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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No. 57 of 2014

1. Mohammad Shoaib, S/o Rafiq Mohammaad, Aged about 25 years, R/o Kasimuddin House, Bristol Chowk, Chotapara, Raipur, P.S. City Kotwali, P.O. Chotapara, Raipur, District Raipur, C.G. PIN 492001

2. Abdul Salam Khan, S/o Abdul Sakur, Aged about 73 years, R/o Kazi Manjil, Jail Road, Hotel Afgan, P.S. Moudhapara, P.O. Moudhapara, Raipur, District Raipur, C.G. PIN 492001

…..... Petitioners

Versus

1. The State of Chhattisgarh, through the Secretary, Department of Forest, D.K.S. Building, Ministry, P.S. Civil Line, P.O. Raipur, District Raipur, Chhattisgarh

2. The Principal Chief Conservator of Forest, Raipur, P.S. Civil Line, P.O. Raipur, District Raipur, Chhattisgarh.

3. The Divisional Forest Officer, (Authorized Officer-cum-Chief Wild Life Warden), Sub Division Raipur, P.S. Raipur, P.O. Raipur, District Raipur, C.G.

4. The Station House Officer, Police Station Palari, District Balaudabazar, C.G.

…....Respondents

For Petitioners: Mr. Alok Dewangan, Advocate.
For Respondents/State: Mr. Dhiraj Kumar Wankhede, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

05/04/2016

(1) The petitioner No.1 is the registered owner of Maruti Zen bearing registration No.CG.04/ZD 7655. The said

vehicle was found involved in commission of offence punishable under Sections 9,44,51,25 & 26(28) of the Wild Life (Protection) Act, 1972 (henceforth 'Act of 1972') and Criminal Case No. 647/2012 was registered in the Court of Judicial Magistrate First Class, Baloda Bazar titled as *State of Chhatisgarh v. Mohammad Shoaib* & another and same is pending consideration.

(2) Case of the respondent/State, in brief, is that the petitioner No.1, who is registered owner of the above stated vehicle, was found committing offence, which is punishable under the Act of 1972. The said vehicle along with arms and other articles was seized by the jurisdictional forest authorities and, thereafter, proceeding for confiscation was initiated under the provisions of the Wild Life (Protection) Act, 1972 read with Section 26(*Jha*) of the Indian Forest Act, 1927 (henceforth 'Act of 1927'). The Specified Officer, by its order dated 23.08.2012, confiscated the said vehicle finding *inter alia* that the said vehicle was involved in hunting of the forest scheduled animal namely *"Chital".*

(3) Feeling aggrieved and dissatisfied with the order of Specified Officer under the Act of 1972, instant writ petition under Article 226/227 of the Constitution of India has been filed by the petitioners herein.

(4) Case of the petitioners, in the instant writ petition, is that Criminal Case No. 647/2012 for commission of offence by using aforesaid vehicle under Sections 9,44,51,25,26 (28) of the Act of 1972 is pending consideration before the jurisdictional criminal court and date is fixed for further hearing. Unless it is established in the said criminal trial that the said vehicle is used for committing the aforesaid offences, the said vehicle cannot be confiscated in exercise of power conferred under Section 39(1)(d) of the Act, 1972 and, as such, the order passed by the Authorized Officer and the Additional Divisional Forest Officer is unsustainable and bad in law.

(5) Return has been filed on behalf of the Respondents/State stating *inter alia* that Authorized Officer has seized the vehicle of the petitioners finding that the said vehicle was used in commission of offence under the provisions of the Act of 1972 & the Act of 1927 and after giving due opportunity of hearing, the aforesaid vehicle has been seized and, therefore, no interference is called for in the order impugned and, as such, the writ petition deserves to be dismissed.

(6) No rejoinder has been filed on behalf of the petitioners.

(7) Shri Alok Dewangan, learned counsel appearing for the

petitioners would submit that order of the Authorized Forest Officer confiscating the vehicle of the petitioners is without jurisdiction and without authority of law as it has not been established in the criminal trial that the said vehicle was used for committing the offence under the Act of 1972 and they have not been convicted by the said criminal court for offence under the Act of 1972 and, as such, confiscation of the petitioners' vehicle by the Authorized officer is unsustainable and bad in law.

(8) Per contra, learned counsel for the State opposes the writ petition and would support the order confiscating the vehicle of petitioner No.1.

(9) I have heard counsel for the parties and considered their rival submissions made hereinabove and also gone through the relevant documents with utmost circumspection.

