IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 18TH DAY OF AUGUST 2025 / 27TH SRAVANA, 1947

ICR (CRL.MC) NO. 16 OF 2025

ARISING FROM Crl.MC NO.7505 OF 2024 OF HIGH COURT OF KERALA

PETITIONER/S:

A.M.NOUSHAD
AGED 46 YEARS
S/O. MUHAMMED HANEEFA, AYYAPPURACKAL HOUSE, EDAVETTY P.O, KARIKKODE VILLAGE, THODUPUZHA, PIN - 685588

BY ADVS.
SRI.P.SHANES METHAR
SHRI.N.KRISHNA PRASAD
SHRI.HARKISH SREETHU V.S.

RESPONDENT/S:

1 **STATE OF KERALA**
REPRESENTED BY THE SPECIAL GOVERNMENT PLEADER (FORESTS) HIGH COURT OF KERALA., PIN - 682031

2 **THE RANGE FOREST OFFICER**
KALIYAR, PIN 685607.

SPL. G.P. SRI. NAGARAJ NARAYANAN

THIS INTRA COURT REFERENCE (CRIMINAL MISC. CASE) HAVING COME UP FOR ADMISSION ON 18.08.2025, THE COURT ON THE SAME DAY ORDERED THE FOLLOWING:

"C.R."

NITIN JAMDAR, C. J. &
P. V. KUNHIKRISHNAN, J.

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ICR (Crl.MC) No. 16 of 2025

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Dated this the 18th day of August, 2025

ORDER

NITIN JAMDAR, C.J.

This Division Bench is called upon to answer the question framed and referred to by the learned Single Judge as under:

> *"Whether the decision in Divisional Forest Officer v. Amina [1999 (1) KLJ 433] and DFO, Kothamangalam v. Sunny Joseph [2002 (3) KLT 641] express divergent views, and if so, whether a reference to a Full Bench is required?"*

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2. A few facts to provide context to the question referred are as follows. The Petitioner claims to be the owner of the vehicle which was taken into custody on 1 August 2024 by the Range Forest Officer on the allegation that it was used for illegal transportation of timber from the forest. The Petitioner moved the Court of Judicial Magistrate for interim custody of the vehicle. The Petitioner's case is that he had nothing to do with the cutting or removal of timber and that he was not aware of its transportation. The Judicial Magistrate of the First Class–I, Thodupuzha, rejected the application for the interim release of the vehicle.

3. The Petitioner challenged this order by filing Crl.M.C. No.7505

of 2024 before this Court on the grounds that the Petitioner is innocent of the alleged crime, that the vehicle is currently lying idle, leading to deterioration in its value, and that the interim release of the vehicle ought to have been granted. The learned counsel for the Petitioner also contended before the learned Single Judge that, under Section 52 of the Kerala Forest Act, 1961 (the Act of 1961), a vehicle could be seized only if it was found transporting forest produce and since the vehicle was seized several days after the timber was seized, the seizure of the vehicle was bad in law. The learned counsel for the Petitioner relied upon the decision of the Division Bench of this Court in the case of *Divisional Forest Officer v. Amina*[1]. The learned Special Government Pleader for the Forest Department, on the other hand, placed reliance upon the decision of the Division Bench of this Court in the case of *DFO, Kothamangalam v. Sunny Joseph*[2] to contend that even if the vehicle is not seized simultaneously with the timber, it does not divest the Forest Officers to exercise the power conferred under Section 52 of the Act of 1961.

4. The learned Single Judge examined the decisions in the cases of *Amina* and *Sunny Joseph*, and opined that there could be a divergence of views between these decisions of the Division Benches and even though the subsequent decision had distinguished the earlier one, an authoritative pronouncement was necessary and that the matter needs to be considered by a Division Bench to decide whether the issue requires a reference to the Full Bench.

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1 1999 (1) KLJ 433

2 2002 (3) KLT 641

5. Pursuant to the administrative order, the reference is now placed before us to answer the above question.

6. We have heard Mr. Harkish Sreethu V.J., the learned counsel representing Mr. P. Shanes Methar, learned counsel for the Petitioner, and Mr. Nagaraj Narayanan, the learned Special Government Pleader.

