petition) No. 1978/2024

Kailash Garwal Son Of Gavariya Garwal, Resident Of Khaden,
Post Kodra, Police Station Ravti, District Ratlam (MP)

----Petitioner

Versus

State Of Rajasthan, Through Public Prosecutor

----Respondent

3. S.B. Criminal Miscellaneous (Petition) No. 6030/2023

Shri Yunish Son Of Sabu Khan, Resident Of Anah Gate,
Bajariya, Bharatpur, Police Station Atalbandh, Bharatpur,
(Registered Owner Of Vehicle).

----Petitioner

Versus

State Of Rajasthan, Through The Public Prosecutor.

----Respondent

4. S.B. Criminal Miscellaneous (Petition) No. 1941/2024

Jafar Quareshi Son Of Pashu Quareshi, R/o Phulambri, District
Aurangabad. (Owner Of Vehicle Truck Bearing No. Mh 20 El
9524)

----Petitioner

Versus

State Of Rajasthan, Through PP

----Respondent

For Petitioner(s) : Mr. Dushyant Singh Naruka
Mr. Anant Sharma with
Ms. Sunita Meena,
Mr. Ankit Khandelwal
Mr. Jiya Ur Rahman

Amicus Curiae : Mr. Anurag Sharma
Mr. S.S. Hora
Mr. Pankaj Gupta
Mr. Sudhir Jain
Mr. Rajneesh Gupta

For Respondent(s) : Mr. S.S. Mahla, PP

HON'BLE MR. JUSTICE SUDESH BANSAL

Judgment

Reserved On:

May 15th, 2024

Pronounced On:

July 01st, 2024

BY THE COURT:

REPORTABLE

1. By means of filing these petitions, petitioners have invoked jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure (Cr.PC), in order to challenge four different orders passed by the concerned District Collector in exercise of its power and jurisdiction under Section 6-A of the Rajasthan Bovine Animal (Prohibition of Slaughter and Regulation of Temporary Migration or Export) Act, 1995 (hereinafter referred to as "the Rajasthan Bovine Animal Act, 1995" Or "the RBA Act, 1995"), in respect of confiscation or release or refuse to release of the means of conveyance (vehicles), which was seized by the Police while registering respective FIRs for commission of an offence punishable under the Rajasthan Bovine Animal Act, 1995, on the ground that the vehicles in question were allegedly found to be used in the commission of an offence under the RBA Act, 1995.

2. Since in all these petitions, the prayer of petitioners is to release their respective vehicles (means of conveyance) on Supurdgi or on an interim custody, and consequently to quash the impugned orders passed by the Collector of concerned District being Competent Authority under the RBA Act, 1995, it is desirable to consider the ambit & scope of power and jurisdiction of the District Collector, to release or to confiscate the vehicle, seized in connection with commission of an offence under the Rajasthan Bovine Animal Act, 1995.

3. In this regard, in the original Rajasthan Bovine Animal Act, 1995, there was no provision about seizure and confiscation of the "means of conveyance" which is used in connection with commission of offence punishable under this Act, however, when this gap was brought to notice of the State legislature and it was proposed that provision is required to be inserted in the RBA Act, 1995, for seizure and confiscation of the means of conveyance, on the similar line of provisions as contained under Section 69 of the Rajasthan Excise Act, 1950, the State Legislature inserted Section 6-A in the RBA Act, 1995, by introducing the Rajasthan Bovine Animal (Prohibition of Slaughter and Regulation of Temporary Migration or Export) (Amendment) Act, 2018 w.e.f. 05.12.2019, to accomplish such aim and object. The provision of seizure and disposal of the Bovine Animal was available in the original RBA Act, under Section 7. For ready reference, newly inserted provision of Section 6-A and already existed provision of Section 7, of the Rajasthan Bovine Animal Act, 1995, are being reproduced here under:-

"6-A. Confiscation of the means of conveyance.- (1) Whenever an offence punishable under this Act is committed, any means of conveyance used in the commission of such offence shall be liable to confiscation.

(2) Where any means of conveyance referred to in sub-Section (1) is seized in connection with the commission of any offence punishable under this Act, a report of such seizure shall, without unreasonable delay, be made by the person seizing it to the Competent Authority and whether or not a prosecution is instituted for commission of such offence, the Competent Authority, having jurisdiction over the area where the said means of conveyance was seized, may, if satisfied that the said means of conveyance was used for commission of offence under this Act, order confiscation of the said means of conveyance:

Provided that before ordering confiscation of the said means of conveyance a reasonable opportunity of being heard shall be afforded to the owner of the said means of conveyance and if such owner satisfied the Competent Authority that he had no reason to believe that such offence was being or likely to be committed and he had exercised due care in the prevention of the commission of such an offence, the Competent Authority may not confiscate the said means of conveyance:

Provided further that where such means of conveyance is owned by the Central Government or any State Government or any of their undertaking, no order of confiscation of such means of conveyance shall be passed by the Competent Authority and the matter shall be referred to the State Government by the Competent Authority for making such orders regarding means of conveyance as the State Government may deem fit:

Provided also that before ordering confiscation under this sub-Section, the owner of the means of conveyance referred to in sub-section (1), may be given an option to pay, in lieu of confiscation, a fine not exceeding the market price of such means of conveyance:

Provided also that an owner of a means of conveyance shall not be given option under the preceding proviso, if he had been given option under that proviso at an earlier occasion.

(3) Whenever any means of conveyance as referred to in sub-section (1) is seized in connection with commission of an offence under this Act, the Competent Authority shall have, and notwithstanding anything contained in any law for the time being in force, any Court, Tribunal or other authority shall not have, jurisdiction to make order with regard to the possession, delivery, disposal or release of such means of conveyance.

(4) Where the Competent Authority is of the opinion that it is expedient in public interest or for the benefit of its owner that the means of conveyance, as referred to in sub-section (1), seized for commission of offence under this Act be sold by public auction, he may at any time direct it to be sold.

(5) Any order of confiscation made by the Competent Authority shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act."

7. Custody and disposal of bovine animal seized.-

(1) Whenever as a result of search or seizure or as a result of inspection or otherwise the bovine animals are seized, the custody of the seized bovine animals pending final disposal of the case may be entrusted by an order of the Competent Authority to any recognized voluntary agency working for the welfare of such animals or to a Gaushala or a Gosadan governed under the provisions of the Rajasthan Gaushala Act, 1960 (Act 24 of 1960):

Provided that where there is no such voluntary agency or Gaushala or a Gosadan in any local area, the Competent Authority may entrust the custody of bovine animals to any such agency, Gaushala or Gosadan outside the area or to any other suitable person, who volunteers to maintain such animal.

(2) Whenever any case is finally disposed of, further orders regarding custody or permanent entrustment of bovine animal shall be made by the Competent Authority subject to such terms and conditions as may be deemed proper.

(3) Any person aggrieved by an order made under sub-section (1) or sub-section (2) may, within thirty days from the date of the said order, appeal against it to the Divisional Commissioner.

(4) On such appeal the Divisional Commissioner may after giving an opportunity to the appellant and the Competent Authority or any other officer authorized by him in this behalf to be heard, direct the order to be stayed pending disposal of the appeal or may modify, after or annual the order and make any further orders that may be just.

(5) Whenever any bovine animal is seized under this Act the Competent Authority or the Divisional Commissioner shall have, and notwithstanding anything to the contrary contained in any other law for the time being in force, any other court, Tribunal or other Authority shall not have jurisdiction to make orders with regard to possession, delivery, disposal or release of such animal."

4. Bare perusal of provision of Section 6-A, inserted in the Rajasthan Bovine Animal Act, 1995, by way of amendment, makes it clear that any means of conveyance used in the commission of an offence punishable under this Act, is liable to be confiscated and whereunder the jurisdiction to pass the order of confiscation has been assigned to the "Competent Authority" only whosoever is having jurisdiction over the area where the said means of conveyance was seized. The "Competent Authority" means the Collector of the concerned District or any other Officer authorized by the State Government to exercise powers and perform the function of the Competent Authority, which is defined under Section 2(g) of the RBA Act, 1995. It is stipulated in the newly inserted Section 6-A that the order of confiscation of said means of conveyance may be passed, if the Competent Authority is satisfied that the said means of conveyance was used for commission of offence under this Act. It is further envisaged in the proviso appended to Section 6-A that before passing an order of confiscation of the means of conveyance, a reasonable opportunity of being heard shall be afforded to the owner of the said means of conveyance and an option may be given to him to pay a fine not exceeding the market price of such means of conveyance, in lieu of its confiscation. Thus, the Competent Authority acts like a quasi-judicial authority, while dealing with confiscation proceedings of the means of conveyance u/s. 6-A of the Act. It is noteworthy that by virtue of Sub-Section (3) of Section 6-A of the Rajasthan Bovine Animal Act, 1995, the "Competent Authority" is also authorized to make an order with regard to the possession,

delivery, disposal or release of such means of conveyance, seized in connection with the offence under the Act, and the jurisdiction of any Court, Tribunal or other Authority has been expressly excluded. Section 7 of the Act provides procedure to deal with the custody and disposal of the Bovine Animal, so seized under the RBA Act, 1995.

5. The Rajasthan Bovine Animal Act, 1995 is a special Act, enacted by the State legislature with an intent to prohibit slaughter of cow and its progeny as also to regulate temporary migration or export thereof from the State of Rajasthan to other States. Section 2 of the RBA Act, 1995, provides definitions of various terms. In Sections 3 to 6 and 8 to 10, various kinds of offences and punishment for such offences, are provided. Section 6-A deals with the seizure and confiscation of "means of conveyance" and Section 7 governs the custody and disposal of "bovine animal", so seized under this Act. Section 11 provides that burden to prove shall be on the person who is prosecuted for offence(s) under the RBA Act, 1995, to prove that he had not committed such offence(s). Section 12 authorizes the Competent Authority to enter, inspect places, wheresoever the Competent Authority has reason to believe that offence(s) under the RBA Act, 1995, has been or is likely to be committed. Under Section 12-A, the Competent Authority has also been empowered to arrest or caused to arrest any person, who in his presence, committed offence punishable under this Act, so also the Competent Authority has been empowered to seize or caused to seize any

means of conveyance being used in commission of an offence punishable under this Act.