(10) In order to decide the question raised at the bar, it would be appropriate to notice certain provisions contained in the Indian Forest Act, 1927 and Wild Life (Protection) Act, 1972, which read as under:-

> “2. Interpretation clause.-xxx xxx xxx xxx
> (1)xxx xxx xxx xxx xxx xxx
> (2)xxx xxx xxx xxx xxx xxx
> (3)xxx xxx xxx xxx xxx xxx
> (4) “forest-produce” includes-
> xxx xxx xxx xxx xxx xxx

(iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey, and wax, and all other parts of produce of animals, and"

"26.Acts prohibited in such forest.- (1) Any person who-

xxx xxx xxx xxx xxx xxx

(i) in contravention of any rules made in this behalf by the State Government hunts, shoots, fishes, poisons water or sets traps or snares; or

shall be punishable with imprisonment for a term terms which, may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid."

"Section 52 as amended by M.P. Act.- Seizure of property liable to confiscation and procedure therefor-

(1) Where there is reason to believe a forest offence has been committed in respect of any forest produce, such produce, together with all tools, boats, vehicles, ropes, chains or any other article used in committing any such offence may be seized by any Forest Officer or Police Officer.

(2) Every officer xxx xxx xxx

(3) Subject to sub-section (5), where the authorised officer upon production before him of property seized or upon receipt of report about seizure, as the case may be, is satisfied that a forest offence has been committed in respect thereof, he may be order in writing and for reasons to be recorded confiscate forest produce so seized together with all tools, vehicles, boats, ropes, chains or any other article used in

committing such offence. xxx xxx".

"**52-C (as amended by M.P. Act) Bar to jurisdiction of Court etc. under certain circumstances.-** (i) On receipt of intimation under sub-section (4) of Section 52 about initiation of proceedings for confiscation of property by the magistrate having jurisdiction to try the offence on account of which the seizure of property which is subject matter of confiscation, has been made, no Court, Tribunal or Authority (other than the authorised officer, Appellate Authority and Court of Sessions referred to in Sections 52, 52-A and 52-B) shall have jurisdiction to make orders with regard to possession, delivery, disposal or distribution of the property in regard to which proceedings for confiscation are initiated under Section 52, notwithstanding anything to the contrary contained in this Act, or any other law for the time being in force."

The relevant provisions of Wild Life (Protection) Act, 1972 are as under :-

"**2. Definition.**- In this Act, unless the context otherwise requires-

xxx xxx xxx xxx

(36) "Wild animal" means any animal found wild in nature and includes any animal specified in Schedule I, Schedule II, Schedule III, Schedule IV or Schedule V, wherever found;

(37) "Wild Life" includes any animal, bees, butterflies, crustacea, fish and moths, and aquatic or land vegetation which forms part of any habitat;"

"**29. Destruction, etc., in a sanctuary prohibited**

without a permit.- No person shall destroy, exploit or remove any wild life from a sanctuary or destroy or damage the habitat of any wild animal or deprive any wild animal of its habitat within such sanctuary except under and in accordance with a permit granted by the Chief Wild Life Warden and no such permit shall be granted unless the State Government, being satisfied that such destruction, exploitation or removal of wild life from the sanctuary is necessary for the improvement and better management of wild life therein, authorises the issue of such permit."

"Declaration of National Parks.-

xxx xxx xxx xxx

(6) No person shall destroy, exploit or remove any wild life from a National Park or destroy or damage the habitat of any wild animal or deprive any wild animal of its habitat within such National Park except under an in accordance with a permit granted by the Chief Wild Life Warden and no such permit shall be granted unless the State Government, being satisfied that such destruction, exploitation or removal of wild life from the National Park is necessary for the improvement and better management of wild life therein, authorises the issue of such permit."

"39. Wild animals etc., to be Government property.- (1) Every-

(a) Wild animal, other than vermin, which is hunted under Section 11 or sub-section (1) of Section 29 or sub-section (6) of Section 35 or kept or [bred in captivity or hunted] in contravention of any provision of this Act or any rule or order made thereunder or found dead, or killed [xxx] by mistake, and

(b) animal article, trophy or uncrued trophy or meat

derived from any wild animal referred to in clause (a) in respect of which any offence against this Act or any rule or order made thereunder has been committed.

(c) ivory imported into India and an article made from such ivory in respect of which any offence against this Act or any rule or order made thereunder has been committed.

(d) vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act;

Shall be the property of the State Government, and, where such animal is hunted in a sanctuary or National Park declared by the Central Government, such animal or any animal article, trophy,uncured trophy or meat (derived from such animal or any vehicle, vessel, weapn, trap or tool used in such hunting) shall be the property of the Central Government."