7. The legal question arises from Section 52 of the Act of 1961. Section 52 of the Act of 1961 reads as under:

> *"52. Seizure of property liable to confiscation.- (1) When there is reason to believe that a forest offence has been committed in respect of any timber or other forest produce, such timber or produce, together with all tools, ropes, chains, boats, vehicles and cattle used in committing any such offence may be seized by any Forest Officer or Police Officer.*
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> ***Explanation:-*** *The terms 'boats' and 'vehicles' in this section, [section 53, section 55, section 61A and section 61B] shall include all the articles and machinery kept in it whether fixed to the same or not.*
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> *(2) Every officer seizing any property under sub-section (1) shall place on such property or the receptacle, if any, in which, it is contained a mark indicating that the same has been so seized and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:*
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> *Provided that, when the timber or forest produce with respect to which such offence is believed to have been committed is the property of the Government and the offender is unknown, it shall be sufficient if the Forest Officer makes, as soon as may be,*

a report of the circumstances to his official superior."

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Section 52 of the Act of 1961 thus empowers the Forest Officer, when there is reason to believe that a forest offence has been committed in respect of any timber or other forest produce, not only to seize such timber or produce, but with all tools, ropes, chains, boats, vehicles, and cattle used in committing any such offence. Under Section 61A of the Act of 1961, the officer seizing the property under Section 52(1) together with all tools, vehicles, cattle, etc., has to produce it without any unreasonable delay before the officer not below the rank of Assistant Conservator of Forests who is empowered to order confiscation. This action is proceeded with by issuing a show cause notice under Section 61B.

8. Now we will examine the decisions of the Division Benches in the cases of *Amina* and *Sunny Joseph*. The decision in the case of *Amina* rendered by the Division Bench in 1999 is a short judgment, which reads as under:

> *"1. Heard counsel for the parties.*
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> *2. This appeal is filed by the Forest authorities impugning the judgment dated 17-7-1998.*
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> *3. The facts are that the petitioner owns a tractor which, according to the appellants, was involved in some offences allegedly committed under the Forest Act. The petitioner was, therefore, asked by the authorities of the Forest Department to produce the tractor in forest office. The controversy centres around the interpretation of S.52 of the Kerala Forest Act, S.52 simply states that*

> *when there is reason to believe that a forest offence has been committed in respect of any timber or other forest produce, vehicles used in committing any such offences may be seized by any Forest Officer or Police Officer along with all articles being used in committing the offence. The question for consideration is whether the respondent owner of the vehicle could be asked to produce the tractor* ***long after*** *the commission of the alleged offence. On a plain reading of S.52, it is clear that the vehicles could be seized by the forest authorities or police officers if it was found that they were involved in committing the offence. S.52 does not confer any power on the forest authorities to ask the owner of the vehicle to produce the same in the forest office* ***much after*** *the offence allegedly committed. Taking such a view, the learned Judge allowed the O.P. and restrained the forest authorities from calling upon the petitioner/respondent to produce her tractor before the respondents. We do not see any prima facie error in the view taken by the learned Judge in the matter. In the result, the appeal is dismissed."*
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> *** *(emphasis supplied)*

This judgment does not detail the facts, but it can be seen that the question posed by the Division Bench was whether the seizure of the vehicle "long after" and "much after" was justified and it was answered in the negative. The Division Bench was considering a case of seizure after a period of time, which was found unreasonable.

9. The decision in the case of *Amina*, relied upon by the Petitioner, has been considered by the Division Bench in the case of *Sunny Joseph*. In this case, according to the Forest Department, the respondent therein had

used his vehicle for the illicit transport of smuggled timber on 24 March 1993, and the vehicle was seized on 27 March 1993. The District Court, in appeal, found that the vehicle was not seized at the time of transportation of the timber items, and also the respondent had no opportunity to cross-examine the Range Officer. Therefore, one of the questions that arose for consideration before the Division Bench was whether it is mandatory that the vehicle has to be seized while seizing the timber, and the meaning of the phrase "together with" under Section 52(1) of the Act of 1961. It was in these circumstances that the Civil Revision Petition was referred to the Division Bench. On this question, the Division Bench observed as under:

> *"The first question is whether the fact that the vehicle was not seized along with the timber deprives the forest officials of the rights to seize and confiscate the vehicle. Learned counsel for the respondents brought to our notice a decision reported in Divisional Forest Officer v. Amina, 1999 (1) KLJ 433. There, a Division Bench of this Court held that "on a plain reading of S.52, it is clear that the vehicles could be seized by the forest authorities or police officers if that was found to be involved in committing the offence. S.52 does not confer any power on the forest authorities to ask the owner of the vehicle to produce the same in the forest office much after the offence allegedly committed."*
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> *S.52(1) of the Kerala Forest Act, 1961 says as follows:*
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> ***52. Seizure of property liable to confiscation.** - (1) When there is reason to believe that a forest offence has been committed in respect of any timber or other forest produce, such timber or produce, together with all tools, ropes, chains, boats, vehicles and cattle used in*