6. It is noteworthy that although this special Act i.e. the RBA Act, 1995, contains various provisions for prohibition of slaughter of cow and its progeny and for not to hurt them even, as also to regulate temporary migration or export of bovine animal from the State of Rajasthan as much as the punishment for such offences under this Act, but the Act nowhere specifies the nature of offence(s), so punishable under the RBA Act, 1995, as to whether such offences are cognizable or non-cognizable? nor prescribes procedure for investigation, inquiry and trial of such offences. In such contingencies, by virtue of Section 4(2) of the Cr.PC, offences under the RBA Act, 1995, are amenable to be investigated, inquired into, tried and otherwise dealt with according to the provisions of Cr.PC and treated as cognizable, therefore a Police Officer is authorized to register an FIR and proceed for investigation including exercise his power to arrest the wrongdoer so also to seize the bovine animal and means of conveyance, used in commission of such offence. Under Sections 12 and 12-A of the Act, the Competent Authority has also been authorized and given power and jurisdiction to enter and inspect places so also to arrest the wrongdoer and seize any means of conveyance, used in commission of offence under the Act, along with the bovine animal.

7. At the cost of repetition, it is important to note that newly inserted Section 6-A in the RBA Act, 1995, specifically stipulates that the power and jurisdiction of confiscation of the means of

conveyance, used in commission of offence(s) under the RBA Act, 1995, shall be vested to the Competent Authority only and in Sub-section (3) of Section 6-A, there is clear stipulation that whenever any means of conveyance is seized in connection with commission of offence under this Act, the Competent Authority shall have, and notwithstanding anything contained in any law for the time being in force, any Court, Tribunal or other authority shall not have, jurisdiction to make order with regard to the possession, delivery, disposal or release of such means of conveyance. Sub-section (5) of Section 6-A makes it clear that any order of confiscation made by the Competent Authority shall not prevent infliction of any punishment to which the person affected thereby is liable under the RBA Act, 1995. Thus, notably such jurisdiction of Competent Authority is independent, distinct and separate, whether or not a prosecution against wrongdoer is instituted for commission of an offence.

8. It has been seen that Section 7 of the RBA Act, 1995 deals with the seizure, custody and disposal of the bovine animal by the Competent Authority i.e. the Collector of District concerned. Sub-section (5) of Section 7 further makes it clear that whenever any bovine animal has seized under this Act, the Competent Authority or the Divisional Commissioner shall have, and notwithstanding anything to the contrary contained in any other law for the time being in force, any other court, Tribunal or other Authority shall not have jurisdiction to make orders with regard to possession, delivery, disposal or release of the such animal. Thus, the Competent Authority under the Act i.e. the Collector of district

concerned is one and same authority, who is authorized and has been entrusted with the jurisdiction to deal with the issue of custody and disposal of bovine animal, so also to deal with the possession, delivery, disposal or release and confiscation of the means of conveyance, seized under the RBA Act, 1995. In this regard, the jurisdiction of any Court, Tribunal or other authority has been expressly excluded in the Act.

9. In view of above referred provisions and proceedings prescribed to deal with the prevention of slaughter of cow and its progeny and to save any bovine animal from hurt so also to regulate migration, temporary or permanent, out of State of Rajasthan, it can safely be held and observed that the bovine animal so also the means of conveyance, may be seized by the Police or by the Competent Authority in respect of commission of offence(s) under the RBA Act, 1995, but by virtue of special provisions of Sections 7 and 6-A, which are available in the RBA Act, 1995, the exclusive jurisdiction to deal with the subject matter of possession, delivery and disposal or release of bovine animal and in respect of possession, delivery, disposal, release and confiscation of the means of conveyance, has been conferred to the Competent Authority i.e. the Collector of concerned District and jurisdiction of any Court, Tribunal or other authority, is ousted. Therefore, with regard to possession, delivery, disposal or release and confiscation of "means of conveyance" regarding which this Court is concerned in the present petitions, the statutory provision of special Act, the RBA Act, 1995, Section 6-A will prevail and override the provisions of general law of the Cr.PC.

To hold this, Section 5 of the Cr.PC can be pressed into service and the maxim *generalia specialibus non derogant* comes in operation. The proposition of law in this regard is well settled that the special law will prevail over the general law. The observation made by the Hon'ble Supreme Court in case of **Suresh Nanda Vs. Central Bureau of Investigation [(2008) 3 SCC 674]**, following judicial precedents on this issue, which has been settled in various previous judgments of the Apex Court, would be suffice, wherein in Para No.10, it was held and observed by the Apex Court that "*Where there is a special Act dealing with specific subject, resort should be had to that Act instead of general Act providing for the matter connected with the specific Act.*"

It is further hereby held and observed that since the RBA Act, 1995 nowhere specifies the nature of offences and procedure for investigation and trial of such offences so punishable under the Act, therefore, in that regard the provisions of general law of Code of Criminal Procedure, 1973 would apply, by virtue of Section 4(2) of the Cr.PC. This well known proposition of law was noted in Para No.41 of judgment of the Hon'ble Supreme Court in case of **Institute of Chartered Accountants of India Vs. Vimal Kumar Surana [(2011) 1 SCC 534]**. Therefore, offences under the RBA Act, 1995 are amenable to be investigated, inquired into, tried and otherwise dealt with according to provisions of Cr.PC.

10. As has been noted hereinabove, by virtue of Section 4(2) of the Cr.PC, offences punishable under the RBA Act, 1995 are treated as cognizable in nature and a Police Officer is authorized to register an FIR in respect of commission of offence(s) under the

RBA Act, 1995, so also possesses powers and jurisdiction to enter, inspect the place, wheresoever it is believed or reasoned to believe that offence under the RBA Act, 1995 has been or is likely to be committed. In this regard, it also cannot be disputed that the Police Officer is also authorized and possesses powers of search and seizure of the bovine animal as also to seize means of conveyance used in connection with commission of offence under the RBA Act, 1995, apart from possessing power to arrest the wrongdoer, without warrant. But after seizure of bovine animal and the means of conveyance by the Police Officer, it is only the Competent Authority or the other Officer authorized by the State Government under the RBA Act, 1995, who possesses power and jurisdiction for delivery, disposal of the bovine animal so seized and to deal with the possession, delivery and disposal or release of the means of conveyance or to confiscate such means of conveyance, so seized. In this regard, the jurisdiction of any Court, Tribunal or other Authority has been specifically excluded under the RBA Act, 1995.

11. From perusal of provisions of the RBA Act, 1995 as a whole, what has been reflected is that, apart from a Police Officer, the Competent Authority or any other Officer so authorized, is also empowered under Section 12 of the Act, to enter and inspect the place, where he has reason to believe that offence under the RBA Act, 1995 has been or is likely to be committed and under Section 12-A, he is also empowered to arrest or caused to arrest any person, who in his presence, commits an offence punishable under this Act, as also has jurisdiction to seize or cause to seize means

of conveyance and bovine animals. But, in the Act, only the Competent Authority is authorized to deal with the delivery and disposal of the bovine animals so seized, as much as to deal with the delivery, disposal or release or confiscate the means of conveyance, so seized. It is thus clear that power to enter and inspect the place and to arrest and seizure of the offender, bovine animal and the means of conveyance may also be exercised by a Police Officer, while registering a criminal case (FIR) in respect of commission of offence(s) under the RBA Act, 1995, but in such eventualities, after seizure, the subject matter to deal with the custody, delivery and disposal of bovine animal and the possession, delivery, disposal or release or confiscation of such means of conveyance, only lies within the jurisdiction of the Competent Authority as defined under the RBA Act, 1995, and the jurisdiction of any Court, Tribunal or other authority is expressly excluded, in this regard.

12. Coming to peculiar facts of present four petitions in hand, respective case of petitioners, is that their vehicles were seized by the Police while registering the FIR for commission of offence(s) under the RBA Act, 1995 and thereafter, the Competent Authority i.e. the concerned District Collector has passed the impugned orders in exercise of its power and jurisdiction entrusted to him under Section 6-A of the RBA Act, 1995. Shorn off details, facts in brief of the each case, are as under:

13. In S.B. Criminal Miscellaneous (Petition) No. 2097/2024, vide order dated 05.07.2023, the District Collector, Jhalawar has passed order to confiscate the vehicle i.e. Pick-up Mahindra

bearing registration No. RJ-20-GB-8328, seized in connection with FIR No.125/2023 registered at Police Station Bhawani Mandi, Jhalawar, holding that the vehicle in question was used to transport bovine animals without permit, hence it is established that vehicle was used in commission of offences u/s. 5, 6, 8, 9 and 11 of the Rajasthan Bovine Animal Act, 1995. It is to be noted that application filed by the owner of the vehicle i.e. the present petitioner, to release the vehicle on Supurdgi, was rejected, however, in lieu of confiscation of the vehicle in question, an option has been given to the petitioner to pay/deposit fine amount equivalent to the market price of such vehicle as indicated in the document of insurance and if petitioner deposits such amount equivalent to market price, the vehicle be released on Supurdgi to petitioner, failing which the vehicle be sold by way of public auction in accordance with law. The fine amount was determined to the tune of Rs. 4 lacs, but same has been rectified and reduced to the tune of Rs.3,50,000/- as indicated in the document of insurance, vide corrigendum order dated 03.10.2023.