(11) Concededly, Chital (Axix axis) is a scheduled wild animal included in Schedule III, Serial No. 5 enacted under Sections 2,8,9 [xxx] 11 and 61 of the Act, 1972.

(12) Allegation against the petitioners is that they have made gun shot injuries to the said animal on 11.10.2011 at 4 am., which is offence punishable under Section 26(jha) of the Act, 1927 as well as Sections 9,44,50 & 51 of the Act, 1972.

(13) Since Chital is a Scheduled animal under the Act, 1972 and offence is alleged to have been committed under Sections 9,44,50

& 51 of the Act, 1972, the provisions of Section 39 of the said Act, 1972 are attracted and, therefore, it can be construed that the said car was seized under Section 39 of the Act of 1972.

(14) The Full Bench of the High Court of Madhya Pradesh in the matter of **Madhukar Rao V. State of M.P. and others**[1] considered the question whether the property seized under the Act, 1972 becomes the property of the State Government on accusation or suspicion of commission of an offence or there should be finding of the competent authority about the commission of offence; and it was held by their Lordships that seized property may be treated as property of the State, only upon a finding by the competent court that vehicle seized has been used for committing an offence and observed as under:-

> "**16.** Strong reliance has been placed on behalf of the State on Clause (d) of sub-Section (1) of Section 39 of the Act. It is submitted that vehicle including properties mentioned therein which have been seized on the ground of having been used for committing the offence become the property of the State and, therefore, such property including vehicle cannot be released even by the Magistrate. It is submitted that other interpretation would frustrate the object of the Amendment Act whereby the power to grant interim release of the property allegedly used in commission of offence has been taken away. On the plain language used in sub-clause (d) of sub-section (1) of Section 39, we are unable to accept the interpretation placed and

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submission made on behalf of the State that every property seized merely on accusation or suspicion of commission of an offence under the Act would become property of the State. The language used in sub-clause (d) of sub-section (1) of Section 39 is "*Vehicle …….....that has been used for committing an offence and has been seized".* In order that that the seized property may be treated as property of the State, there should be a finding by the competent Court that vehicle seized has been used for committing an offence. The seized vehicle or other property merely on the charge of commission of an offence cannot be declared to be the property of the State Government under said Clause (d) of Section 39(1). The power to seize a vehicle by an Authority or officer under the Act is contained in Section 50(1)(c). The power of seizure can be exercised in respect of a property including a vehicle if it appears to the Authority that an offence under the Act has been committed. The seizure of property or vehicle is, effected on accusation or suspicion of commission of an offence Under sub-section (3-A) introduced by Amendment Act No.44 of 1991 , power has expressly been conferred on the specified Forest Authorities to grant interim release of any captive animal or wild animal seized in commission of an offence on a condition of executiong a bond by the person concerned that the said animal shall be produced before the Magistrate having jurisdiction to try the offence. Such a power in respect of certain properties including vehicles existed in sub-section (2) of Section 50 prior to its deletion under Amendment Act No.44 of 1991. The omission of sub-section (2) of Section 50 by amendment has

necessary consequence of taking away power of the prescribed Authorities under the Act to grant interim release of seized property including vehicle to the person claiming ownership to the same. The omission of sub-section (2) of Section 50 cannot, however, be construed to hold that the power to grant interim release already available to an established criminal Court, meaning the Magistrate under Section 452 of the Code of Criminal Procedure, has also been taken away. No such intention can be gathered from any of the provisions of the Act quoted above. We on the contrary, find a clear indication in them that the power of the Magistrate as a Criminal Court empowered to deal and try the offence under the Act is not in any manner affected. Sub-section (4) of Section 50 requires that any person detained or things seized under sub-section (I) of Section 50 shall forthwith be taken before a Magistrate to be dealt with according to law. It is not disputed on behalf of the State that by virtue of the provisions contained in sub-section (2) of Section 4 of the Criminal Procedure Code any offence under the Act can be investigated, enquired into and tried under the Code. The Magistrate, therefore, as a Criminal Court under the Code is empowered to try the offences and impose penalties and punishments provided by the Act or proving of commission of the offence under the Act.