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

A reading of this Section does not indicate that there should be simultaneous seizure of the timber or forest produce and tools, ropes, chains, boats, vehicles, etc. It may happen that the forest offence would have been committed with respect to timber. The Forest Authorities would have got information only later. By the time the timber would have been stored in some place as had happened in this case. It cannot be said that because the timber has been stored in a particular place, the vehicle which was used for conveying the timber cannot be seized when it was really involved in the commission of offence. The question depends on the evidence and on the basis of which the Forest Officer has reason to believe that the vehicle was also involved in the offence. The decision cited in Divisional Forest Officer v. Amina, 1999 (1) KLJ 433, rests on the facts of that case. Here, there was not much delay in seizing the vehicle. The offence was detected on 24.3.1993 and the vehicle was seized on 27.3.1993. We make it clear that in cases where the forest produce and the vehicle are not seized simultaneously, the vehicle can be seized only if there is evidence to connect the vehicle with forest offence and that the seizure is not to be done after a long time. The seizure of the vehicle after a long time will put the owner and driver of the vehicle into great hardship with regard to discharging their burden which is imposed on them under S.52 and 61A of the above Act."

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The Division Bench in the case of *Sunny Joseph* held that Section 52 of the Act of 1961 does not imply a mandatory condition for simultaneous

seizure and there could be various factual situations where the simultaneous seizure is not possible, and it would depend on the facts of each case. It was clarified that there needs to be a reasonable nexus between the vehicle and the seized forest products, and that the seizure of the vehicle should be within a reasonable period, as seizure of the vehicle after a long time would place the owner and the driver in great hardship. The Division Bench in the case of *Sunny Joseph* noted that the decision in the case of *Amina* was based on the facts of the case. Correctly so, because the discussion in the decision in *Amina* shows that the delay in that case was held to be unreasonable.

10. In the case of *Amina*, the seizure of the vehicle occurred long after the seizure of the forest produce, and consequently, the seizure was set aside. In the case of *Sunny Joseph*, the Division Bench interpreted the phrase "together with" occurring in Section 52 of the Act of 1961 and held that seizure of the vehicle cannot occur long after the seizure of the forest produce.

11. Not only is there no conflict between the decisions in the cases of *Amina* and *Sunny Joseph*, but both the judgments are founded on the same principle. The principle being that the seizure of a vehicle, following the seizure of forest produce, has to be effected within a reasonable period of time. The decision in the case of *Sunny Joseph* develops this principle laid down in the case of *Amina* further by elaborating its scope and application. From both the judgments, same principle emerges that there has to be a reasonable nexus between the vehicle and the forest produce

seized, as well as a reasonable interval between the seizure of the produce and the seizure of the vehicle, otherwise the seizure of the vehicle after a long time will prejudice the owner and driver of the vehicle with regard to discharging their burden under the statute. The question of whether seizure of the vehicle after the seizure of the forest produce is within the reasonable time and with justifying reasons for the delay, and whether there is evidence to connect the vehicle to the seized products, will depend on the facts of each case which the Court will have to decide. Neither the decision in the case of *Amina* nor the decision in the case of *Sunny Joseph* has laid down any absolute principle in this regard that the words "together with" in Section 52 of the Act of 1961 means simultaneously or that it can mean any time.

12. Second aspect is that having dealt with the decision in the case of *Amina* in detail and further having expounded the same basic principle, the subsequent decision in the case of *Sunny Joseph* of the Division Bench is the binding law insofar as the Single Judge is concerned. The law laid down in the case of *Sunny Joseph* is in field for more than twenty three years. Generally, a long-standing interpretation of a statutory provision need not be re-opened unless compelling reasons exist.

13. Thus, the decisions in the cases of *Divisional Forest Officer v. Amina* and *DFO, Kothamangalam v. Sunny Joseph* do not express divergent views. On the other hand, both the decisions lay down the same legal principle that the phrase "together with" in Section 52 of the Act of 1961, in respect of vehicle and the forest produce, does not mean that the

seizure of both has to be simultaneous, nor does it permit the seizure at any time later. If the vehicle is not seized along with the forest produce, it has to be seized within a reasonable time and nexus. This aspect of reasonableness will depend on the facts of each case. Therefore, a reference to the Full Bench is not required.

14. In view of the above discussion, the question referred for consideration is answered in the Negative.

15. Crl.M.C. No.7505 of 2024 be placed before the learned Single Judge as per roster for disposal.

Sd/-

NITIN JAMDAR,
CHIEF JUSTICE

Sd/-

P. V. KUNHIKRISHNAN,
JUDGE

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