14. In S.B. Criminal Miscellaneous (Petition) No. 1978/2024, the order dated 20.02.2024 passed by the District Collector, Jhalawar has been challenged, whereby and whereunder, the means of conveyance (vehicle) being registration No. MP-43-G-5257 seized by the Police on 21.05.2023 in connection with FIR No.207/2023 registered at Police Station Bhawani Mandi, Jhalawar for offences under Sections 5, 6, 8, 9 and 11 of the Rajasthan Bovine Animal Act, 1995, has been ordered to be confiscated by the Collector in exercise of its powers and jurisdiction under Section 6-A of the

Rajasthan Bovine Animal Act, 1995 and by the same order, option has been given to the registered owner to deposit fine amount equivalent to the market price of the vehicle as indicated in the document of insurance and on deposition of such fine, vehicle has been allowed to be released to the registered owner on Supurdgi, otherwise the vehicle has been held to be confiscated.

15. In SB Criminal Miscellaneous (Petition) No.6030/2023, the order is of dated 03.08.2023 passed by the District Collector, Bharatpur, whereby and whereunder the vehicle- Pick-up bearing registration No. UP-85-CT-1695, seized by the Police in connection with FIR No.257/2022 registered at P.S. Deeg, Bharatpur for offences under Sections 5 and 8 of the Rajasthan Bovine Animal Act, 1995, has been ordered to be confiscated and in lieu of confiscation, an option has been given to the petitioner to deposit fine of Rs.3 lacs to release the vehicle. From perusal of the order impugned, it reveals that the vehicle in question was intercepted by the Police and on search, it was found that in the vehicle bovine animals (four cows) were being transported without any permit, therefore, the vehicle was seized and FIR was registered for offences stated hereinabove.

16. In SB Criminal Miscellaneous (Petition) No.1941/2024, order dated 20.03.2024 passed by the District Collector and District Magistrate, Beawar, rejecting the application filed by petitioner under Section 6-A of the Rajasthan Bovine Animal Act, 1995, to release the vehicle in question on Supurdgi is under challenge.

It appears that the vehicle in question was intercepted by the Police and on search, it was found that bovine animals were

being transported in the vehicle without any license or permit for transportation, therefore, the Police registered an FIR No.408/2023 at Police Station Jawaja, Beawar for offences under Section 5, 6 and 8 of the Rajasthan Bovine Animal Act, 1995, and seized the vehicle in question, a truck bearing registration No. MH-20-EL-9524.

The petitioner, alleging himself to be registered owner of the vehicle in question, moved an application to release the vehicle on Supurdgi, but his application has been rejected by the District Collector vide order impugned with observation that the vehicle is liable to be confiscated as per amended provision of Section 6-A of the Rajasthan Bovine Animal Act, 1995. It is to be noted that the Competent Authority has not passed any order for confiscation of the vehicle in question in the impugned order.

17. Before delving into merits and demerits of the impugned orders passed by the Collector of concerned District, in the capacity of being Competent Authority, in exercise of its jurisdiction under Section 6-A of the RBA Act, 1995 and before entering into the jurisdictional issue of the High Court to interfere with the impugned orders in exercise of its inherent powers under Section 482 Cr.PC, during course of hearing of these petitions, this Court put a query from the counsels, appearing for and on behalf of petitioners, as to whether any remedy of statutory appeal or revision is provided under the RBA Act, 1995 itself to the aggrieved person, to challenge the orders passed by the District Collector i.e. the Competent Authority, in exercise of its powers

under Section 6-A, either before the Divisional Commissioner or before any other Authority?

18. The question, poses by this Court is certainly of immense importance and needs to be addressed first, therefore, this Court deems it just and proper to deal with such legal question of general importance, at the first instance. Since the aforesaid legal question is of general importance, which cropped up, during course of hearing of these petitions, therefore, apart from counsels, who are appearing for and on behalf of petitioners, the other learned members of the Bar, have also been permitted to render their precious assistance to the Court as Amicus Curiae, to answer this legal issue of availability of alternative remedy under the Act.

19(i). In respect of aforesaid question of law, about the availability of any alternative statutory remedy of appeal or revision, against the impugned orders, passed by the District Collector in exercise of its power and jurisdiction under Section 6-A of the RBA Act, 1995, it has been pointed out by learned counsel for petitioners that no specific remedy of filing appeal or revision against the order passed by the District Collector in exercise of its powers under Section 6-A, is provided in the RBA Act, 1995. It has been pointed out that although against the order passed by the District Collector i.e. the Competent Authority, in exercise of its powers under Section 7(1) or 7(2) of the RBA Act, 1995, in respect of entrustment of custody, delivery and disposal of bovine animal, so seized either temporary or permanent, any person aggrieved, may prefer an appeal before the Divisional

Commissioner as provided under Sub-section (3) of Section 7, but no such statutory appeal is provided against the order passed by the Competent Authority i.e. the District Collector, in respect of delivery or release or confiscation of means of conveyance so seized under the Act, in exercise of its powers under Section 6-A. Therefore, in such eventuality, petitioners are compelled to invoke inherent jurisdiction of the High Court under Section 482 Cr.PC, to challenge the impugned orders passed by the District Collector, refusing to release their vehicles in question on Supurdgi or on interim custody and directing confiscation of their vehicles i.e. means of conveyance so seized under the RBA Act, 1995, though criminal case, arising out of the FIR, wherein their vehicle has been seized, is yet not concluded finally and pending before the criminal Court.

19(ii). Learned counsel for petitioner, appearing in SB Criminal Miscellaneous (Petition) No.2097/2024, arising against the order dated 05.07.2023, confiscating the vehicle in question i.e. Pick-up Mahindra bearing registration No. RJ-20-GB-8328, seized in connection with FIR No.125/2023 registered at Police Station Bhawani Mandi, Jhalawar, has pointed out that in the same FIR No.125/2023 registered at Police Station Bhawani Mandi, Jhalawar for offence punishable under Sections 5, 6, 8, 9 and 11 of the RBA Act, 1995 and Sections 11, 11(1)(d), 11(1)(k), 11(1)(l) and 11(1)(m) of the Prevention of Cruelty to Animals Act, 1960, an another vehicle i.e. Bolero bearing registration No. RJ-01-GB-2617, belonging to registered owner Sh. Pappu, was also seized. It has been pointed out that the District Collector by a separate order of

even date i.e. 05.07.2023 directed to confiscate the vehicle No. RJ-01-GB-2617, holding to be used in commission of offence under the RBA Act, 1995, and in lieu of confiscation, fine to the tune of Rs. 4 lacs, was ordered to be deposited, allowing to release the vehicle on Supurdgi. This order was passed by the District Collector, in exercise of power under Section 6-A of the RBA Act, 1995, whereagainst the registered owner Sh. Pappu preferred SB Criminal Miscellaneous (Petition) No.7340/2023; Pappu Vs. State of Rajasthan, invoking jurisdiction of the High Court under Section 482 Cr.PC. In that petition, the Co-ordinate Bench of this Court, vide order dated 02.02.2024, directed to release the vehicle-Bolero bearing registration No. RJ-01-GB-2617 on interim custody to its registered owner on furnishing bank guarantee of Rs. 1 lac along with two sureties of the like amount as much as the condition not to transfer vehicle during pendency of the criminal case, was also allowed to be made against the petitioner. Hence, petitioner has prayed similar relief in the present petition as well, arises out of the same FIR bearing No.125/2023.

19(iii). On perusal of the order dated 02.02.2024 passed by the Co-ordinate Bench of this High Court in S.B Criminal Misc. (Petition) No. 7340/2023, it appears that the Co-ordinate Bench relied on an another previous order of the High court dated 08.09.2022 passed in S.B. Criminal Misc. (Petition) No. 6641/2022; Rashid Vs. State of Rajasthan, wherein no confiscation proceedings had started and the High Court directed to release the vehicle, seized under the RBA Act, 1995, on an

interim custody on producing bank guarantee of Rs. 3 lacs, whereagainst SLP (Criminal) No. 9311/2022 was filed and the amount of bank guarantee was reduced by the Hon'ble Supreme Court to the tune of Rs. 1 Lac only. Therefore, the Co-ordinate bench passed the order dated 02.02.2024 and released the vehicle applying the same analogy.

19(iv). But what is important to note that in the order dated 02.02.2024 passed in petition No. 7340/2023 or in the order dated 08.09.2022 passed in petition No. 6641/2022 or in any other order passed by this Court in this regard, both the issues of law:-

- (I) pertaining to availability of any alternative remedy of appeal or revision against the order of the Competent Authority passed in exercise of powers under section 6-A of the RBA Act, 1995; and,
- (II) about the issue pertaining to grant indulgence with the order of Competent Authority, in exercise of inherent jurisdiction of the High Court in exercise under Section 482 Cr.PC,

were neither raised nor the Co-ordinate Bench dealt with such issues, nor any other order of Rajasthan High Court has been brought to knowledge of this Court, dealing with both the issues referred herein above.

19(v). Therefore, the orders of the Co-ordinate Benches of this Court passed in other Criminal Misc. Petitions do not render any assistance for deciding the legal issues, which are being considered and addressed by this Court.

20(i). From the side of learned members of the Bar, permitted to appear as Amicus Curiae, it has been urged that it nowhere

reflects from the newly inserted provision of Section 6-A that it was the intention of the State legislature to give any finality to the order of confiscation passed by the Competent Authority under Section 6-A and for not providing any remedy of appeal or revision thereagainst. It has been urged that in the whole provision of Section 6-A, it is nowhere stipulated that the order passed by the Competent Authority within exercise of power under this Section, shall be final and conclusive as has been mentioned in respect of order of the Divisional Commissioner under Section 5(8) of the RBA Act, 1995.