(17) If the interpretation, as has been sought to be put on behalf of the State on Clause (d) of sub-section (1) of Section 39, is accepted, every property mentioned therein including a vehicle seized merely on accusation or suspicion would become property of the State and that would be the result even though in the

trial ultimately the Magistrate finds that no offence has been committed and acquits the accused. In our considered opinion the property seized under Section 50 of the Act from an alleged offender cannot become property of the State under Clause (d) of Section 39(1) unless there is a trial and a finding reached by the competent Court that the Property was used for committing an offence under the Act. If the seizure of a property was enough to declare it as the property of the Government, there was no necessity to provide under sub-section (2) of Section 51 that on proof of commission of the offfence, the properties including vehicle, vessel, or weapon used in the commission of the offence would be forfeited to the State Government, we do not find any dichotomy or conflict in the provisions under Section 39(1)(d) and Section 51 (2) of the Act. Properties including vessel can be seized on accusation of commission of an offence under the Act and if the offender is available and is arrested, on proof of his guilt, the property seized from him and used in commission of the offence is liable to forfeiture to the State under Section 51(2) of the Act. Similarly every property seized and is held to have been used for committing an offence by competent Court, whether the offender is available or not for punishment, would be declared to be the property by virtue of the provisions contained under Section 39(1) (d) of the Act. We find that Section 39 contained in Chapter-V is sort of a residuary provision to make all properties seized and found to be used in commission of an offence as properties of the State Government irrespective of the fact whether they are liable to forfeiture at the conclusion of the trial under sub-

section (2) of Section 51 of the Act. A situation can be envisaged where the offence is proved to have been committed but the owner of the property or the offender himself is not available for prosecution. In that situation by virtue of Clause (d) of Section 39 of the Act the property would become the property of the State without any requirement of passing an order of forfeiture in a trial by the Criminal Court in accordance with sub-section (2) of Section 51 of the Act."

Their Lordships finally concluded:-

"We also hold that mere seizure of any property including vehicle on the charge of commission of an offence would not take the property to be State Government under Section 39(1)(d) of the State"

(15) From the judgment of Full Bench of the High Court of Madhya Pradesh, it is quite vivid that mere seizure of any property including vehicle on the charge of commission of an offence would not make property to be of the State Government under Section 39(1)(d) of the Act of 1972, unless there is finding returned by the criminal court that said vehicle seized has been used for committing offence.

(16) The aforesaid determination brings me to the factual matrix of the case in hand. The Authorized Forest Officer in exercise of power under Section 39(1)(d) of the Act of 1972 has directed confiscation of the vehicle in favour of the State Government but the criminal case initiated for commission of offence against the petitioners under Sections 9,44,51,25,26 (28) of the Act, 1972 is

pending consideration before the jurisdictional criminal court; and at present there is no finding recorded by the criminal court that the petitioners' vehicle has been used for committing offence. In absence of such finding by the competent criminal court, the provisions of Section 39(1)(d) of the Act, 1972 cannot be invoked into. The order of the Specified Officer forfeiting the vehicle without awaiting the decision of the competent criminal court about use of offending vehicle in above-stated offence is without jurisdiction and without authority of law in light of the decision rendered by the Full Bench of the Madhya Pradesh High Court in the matter of **Madhukar Rao** (supra).

(17) As a fall out and consequence of aforesaid discussion, order dated 23.08.2012 passed by Specified Officer is hereby quashed. In the matter of **Madhukar Rao** (Supra), it was held that any property including vehicle seized on accusation or suspicion of commission of an offence under the Act can on relevant grounds and circumstances, be released by the Magistrate pending trial in accordance with Section 50(4) read with Section 451 of the Code of Criminal Procedure. Thus an application under Section 451 of the Cr.P.C. before the jurisdictional Magistrate is maintainable for interim custody of questioned vehicle. Accordingly, the petitioners are granted liberty to make an application before the Magistrate having jurisdiction to try the offence under Section 50(4) read with Section 451 of the Code of

Criminal Procedure for grant of interim custody of the vehicle and in the event of filing such application before the learned jurisdictional Magistrate, it is directed to be decided by the concerned Magistrate in light of judgment rendered in the matter of **Madhukar Rao** (Supra) and in light of observations made hereinabove expeditiously preferably within a period of 30 days from the date of production of a certified copy of this order, in accordance with law. No order as to costs.

(18) However, liberty is reserved in favour of the Authorized Forest Officer to proceed for seizure/confiscation of the vehicle depending upon the result and finding of Criminal Case No. 647/2012 pending in the Court of Judicial Magistrate, First Class, Baloda Bazar against the petitioners.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

HEAD NOTE

(1) Vehicle seized under Section 39(1)(d) of Wild Life (Protection) Act, 1972 cannot be property of the Government unless finding is recorded by Criminal Court that vehicle is used for commission of offence.

HINDI

(1) वन्य जीव (संरक्षण) अधिनियम, 1972 की धारा 39 (1) (डी) के अधीन जब्त वाहन शासन की संपत्ति नहीं हो सकती जब तक कि दाण्डिक न्यायालय द्वारा यह निष्कर्ष अभिलिखित न कर लिया जाए कि वाहन का उपयोग अपराध करने हेतु किया गया है।


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