20(ii). It has further been urged that in the original RBA Act, 1995, the powers to seize bovine animal were available and the Competent Authority was already authorized to deal with the custody, delivery and disposal of the bovine animal so seized, as envisaged under Section 7 of the RBA Act, 1995, but there was no provision in the RBA Act, for seizure and confiscation of the means of conveyance, which is used in connection with commission of offence punishable under this Act, therefore, on the lines of provision contained in Section 69 of the Rajasthan Excise Act, 1950, provision of Section 6-A has been inserted by the State legislature by introducing the Amendment of 2018 dated 05.12.2019. Thus, by virtue of amended provision of Section 6-A, the intention of the State legislature was to entrust the power and jurisdiction to the Competent Authority to deal with the possession, delivery, disposal or release or confiscation of the means of conveyance, so seized in respect of commission of offence under the RBA Act, 1995. When against the order of

confiscation of means of conveyance, passed by the Authority under Section 69(4) of the Rajasthan Excise Act, remedy of appeal is provided in the statute by virtue of Section 9-A and in the RBA Act, 1995 also, against the order passed by the Collector in respect of delivery and disposal of the Bovine animal either under Section 7(1) or (2), remedy of appeal before the Divisional Commissioner, is prescribed under Section 7(3), it cannot be the intent of the State legislature to deprive the person aggrieved by the order passed by the Collector in respect of delivery, disposal or release or confiscation of means of conveyance, under Section 6-A from having remedy of appeal under the RBA Act, 1995. Therefore, the order passed by the District Collector i.e. the Competent Authority under Section 6-A is also be held to be amenable and challengeable by way of appeal, before the Divisional Commissioner, in the similar manner as an appeal is provided against the order(s) passed by the Collector i.e. the Competent Authority under Sub-sections (1) & (2) of Section 7, before the Divisional Commissioner under Sub-section (3) of Section 7 of the RBA Act, 1995.

20(iii). Therefore, on the basis of above referred reasoning, the argument of one group of learned members of Bar appearing as Amicus Curiae is that the availability of remedy of appeal against the order of the Competent Authority under Section 6-A, before the Divisional Commissioner be treated as implied either by applying the "doctrine of implied power" or by giving purposive interpretation and cumulative effect to both the provisions of

Section 6-A and Section 7, and the “principle of *casus omissus*”, may be pressed into service to draw a logical conclusion.

20(iv). To buttress such contentions, reference of judgment of the Apex Court in case of **Sakiri Vasu Vs. State of UP [(2008) 2 SCC 409]** has been given, to contend that the rule of doctrine of implied power may be applied to assume and to ensure that the Divisional Commissioner has jurisdiction to hear appeal against the order of District Collector i.e. the Competent Authority, passed under Section 6-A as well and another reference of a judgment of Full Bench of the Punjab and Haryana High Court in case of **Paramjit Kumar Saroya Vs. The Union of India [AIR 2014 P&H 121]** has also been given, to contend that it is merely a case of accidental omission and not of conscious exclusion on the part of State legislature, of not providing any specific words prescribing remedy of appeal in the provision of Section 6-A, and such missing words may be supplied to give effective contextual meaning and to fulfill the real object of legislature, as prescribed in Section 7(3) of the RBA Act, 1995 and other statute of similar nature, therefore, the only way to avoid this anomaly is to press into service both the principles of purposive interpretation and *casus omissus*, and remedy of appeal, against the order passed u/s. 6-A by the Competent Authority before the Divisional Commissioner be treated to be available in law.

21. An another argument, with full force and persuasion has been made, that it is well settled proposition of law that the right of appeal is not a natural or inherent right. The right of appeal cannot be assumed to exist unless expressly provided for by the

statute. The right of appeal is a statutory right and is available only if it is conferred by the statute, and remedy of appeal, being creature of the statute, is available only when it is prescribed in the statutory provision. Since in the provision of Section 6-A, no right of appeal against the orders passed by the Competent Authority before the Divisional Commissioner, has been provided, the aggrieved person may not avail the remedy of appeal thereagainst. It has been canvassed that such proposition of law is well known and settled, for which reference of two judgments of the Apex Court in cases of **M/s Super Cassettes Industries Ltd Vs. State of UP [(2009) 10 SCC 531]** and **Hindustan Petroleum Corpn. Ltd. Vs. Dilbahar Singh [(2014) 9 SCC 102]**, would be suffice.

22. This Court has been apprised that the provision of Section 6-A in the original Act, was inserted on the similar line of provisions contained under Section 69 of the Rajasthan Excise Act, 1950. Section 69 of the Rajasthan Excise Act, 1950, talks about things which are liable to confiscation. In this Section, Clause (e) in Sub-section (1) for confiscation of the conveyance and simultaneously Sub-section (4), were inserted by way of Rajasthan Excise (Amendment) Act, 2000 w.e.f. 03.05.2000. In Sub-section (5) of Section 69, remedy of appeal was provided to any person aggrieved by order of confiscation made under Sub-section (4), but it appears that since the remedy of appeal and revision against the order passed by the authority under the Excise Department, is specifically prescribed under Section 9-A of the Rajasthan Excise Act, 1950, in that view, later on, Sub-section (5)

of Section 69 was deleted w.e.f. 24.05.2005 and such Clause could not find place in Section 6-A of the RBA Act, 1995, while inserted by the Amendment Act, 2018. In the Rajasthan Excise Act, 1950, the powers for confiscation of the means of conveyance, seized in connection with commission of offence under the Excise Act, have been entrusted to the Excise Commissioner or to the Officer not below the rank of District Excise Officer, as provided under Sub-section (4) of Section 69, and thereagainst, the statutory remedy of appeal and revision is prescribed by virtue of Section 9-A, but no such general provision providing remedy of filing appeal or revision against the order of confiscation passed by the District Collector i.e. the Competent Authority, under Section 6-A, is prescribed under the RBA Act, 1995. Such error seems to be bona fide and unintentional.

23. This Court has further been apprised that in the statute of Essential Commodities Act, 1955, the relevant provision is also Section 6-A, which specifically entrust power to the Collector of the District concerned to seize essential commodity so also any animal, vehicle, vessel or other conveyance used in carrying such essential commodities illegally and the Collector is authorized for confiscation of such things so seized under the Act. In that Act, Section 6-C prescribes remedy of statutory appeal to any person aggrieved by order of confiscation passed under Section 6-A, before the Judicial Authority, appointed by the State Government. Thus, it has been canvassed that the statutory remedy of appeal against the order of confiscation passed by the District Collector is

also available and prescribed specifically under the Essential Commodities Act, 1955 as well.

24. The attention of this Court has also been drawn to the relevant provision of Rajasthan Forest Act, 1953, wherein Section 52 envisages that when there is reason to believe that an offence has been committed in respect of any forest produce, such produce together with all machinery, carts, tools, boats, vehicle, ropes, chains or any other articles used in committing such offence, may be seized by any Forest Officer or a Police Officer, not below the rank of Head Constable. Such articles, so seized, are liable to confiscation and against the order of confiscation, Section 52-A provides provision of appeal before the Chief Conservator of Forest. Further, the remedy of revision is also available before the Court of Sessions against the order of appellate Authority as envisaged under Section 52-B. Thus, in the Rajasthan Forest Act, also order of confiscation in subtext to remedy of appeal and revision, as prescribed under the Act.

25. In addition to above referred statutes, it has also been pointed out that in the State of U.P, Prevention of Cow Slaughter Act, 1955, Section 5-A contains provisions for regulation on transport of cows etc. and in Sub-section (7) of Section 5-A, the vehicle by which the beef or cow or its progeny is transported in violation to provision of the Act, the same is liable to be confiscated and seized by the concerned District Magistrate/Commissioner of Police. In that Act, the powers to do proceedings of confiscation and release have been entrusted to the District Magistrate/ Commissioner of Police. In the Act, there is

no provision of appeal or revision, but Sub-section (11) of Section 5-A provides that where provisions of this Act or the related rules in context of search, acquisition, disposal and seizure are silent the relevant provision of the Cr.PC shall be effective thereto. So the remedy against the order of confiscation or release, passed by the District Magistrate/ Commissioner of Police, is available and has been provided as per procedure prescribed under the CrPC in the Act, applicable in the State of UP. It has been canvassed that in the RBA Act, 1995, there is no such similar provision for applying the Cr.PC, to avail the remedy against the order of confiscation or refusal to release the means of conveyance under Section 6-A, is available, rather by virtue of Sub-section (3) of the Section 6-A, jurisdiction of the any Court, Tribunal or any other Authority has been expressly excluded and jurisdiction is conferred only to the Competent Authority under the Act. So it has been argued that since the remedy of appeal or revision is not there in the RBA Act, 1995, to challenge the order passed u/s. 6-A of the Act, hence the person aggrieved, would be compelled to invoke directly the writ jurisdiction of the High Court.

26. Learned counsel, appearing as Amicus Curiae, has pointed out that in the State of Haryana, Gauvansh Sanrakshan and Gausamvardhan Act, 2015 has been promulgated by the legislature of the State of Haryana. In that Act also, Section 17 prescribes provision of confiscation of vehicles and the Competent Authority i.e. the concerned Sub-Divisional Magistrate and any other Officer so appointed by the Government is authorize to seize and to pass the order of confiscation of the seized vehicle. In Sub-

section (3), the jurisdiction of the court, Tribunal or other Authority has been ousted and the Competent Authority only shall have been entrusted with the jurisdiction to make order with regard to possession, delivery, disposal, release of the such seized vehicle. But Sub-section (5) of Section 17 provides remedy of appeal to any person aggrieved by the order made by the Competent Authority in respect of confiscation under Sub-sections (2) & (4) of the Act before the Deputy Commissioner of the District concerned. Thus, similar remedy should be open to the aggrieved person against the order passed under Section 6-A before the Divisional Commissioner under the RBA Act, 1995.

27. Having gone through the relevant provisions of afore-referred other Central and State Acts and the statutes, applicable in other States dealing with the similar subject matter and pertaining to the proceedings of confiscation by the concerned authority of the means of conveyance, under the special statutory provisions of law and taking into consideration the Statement of Object and Reasons, to insert amended provision of Section 6-A in the RBA Act, 1995, by the State Legislature of Rajasthan, on the similar line of provision contains in Section 69 of the Rajasthan Excise Act, 1950, to provide provision for seizure and confiscation of the means of conveyance, it is difficult to infer and hold that the State Legislature, consciously and deliberately, did not prescribe any specific provision of appeal or revision against the order passed by the Competent Authority i.e. the District Collector, in exercise of its powers under Section 6-A of the RBA Act, 1995. At the same time, it is noteworthy that there are no words,

prescribed in Section 6-A, to render any finality to the order passed therein. It is noteworthy that Section 6-A was inserted by the State legislature with an aim and object of allowing to seize and confiscate the means of conveyance also by the Competent Authority and in this provision of Section 6-A, only the Competent Authority has been entrusted with jurisdiction to make order of confiscation as also with regard to possession, delivery, disposal or release of such means conveyance, excluding the jurisdiction of any Court, Tribunal or other Authority. Indisputably, the Competent Authority i.e. the District Collector was already authorized and had jurisdiction to deal with the custody, delivery and disposal of the bovine animals so seized under the Act, for which provision of Section 7 is envisaged under the RBA Act, 1995. Indubitably, the State Legislature has prescribed provision of appeal, to any aggrieved person against the order passed by the Competent Authority i.e. the District Collector, in respect of temporary or permanent entrustment of bovine animal so seized, passed under Sub-section (1) or (2) of Section 7, before the Divisional Commissioner by virtue of Sub-section (3) of Section 7. The remedy of appeal/ revision is also available under the other statutes referred above. Considering the question holistically and broadly, by no stretch of imagination, there can be any justification for non-inclusion of provision of appeal under Section 6-A, against the order passed by the Competent Authority i.e. District Collector. Thus, it may not be assumed by any means that the State legislature was inclined to deprive the person aggrieved, to have a remedy of appeal against the order passed under

Section 6-A, by the same Competent Authority i.e. the Collector. Such intention of the State legislature may also be gathered by the fact that in the provision of Section 6-A, the order passed by the Competent Authority has not been held to be final and conclusive.

28. Therefore, by giving a literal and purposive interpretation to provision of Section 6-A and Section 7 by reading both the provisions cumulatively and together, as also taking into consideration to insert provision of Section 6-A on the similar line of Section 69 of the Rajasthan Excise Act, 1950, it can safely be held and observed that it was never the intention of the State legislature to render any finality to the order of the Competent Authority passed under Section 6-A and not to provide any remedy of appeal or revision thereagainst in the Act. In the opinion of this Court, the order passed by the Competent Authority, it means the District Collector, under Section 6-A of the RBA Act, 1995, should also be amenable to be challenged by way of appeal before the Divisional Commissioner, in similar manner of availability of remedy of appeal under Section 7(3) against the order of Collector i.e. the Competent Authority passed under Section 7(1) or (2) of the Act.

29. Nevertheless, it is simultaneously true that in the provision of Section 6-A or in any other statutory provision of the RBA Act, 1995, the required statutory words in explicit terms about availability of a remedy of appeal or revision against the order passed by the Competent Authority i.e. the District Collector, under Section 6-A in respect of confiscation, or to make any order

in respect of possession, delivery, disposal or release of the means of conveyance, either before the Divisional Commissioner or any other Authority, do not reflect or find place in the statute. This gap/ lacunae may be a case of accidental omission and not of conscious exclusion, yet in the opinion of this Court, may not be filled by the Court either by applying the doctrine of implied powers to assume jurisdiction of appeal to the Divisional Commissioner or by applying principles of purposive interpretation and *casus omissus*. This Court concurs with the well settled proposition of law that the right of appeal cannot be assumed to exist unless expressly provided for under the statute.

30. Therefore, the aforesaid question of law about availability of any alternative remedy of appeal or revision against the impugned orders passed by the District Collector in exercise of its power and jurisdiction under Section 6-A of the RBA Act, 1995, is answered in negative, however, taking into consideration the availability of statutory remedy of appeal/ revision, against the order of confiscation and other kind of ancillary orders, as provided in other statutes, referred hereinabove, dealing with the similar nature of subject matter, this Court records its opinion that a remedy of appeal or revision against the order passed by the Competent Authority i.e. the District Collector in exercise of its jurisdiction u/s. 6-A of the RBA Act, 1995, must be open and be provided to the aggrieved person. It may not be oversight that against the order of same Competent Authority i.e. the District Collector, passed under Section 7(1) or (2), remedy of appeal is already prescribed under Section 7(3) of the Act, before the

Divisional Commissioner, as much as in the Rajasthan Excise Act, 1950 also, against the order of confiscation passed under Section 69(4), remedy of appeal is available u/s. 9-A. The provision of Section 6-A was inserted by the State legislature in RBA Act, 1995, on the similar lines of Section 69 of Rajasthan Excise Act, with an aim and object to enlarge scope of the Act, for seizure and confiscation of the means of conveyance as well, which was used in commission of offence under the RBA Act. Therefore, this Court deems it just and proper that in order to bring the provision of Section 6-A to its completeness, on the similar line of Section 69 of the Rajasthan Excise Act, 1950, the State Legislature ought to ponder over its attention to the issue to open remedy of appeal to the aggrieved person against the order of Competent Authority passed under Section 6-A, in the similar tune as available against the order of Competent Authority passed under Section 7(1) or (2), u/s. 7(3) of the RBA Act, 1995 and this Court finds it proper to make its recommendations to the Government of Rajasthan to consider the same and to proceed, to fill up the gap/ lacunae in this regard, or atleast to make clarification in this regard, if think it just and proper to do so, within its domain and as per its own wisdom.

31. Coming to the another issue, pertaining to scope and jurisdiction of the High Court to interfere with the impugned orders in exercise of its inherent powers under Section 482 Cr.PC, it has been noticed from the record that in Criminal Misc. (Petitions) No.2097/2024, 1978/2024 and 6030/2023, respective impugned orders dated 05.07.2023, 20.02.2024 and 03.08.2023

passed by the Competent Authority i.e. District Collector concerned, the means of conveyance (vehicles in question) have been ordered to be confiscated under Section 6-A of the RBA Act, 1995 and prayer made by the petitioners to release the vehicles on interim custody has been rejected by the Collector. In Criminal Misc. (Petition) No.1941/2024, vide impugned order dated 20.03.2024, the District Collector, although has refused to release the vehicle in question on Supurdgi to petitioner, but no final order of confiscation of the vehicle in question has been passed.

32. In order to deal with the issue of exercising inherent powers of the High Court under Section 482 Cr.PC against the impugned orders, it is desirable and necessary to examine, as to whether the concerned District Collector i.e. the Competent Authority, has passed the impugned orders, acting like a criminal Court or in any other capacity? In this context, it would be useful and worthy to highlight that under Sub-section (3) of Section 6-A of the RBA Act, 1995, jurisdiction of any Court, Tribunal or other Authority, has been expressly excluded and jurisdiction has been specifically assigned only to the Competent Authority as defined under Section 2(g) of the Act, to make order with regard to the possession, delivery, disposal or release of means of conveyance, apart from possessing jurisdiction of confiscation of the means of conveyance, if held to be used in commission of offence under the Act. Thus, in the RBA Act, 1995, the Collector of concerned District, where the offence is committed and means of conveyance used therein is seized, is authorized to proceed and conclude the confiscation proceedings and to deal with the matter relating to

possession, delivery, disposal or release of such means of conveyance, so seized for commission of an offence under this Act.

33. The prayer of petitioners is that, being registered owner of their respective means of conveyance (vehicles in question), so seized by the Police while registering an FIR in connection with commission of offence under the RBA Act, 1995, vehicle in question be ordered to be released on interim custody or on Supurdgi to the petitioners atleast until the conclusion of trial of criminal case arising out of respective FIRs and their submission is that during course of criminal trial of the case, the vehicle in question may not be allowed to be confiscated by the Competent Authority i.e. the District Collector. Their contention is that in none of the case herein, the vehicle in question was seized by the Competent Authority under Section 12-A of the RBA Act, 1995, rather the vehicles in question of petitioners, have been seized by the Police Officer, while registering an FIR for commission of offence(s) under the RBA Act, 1995, alleging *inter alia* that the vehicle was being used for commission of offence under the Act. Therefore, their submission is that, until the commission of offence and use of the vehicle in question in such offence is not proved in the criminal trial before the criminal Court, the Confiscating Authority should not come to its own conclusion that the vehicle in question was used for in commission with offence under the Act, merely on account of registering FIR and seizing the vehicle in question by the Police in connection with that FIR. Their contention is that since the seizure of means of conveyance

was made on the basis of registering the FIR by the Police and not by the Competent or Confiscating Authority itself, in such factual scenario, the confiscation proceedings of the means of conveyance must be treated as incidental and ancillary to the proof of criminal case. Thus, by way of filing these petitions under Section 482 Cr.PC, petitioners have prayed to quash the impugned orders and to direct to release their respective vehicles in question on interim custody or Supurdgi on appropriate terms and conditions until the conclusion of the trial of criminal case, arising out of respective FIRs wherein their vehicles were seized by the Police.

34. Per contra, learned Public Prosecutor, appearing for and on behalf of State, has opposed the petitions and argued that the District Collector, who is Competent Authority as defined under Section 2(g) of the Rajasthan Bovine Animal Act, 1995, is authorized to confiscate the means of conveyance used in commission of offence under this Act, by virtue of Section 6-A and his jurisdiction of confiscation is independent, distinct and separate than the jurisdiction of criminal Court to punish or not the offender for commission of alleged offences under the RBA Act, 1995. His argument is that the jurisdiction of confiscation can be exercised by the Authority irrespective of the fact that the criminal prosecution has been commenced or not. Learned Public Prosecutor has drew attention of this Court to Sub-Section (5) of Section 6-A, which stipulates that the order of confiscation made by the Competent Authority shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act. The contention of learned Public Prosecutor is that the

impugned orders of confiscation are final in nature and has been passed well within jurisdiction by the District Collector in exercise of its powers under Section 6-A of the Rajasthan Bovine Animal Act, 1995, as much as the order of refusal to release the vehicles in question by the Competent Authority is also justified, questioned in one of the Criminal Misc. Petitions bearing No.1941/2024. Hence, according to the learned Public Prosecutor, impugned orders do not result into miscarriage of justice, but have been passed by the Collector well within exercise of its jurisdiction, as the Confiscating Authority, therefore, may not required to be interfered with by the High Court in exercise of its inherent jurisdiction under Section 482 Cr.PC.

35. In case of **State of Madhya Pradesh Vs. Kallo Bai [(2017) 14 SCC 502]**, the issue of confiscation of the vehicle, found involved in transportation of the teak-wood unauthorizedly, and was seized under the relevant provision of the Madhya Pradesh Van Upaj (Vyapar Viniyam) Adhiniyam, 1969, read with Forest Act, 1927, came up for consideration before the Hon'ble Supreme Court. The Forest Officer-cum-Sub Divisional Officer of concerned forest division, initiated the confiscation proceedings of the seized vehicle, separately to proceedings of the criminal trial of the criminal case and finally confiscation of vehicle was ordered by the Forest Officer. Aggrieved owner of the vehicle, preferred appeal thereagainst as provided under the statute, but the Appellate Authority-cum-Chief Conservator of Forest, affirmed the order of confiscation. Then, the aggrieved preferred revision before the Additional Sessions Judge under Section 15-B of the

Adhiniyam, 1969. The revision was allowed and by quashing the order of confiscation, Additional Sessions Judge directed to release the vehicle whereagainst, the State filed a petition under Section 482 Cr.PC, which was dismissed and thus, the matter came up before the Apex Court. The Hon'ble Supreme Court, after analytical discussion on Section 15 of the Adhiniyam 1969, which deals with the search and seizure of the property liable to confiscation and procedure thereof, held that under Sub-section (1) of Section 15, Forest Officer concerned is empowered to conduct search to secure compliance of provision of the Adhiniyam and under Sub-section (2), the Officer concerned may seize vehicles, ropes etc. if he has reason to believe that the said items were used for the commission of offence under the Adhiniyam. It was observed that Sub-section (3) provides procedure for confiscation of seized items and before passing an order of confiscation, an opportunity of hearing to the person concerned was required to be given as much as the Confiscating Authority was required to record satisfaction with regard to the commission of forest offence. Section 15-C of the Adhiniyam also puts jurisdictional bar on courts and Tribunal to release the item, if the confiscation proceedings are initiated under Section 15 of the Adhiniyam. The Apex Court held and observed that the confiscation proceedings as contemplated under Section 15 of the Adhiniyam are quasi-judicial proceedings and not criminal proceedings, which are separate and distinct proceedings from that of trial before the Court for commission of offence. The

relevant portion of the judgment i.e. Para Nos.18, 22, 23 and 24 is being extracted hereunder:-

"18. The broad scheme of the Adhiniyam is to punish those who are in contravention of the law at the hand of the criminal court. The confiscation being incidental and ancillary to the conviction, State of Madhya Pradesh, separated the process of confiscation from the process of prosecution. The purpose of the enactment seems to be that the power of the criminal court regarding the disposal of property is made subject to the jurisdiction of the authorized officer with regard to that aspect; the jurisdiction of criminal court in regard to the main trial remains unaffected.

22. In view of the foregoing discussions, it is apparent that Section 15 gives independent power to the concerned authority to confiscate the articles, as mentioned there under, even before the guilt is completely established. This power can be exercised by the concerned officer if he is satisfied that the said objects were utilized during the commission of a forest offence. A protection is provided for the owners of the vehicles/articles, if they are able to prove that they took all reasonable care and precautions as envisaged under Sub-section (5) of Section 15 of the Adhiniyam and the said offence was committed without their knowledge or connivance.

23. 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 Adhiniyam prescribes an independent procedure for confiscation. The intention of prescribing separate proceedings is to provide a deterrent mechanism and to stop further misuse of the vehicle

24. At the cost of repetition we clarify that confiscatory proceedings are independent of the main criminal proceedings. In view of our detailed discussion in the preceding paragraph we are of opinion that High Court as well as the revisional court erred in coming to a conclusion that the confiscation under the law was not permissible unless the guilt of the accused is completely established."

36. In an another case before the Hon'ble Supreme Court i.e.

Abdul Vahab Vs. State of Madhya Pradesh [(2022) 13 SCC

310], the order of confiscation of appellant's truck was passed by

the District Magistrate purporting to exercise powers under

Section 11(5) of the Madhya Pradesh Prohibition of Cow Slaughter Act, 2004, even after acquittal of the accused persons from the criminal case. The confiscation order was affirmed by the Additional Commissioner and revision petition filed thereagainst too was dismissed by the Additional Sessions Judge, Ujjain. The petition filed by truck owner under Section 482 Cr.PC before the High Court of Madhya Pradesh was also dismissed, affirming the confiscation order and holding that the District Magistrate has committed no error in passing the order of confiscation of the truck, even after acquittal of the accused persons from the criminal case. Thus, the matter came up before the Apex Court. The Hon'ble Supreme Court considered that the High Court has upheld the order of confiscation passed by the District Magistrate, placing reliance on the judgment of **Kallo Bai** (*Supra*), drawing observation that the confiscation proceedings of the vehicles/equipment used for commission of offence, are separately maintainable before the District Magistrate, which are distinct than the proceedings for prosecution of accused charged with offence and commenced before the criminal Court. However, the Apex Court held and observed that it is true that confiscation proceedings before the District Magistrate, is different from the criminal prosecution and both proceedings may run simultaneously, but in a case where offender/ accused are acquitted in the criminal prosecution, the judgment given in the criminal trial, should be factored in by the District Magistrate, while deciding confiscation proceedings. Finally, the Apex Court allowed the appeal, holding that the confiscation order of District

Magistrate cannot be sustained and consequently, the High Court's decision was also set aside. It would be apropos to reproduce relevant portion of the judgment i.e. Para Nos.17 to 22 hereunder:-

"17. By reason of an order of confiscation, a person is deprived of the enjoyment of his property. Article 300A of the Constitution provides that no person shall be deprived of his property save by authority of law. Therefore, to deprive any person of their property, it is necessary for the State, inter-alia, to establish that the property was illegally obtained or is part of the proceeds of crime or the deprivation is warranted for public purpose or public interest. 18. At this stage, we may usefully refer to this Court's opinion in State of W.B. Vs. Sujit Kumar Rana [(2004) 4 SCC 129]. Here it was emphasized on the need to maintain balance between statutes framed in public interest such as the Forest Act, 1927 (and the relevant insertions under W.B Act 22 of 1988) and the consequential proceedings, depriving a person of his property, arising therefrom. It was accordingly observed that "commission of an offence" is one of the requisite ingredients for passing an order of confiscation and an order of 7 (2004) 4 SCC 129 confiscation should not be passed automatically. The relevant passage is reproduced below:

"26. An order of confiscation of forest produce in a proceeding under Section 59-A of the Act would not amount either to penalty or punishment. Such an order, however, can be passed only in the event a valid seizure is made and the authorized officer satisfies himself as regards ownership of the forest produce in the State as also commission of a forest offence. An order of confiscation is not to be passed automatically, and in terms of sub-section (3) of Section 59-A a discretionary power has been conferred upon the authorized officer in relation to a vehicle. Apart from the ingredients which are required to be proved in terms of sub-section (3) of Section 59-A by reason of the proviso appended to Section 59-B, a notice is also required to be issued to the owner of the vehicle and furthermore in terms of sub-section (2) thereof an opportunity has to be granted to the owner of the vehicle so as to enable him to show that the same has been used in carrying forest produce without his knowledge or connivance and by necessary implication precautions therefor have been taken."

19. Insofar as the submission of the State Counsel that the burden of proof is on the truck owner in the process of confiscation, we must observe that Section 13A of the 2004 Act, which shifts the burden of proof, is not applicable for the confiscation proceedings but for the process of prosecution. By virtue of Section 13A of the 2004 Act, the burden on the State authority to legally justify the

confiscation order, cannot be shifted to the person facing the confiscation proceeding. The contention to the contrary of the State's counsel, is accordingly rejected.

20. In the present case, the appellant's truck was confiscated on account of the criminal proceedings alone and therefore, under the applicable law, the vehicle cannot be withheld and then confiscated by the State, when the original proceedings have culminated into acquittal. It is also not the projected case that there is a likelihood that the appellant's truck will be used for committing similar offence.

21. It should be noted that the objective of the 2004 Act is punitive and deterrent in nature. Section 11 of the 2004 Act and Rule 5 of M.P Govansh Vadh Pratishedh Rules, 2012, allows for seizure and confiscation of vehicle, in case of violation of sections 4, 5, 6, 6A and 6B. The confiscation proceeding, before the District Magistrate, is different from criminal prosecution. However, both may run simultaneously, to facilitate speedy and effective adjudication with regard to confiscation of the means used for committing the offence. The District Magistrate has the power to independently adjudicate cases of violations under Sections 4, 5, 6, 6A and 6B of the 2004 Act and pass order of confiscation in case of violation. But in a case where the offender/accused are acquitted in the Criminal Prosecution, the judgment given in the Criminal Trial should be factored in by the District Magistrate while deciding the confiscation proceeding. In the present case, the order of acquittal was passed as evidence was missing to connect the accused with the charges. The confiscation of the appellant's truck when he is acquitted in the Criminal prosecution, amounts to arbitrary deprivation of his property and violates the right guaranteed to each person under Article 300A. Therefore, the circumstances here are compelling to conclude that the District Magistrate's order of Confiscation (ignoring the Trial Court's judgment of acquittal), is not only arbitrary but also inconsistent with the legal requirements.

22. In view of the foregoing, the confiscation order of the District Magistrate cannot be sustained and it is declared so accordingly. Consequently, the High Court's decision to the contrary is set aside. The appeal stands allowed with this order without any order on cost."

(Emphasis Supplied)

37. Recently the Hon'ble Supreme Court has passed an order dated 26.02.2024 in case of **Mohammad Vs. The State of Rajasthan; Special Leave to Appeal (Criminal) No.1910/2024 [MANU/SCOR/31464/2024]**, wherein the

order of confiscation of the vehicle seized in connection with offences under Sections 3, 5, 6, 8, 9 and 10 of the Rajasthan Bovine Animal Act, 1995, was held to be not given effect to, during course of trial of the criminal case and the vehicle in question was allowed to be released on Supudgi subject to final outcome of the criminal case. For ready reference, the whole order is being reproduced hereunder:-

"Arising out of an order dated 17.05.2023 rejecting the petition under section 482 of Cr.PC by the High Court, affirming the order dated 23.09.2021 of the District Collector and District Magistrate, Jhalawar, directing to confiscate the seized vehicle under the offences registered in Sections 3,5,6,8,9 and 10 of the Rajasthan Bovine Animal (Prohibition of Slaughter and Regulation of Temporary Migration or Export) Act, 1995 and Section 3 of the Prevention of Cruelty to Animals Act, 1960, by an FIR No. 174 of 2021 of Police Station Kotwali Jalahwar, Rajasthan, the petitioner has approached this Court being aggrieved of refusing to release of such vehicle during pendency of trial and proving his guilt as alleged. After hearing learned counsel for the parties, in the facts of the case we direct that during the trial, the order of confiscation of the vehicle shall not be given effect to, and the vehicle in question, truck Tata LP No. RJ 14 GH 4462 shall be released subject to final outcome of the criminal case and on furnishing a Bank Guarantee of Rs. 2 Lakhs and the surety for the remaining sum to which the vehicle was insured on the date of accident and on such other conditions as may be imposed by the Confiscating Officer. In view of the above, the vehicle in question shall be released within two weeks from today.

In the foregoing terms, the order(s) impugned are set aside at this stage and the Special Leave Petitions are disposed of. Pending interlocutory application, if any, is/are disposed of."

38(i). Having enlightened with the judgments and order of the Hon'ble Supreme Court, referred hereinabove, and taking into consideration the procedure provided under Section 6-A of the RBA Act, 1995, to confiscate the means of conveyance by the Competent Authority, this Court is of opinion that whenever means of conveyance is seized by the Police, while registering an FIR in

connection with commission of offence under the RBA Act, 1995, proceedings of confiscation of such means of conveyance, if commenced by the Competent Authority i.e. the concerned District Collector, shall be incidental and ancillary to the final conclusion of the criminal case, however, the position may differ in case, where the Competent Authority seizes the means of conveyance in exercise of its power and jurisdiction specified under the amended provision of Section 12-A of the RBA Act, 1995, and criminal case is registered later on or even may not be registered.

38(ii). There is no doubt that the confiscation proceedings, which are commenced and concluded by the Competent Authority, are independent, distinct/ different and separate, than the criminal proceedings, which are initiated and concluded before the criminal Court, whenever an FIR is separately registered in respect of commission of offence under the RBA Act, 1995. Nevertheless, this Court holds that "commission of offence punishable under the RBA Act, 1995", is one of the essential and requisite ingredient of Section 6-A and before passing a final order of confiscation of any means of conveyance so seized under the Act, the Confiscation Authority is required to record a finding and satisfaction to the effect that the seized means of conveyance was used in commission of such offence under the Act. Without recording satisfaction by the Confiscating Authority about use of seized conveyance in commission of offence, the order of confiscation may not be passed automatically, merely on account of seizure of the conveyance, on registering an FIR for commission of offence under the RBA Act, 1995.

38(iii). This Court is also of considered view and holds that, taking into consideration the nature and procedure of confiscation proceedings as contemplated under Section 6-A of the RBA Act, 1995, same falls in the nature of quasi-Judicial and not in the nature of criminal proceedings. Therefore, from this angle and in such view of the matter, the Competent Authority i.e. the District Collector concerned, acts while exercising its power and jurisdiction under Section 6-A as quasi judicial authority and not like a criminal Court.

38(iv). Thus an irresistible conclusion comes to the light that while it is true that the proceedings of confiscation are independently maintainable, before the Competent Authority, separately than the criminal proceedings, however, the Competent Authority is supposed to initiate and conclude the confiscation proceedings cautiously, having considered the basic origin of the confiscation proceedings, of the means of conveyance and if the means of conveyance was seized by the Police, while registering an FIR, in connection with commission of offence under the RBA Act, 1995 and trial of criminal case is pending before the Criminal Court, the judgment given by the criminal Court should be factored by the Confiscating Authority as has been observed and held by the Hon'ble Supreme Court in case of **Abdul Vahab** (*Supra*).

38(v). As far as exercising jurisdiction by the Competent Authority to make an order with regard to possession, delivery and disposal or release of such means of conveyance on interim custody is concerned, the Authority may pass such orders in

accordance with law duly guided by law of judicial precedents, settled in various judgments of the Apex Court and High Courts in this regard, keeping in mind that detention of vehicle for a long period in the premises of Police Station does not serve any purpose and it will cause loss not only to the owner, but also cause loss on revenue to the State exchequer as well.

39. This Court is conscious that the inherent powers by the High Court under Section 482 Cr.PC can be exercised in relation to a matter pending before the Court; which in the context of the Code of Criminal Procedure would mean "a criminal Court" or where power is exercised by the Court under the Code of Criminal Procedure. It is no more *res integra* that the inherent powers of the High Court have been saved by incorporating the provision of Section 482 in the Code for Criminal Procedure, which can be exercised to make such order(s), as may be necessary to give effect to any order under the Code, or to prevent abuse of process of any Court or otherwise to secure ends of justice. In view of such well settled proposition of law, in respect of exercising the inherent powers by the High Court under Section 482 Cr.PC, this Court finds it difficult to interfere with the impugned orders passed by the Competent Authority i.e. the District Collector within domain of Section 6-A of the RBA Act, 1995, because when once it has been held and observed hereinabove that the Competent Authority i.e. the District Collector and District Magistrate, does not act like a criminal Court and more over, the jurisdiction of any Court, Tribunal or other Authority has also been expressly excluded under Sub-section (3) of Section 6-A of the RBA Act, 1995, it would not be expedient for the High Court to indulge with the order of such authority, in exercise of its inherent powers u/s. 482 Cr.PC.

40. With regard to exercising inherent powers by the High Court under Section 482 Cr.PC, allowing to release the vehicles in question on an interim custody to petitioners and warranting interference with the impugned orders, the *ratio decidendi* as expounded by the Apex Court in case of **State of W.B. Vs. Sujit Kumar Rana [(2004) 4 SCC 129]** cannot be overlooked. In that case, the forest produce and vehicles carrying the same, were seized by the forest officer under the Forest Act, 1927. The Confiscation proceedings of the seized vehicles were initiated in terms of Section 59-G of the Act before the Forest Officer, whom the jurisdiction is entrusted and the jurisdiction of the criminal Court in this behalf is excluded under the Act, however, the High Court in exercise of its inherent jurisdiction under Section 482 Cr.PC, directed to release the vehicle in question. In that backdrop of facts, the Apex Court, Para Nos. 33 and 46, held and observed as under:-

"33. From a bare perusal of the aforementioned provision, it would be evident that the inherent power of the High Court is saved only in a case where an order has been passed by the criminal court which is required to be set aside to secure the ends of justice or where the proceeding pending before a court amounts to abuse of the process of court. It is, therefore, evident that power under Section 482 of the Code can be exercised by the High Court in relation to a matter pending before a court; which in the context of Code of Criminal Procedure would mean 'a criminal court' or whence a power is exercised by the court under the Code of Criminal procedure. Once it is held that the criminal court had no power to deal with the property seized under the Act, the question of the High Court's exercising its jurisdiction under Section 482 of the Code of Criminal Procedure would not arise.

46. The upshot of our aforementioned discussion is that once a confiscation proceeding is initiated the jurisdiction of the criminal court in terms of Section 59-G of the Act being barred, the High Court also cannot exercise its jurisdiction under Section 482 of the Code of Criminal Procedure for

interim release of the property. The High Court can exercise such a power only in exercise of its power of judicial review.

(Emphasis Supplied)

This judgment was relied upon by the Hon'ble Supreme Court in case of **Abdul Vahab** (*Supra*) in Para 18, but in different context to hold that "commission of an offence" is one of the requisite ingredients for passing an order of confiscation and order of confiscation should not be passed automatically and it was emphasized to maintain balance between statutes framed in the public interest such as Forest Act, 1927 and consequential proceedings, depriving the person of his property, arising therefrom. But as far as exercising jurisdiction by the High Court under Section 482 Cr.PC against the order passed by the Authority which is not a criminal Court, nor order by the Authority is passed under the Code of Criminal Procedure, the *ratio decidendi* was re-affirmed in Para No.14. Thus applying the same analogy, issuing any direction to release the vehicle seized under the RBA Act, 1995, by the High Court u/s. 482 Cr.PC, where the jurisdiction of any Court, Tribunal and other Authority is expressly barred, this Court is of considered view that the inherent jurisdiction by the High Court under Section 482 Cr.PC should not be exercised to interfere with the impugned orders. Though, it is open for the High Court to exercise its jurisdiction of judicial review in the criminal writ petition, if filed by petitioners, against the impugned orders.

41. In an another judgment of the Hon'ble Supreme Court in case of **State of Madhya Pradesh Vs. Uday Singh [(2020) 12 SCC 733]**, it was held that the High Court erred in directing the

Magistrate to release seized vehicle in exercise of its inherent jurisdiction under Section 482 Cr.PC. Since the confiscation proceedings were initiated under Section 52(3) of the Forest Act, 1927, however, proceedings were governed by the relevant provisions of the said Act and thereof the jurisdiction of criminal courts stood excluded. As per the scheme of the Forest Act, 1927, in that case, substituted by the MP Act 25 of 1983, in view of Section 52-C(1), once the confiscation proceedings are initiated under provisions of the special statute, the jurisdiction of the criminal Court is ousted, since it is forest officer who is vested with power to pass orders for interim custody of vehicles and the jurisdiction of Magistrate is kept away.

42. Applying the analogy and *ratio decidendi* as expounded by the Apex Court in the above referred two judgments, and when it is explicit that in the special statute of the RBA Act, 1995, also the jurisdiction of any Court, Tribunal and other Authority has expressly been excluded and jurisdiction has been conferred only to the competent Authority to make order with regard to possession, delivery, disposal or release or confiscation of the means of conveyance seized under the Act within its special power assigned under Section 6-A of the Act, and this Court has already reached to the conclusion, in Para No.38 that the Competent Authority does not act like a criminal Court while exercising its jurisdiction under Section 6-A, in such eventuality a natural corollary and conclusion comes to fore that against the order passed by the Competent Authority i.e. the District Collector, in exercise of its jurisdiction under Section 6-A of the RBA Act, 1995,

interference should not and cannot be made in exercise of inherent powers by the High Court under Section 482 Cr.PC. However, it is hereby opined and observed that the High Court may grant indulgence and interfere with such order(s) of the Competent Authority, in exercise of its powers of judicial review in the writ petition, hence the criminal writ petition(s) against the impugned orders can obviously be maintained and entertained, wherein the High Court may examine the order on merits passed by the Competent Authority u/s. 6-A of the RBA Act, 1995.

43. For the foregoing reasons, this Court is refraining itself to interfere with the impugned orders in exercise of its inherent jurisdiction under Section 482 Cr.PC, wherein the present petitions have been filed by petitioners. However, it is hereby observed that it is open for the petitioners to invoke power and jurisdiction of judicial review of the High Court and to file criminal writ petition(s), against the impugned orders, if so desire.

44. **Conclusion:-** This Court finally reaches to the conclusion;

(i). that the nature of confiscation proceedings under Section 6-A of the Rajasthan Bovine Animal Act, 1995, is quasi-judicial and not criminal proceedings, therefore, the Competent Authority i.e. the Collector of concerned District, while passing any order under Section 6-A of the RBA Act, 1995, acts like a quasi-judicial authority and not as a criminal Court;

(ii). that the proceedings under Section 6-A of the Rajasthan Bovine Animal Act, 1995, are independent and distinct, which are separately maintainable before the Competent Authority i.e. the concerned District Collector, apart from the criminal proceedings,

commenced against the wrongdoer for commission of offence(s) under the RBA Act, 1995 before the criminal Court under the Code of Criminal Procedure. This conclusion is based on the *ratio decidendi* expounded by the Hon'ble Supreme Court in case of **State of Madhya Pradesh Vs. Kallo Bai [(2017) 14 SCC 502];**

(iii). that the Competent Authority is expected to initiate and conclude the confiscation proceedings under Section 6-A of the Rajasthan Bovine Animal Act, 1995, cautiously and with circumspection, keeping in mind the basic origin of seizure of the means of conveyance, and if means of conveyance was seized by the Police, while registering an FIR in connection with commission of offence(s) under the RBA Act, 1995 and a criminal trial of case arising out of such FIR, is pending before the criminal Court, the judgment given by the criminal Court should be factored by the Confiscating Authority. Such conclusion is based on the observations made by the Hon'ble Supreme Court in case of **Abdul Vahab Vs. State of Madhya Pradesh [(2022) 13 SCC 310];**

(iv). that As far as exercising jurisdiction by the Competent Authority to make an order with regard to possession, delivery and disposal or release of such means of conveyance on interim custody is concerned, the Authority may pass such orders in accordance with law duly guided by law of judicial precedents, settled in various judgments of the Apex Court and High Courts in this regard, keeping in mind that detention of vehicle for a long period in the premises of Police Station does not serve any purpose and it will cause loss not only to the owner, but also cause loss on revenue to the State exchequer as well.

(v). that against the order passed by the District Collector being the Competent Authority under Section 2(g) of the Rajasthan Bovine Animal Act, 1995, in exercise of its power and jurisdiction entrusted to him specifically under Section 6-A of the Rajasthan Bovine Animal Act, 1995, the interference should not and cannot be made by the High Court in exercise of its inherent jurisdiction under Section 482, since the Authority did not act like a criminal Court under the Code of Criminal Procedure. For arriving of such conclusion, this Court has followed *ratio decidendi* expounded by the Apex Court in cases of **State of W.B. Vs. Sujit Kumar Rana [(2004) 4 SCC 129]** & **State of Madhya Pradesh Vs. Uday Singh [(2020) 12 SCC 733]**, referred hereinabove. Nevertheless, it can be observed that such conclusion does not affect the judicial powers of the High Court, therefore, it is open for the aggrieved person to invoke the writ jurisdiction of the High Court, to challenge such orders, passed by the Competent Authority u/s. 6-A of the RBA Act, 1995, invoking powers of judicial review of the High Court and the criminal writ petition thereagainst may certainly lie; and

(vi). that in respect of question of law about availability of any alternative statutory remedy of appeal or revision against the order passed by the Competent Authority i.e. the District Collector in exercise of its powers under Section 6-A of the RBA Act, 1995, this Court has expressed its own opinion and made recommendations to the Government of Rajasthan in Para No.30 of the present judgment, as under:-

"30. Therefore, the aforesaid question of law about availability of any alternative remedy of appeal or revision against the impugned orders passed by the District Collector in exercise of its power and jurisdiction under Section 6-A of the RBA Act, 1995, is answered in negative, however, taking into consideration the availability of statutory remedy of appeal/ revision, against the order of confiscation and other kind of ancillary orders, as provided in other statutes, referred hereinabove, dealing with the similar nature of subject matter, this Court records its opinion that a remedy of appeal or revision against the order passed by the Competent Authority i.e. the District Collector in exercise of its jurisdiction u/s. 6-A of the RBA Act, 1995, must be open and be provided to the aggrieved person. It may not be oversight that against the order of same Competent Authority i.e. the District Collector, passed under Section 7(1) or (2), remedy of appeal is already prescribed under Section 7(3) of the Act, before the Divisional Commissioner, as much as in the Rajasthan Excise Act, 1950 also, against the order of confiscation passed under Section 69(4), remedy of appeal is available u/s. 9-A. The provision of Section 6-A was inserted by the State legislature in RBA Act, 1995, on the similar lines of Section 69 of Rajasthan Excise Act, with an aim and object to enlarge scope of the Act, for seizure and confiscation of the means of conveyance as well, which was used in commission of offence under the RBA Act. Therefore, this Court deems it just and proper that in order to bring the provision of Section 6-A to its completeness, on the similar line of Section 69 of the Rajasthan Excise Act, 1950, the State Legislature ought to ponder over its attention to the issue to open remedy of appeal to the aggrieved person against the order of Competent Authority passed under Section 6-A, in the similar tune as available against the order of Competent Authority passed under Section 7(1) or (2), u/s. 7(3) of the RBA Act, 1995 and this Court finds it proper to make its recommendations to the Government of Rajasthan to consider the same and to proceed, to fill up the gap/ lacunae in this regard, or atleast to make clarification in this regard, if think it just and proper to do so, within its domain and as per its own wisdom."

45. Registrar (Judicial) is directed to send a copy of this judgment to the Principal Law Secretary, Government of Rajasthan forthwith, who shall circulate the same to all the District Collectors of the State of Rajasthan as also shall apprise the Government of Rajasthan about the opinion and recommendations made by this Court in Para No.30 of this judgment, to do the needful, however,

it would be within the exclusive domain, discretion, jurisdiction and powers of the Government of Rajasthan and State Legislature, either to carry out or not any amendment, or to make any clarification or not, in the provision of Section 6-A of the Rajasthan Bovine Animal Act, 1995, in respect of providing any remedy of appeal/ revision against the order passed therein by the Competent Authority and in this regard, Government of Rajasthan would be absolutely free to deal with the issue, as it deems fit and proper as per its own wisdom.

46. Before parting with the judgment, this Court also place on record a mark of appreciation for the learned members of the Bar, who rendered their precious assistance to this Court as Amicus Curiae in these petitions.

47. With the aforesaid observations, opinion and recommendations, but without interfering with the impugned orders, all four present criminal miscellaneous petitions stand disposed of, by this common judgment.

48. A copy of this judgment be placed in each connected file.

(SUDESH BANSAL),J

Sachin