

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 306 of 2018**

Robin Lal, S/o. Late Shri Rajan Mukesh Lal, Aged About 32 Years, R/o. Shri Arihant Vihar Colony, Civil Lines, Dhamtari, Civil & Revenue District-Dhamtari, Chhattisgarh., District : Dhamtari, Chhattisgarh

---- Petitioner**Versus**

State Of Chhattisgarh, Through P.S. Kotwali (Incharge), Dhamtari, Chhattisgarh.

---- Respondents

For Petitioner : Mr. Kshitij Sharma, Advocate

For Respondents : Mr. S.K.Mishra, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****11.07.2018**

Heard

1. This petition is against the order dated 01.02.2018 passed by the Sessions Judge Dhamtari in Criminal Revision No.3/2018. By such order, the revisional Court has affirmed the rejection of application for custody of the vehicle seized in Crime No.407/2017 under Section 379 of Indian Penal Code & under Sections 9, 39, 48-A, 49 & 51 of the Wild Life Protection Act, 1972 and under Section 26(1) J of the Indian Forest Act, 1927 and also under Section 30 of the Arms Act.
2. It has been contended before this Court that after framing of charge, the offence under Section 9 & 48-A of the Wild Life Protection Act, 1972 (*hereinafter referred to as "Act, 1972"*) and Section 379 of I.P.C. and Section 30 of the Arms Act has been framed by the Judicial Magistrate.
3. As per the prosecution case on 03.10.2017, in a farm house which is adjacent to the forest, the petitioner has killed Cheetal by his .22



bore Rifle and shot him down and in order to consume the meat took it in a XUV vehicle bearing No.C.G.05/MB/2656 and from Vishrampur forest came to Dhamtari. The dead Cheetal and flesh and vehicle were seized, thereafter, the charge sheet was filed. During pendency before the Court, an application was filed for custody of the vehicle which was dismissed by Judicial Magistrate by an order dated 10.01.2018. Thereafter, the same was subject of challenge in a revision before the Sessions Judge. The Sessions Judge also dismissed the petition and relied on the averments made in the order of the Judicial Magistrate that the vehicle has been sent for confiscation and a communication to this effect exists by a letter dated 05.10.2017. Therefore, the Court was not within its power to give the vehicle on supurdnama.

4. Learned counsel for the petitioner submits that both the Court below completely misconceived the interpretation of statute as the rejection of the custody of vehicle has been made under Section 50(3A) of the Act, 1972, which has been applicable in this case. It is stated that the ground on which custody is rejected speaks about the animal and here in this case the custody was sought for of the vehicle. It is further contended that unless and until the Court which is trying the offence has convicted the offender, the confiscation order cannot be passed by any other authority as provided under Section 51(2) of the Act, 1972. He therefore submits under the circumstances, since the trial is pending adjudication, no bar exists in giving the custody of the vehicle. Accordingly, the custody of vehicle may be allowed to be given to the petitioner.

5. Learned State counsel opposes the argument and submits that the order passed by the Court below is well merited, which do not call for any interference.
6. Perused the documents and reply of the State.
7. The rejection of the vehicle has been made under Section 50(3) (A) of the Act, 1972. For the sake of brevity, sub Section 3(A) of Section 50 which falls under Chapter VI of the Act, 1972 reproduced herein under :

(3A). Any officer of a rank not inferior to that of an Assistant Director of Wild Life Preservation or an Assistant Conservator of Forests, who or whose subordinate, has seized any captive animal or wild animal under clause (c) of sub-section (1) may give the same for custody on the execution by any person of a bond for the production of such animal if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

8. Therefore, reading of the aforesaid Section on which the application for the custody of the vehicle has been rejected is only meant for the animal and not for the vehicle. Therefore, prima facie, it appears that sub-section 3A of Section 50 of the Act, 1972 was wrongly been interpreted by the Court below. Further, sub section 4 of Section 50 provides that any things seized under the power in exercise of Section 50 shall forthwith be taken before a Magistrate to be dealt with according to law under intimation to the Chief Wild Life Warden or the officer authorised by him in this regard. Therefore, the duty has been cast on the person who seized any thing, which is used in an offence has to produce it before the Magistrate. Further Section 51 of the Act, 1972

provides for the penalties with respect to the seizure and confiscation. The provisions are contained in sub-section 2 of Section 51 which reads as under :

(2). When any person is convicted of an offence against this Act, the court trying the offence may order that any captive animal, wild animal, animal article, trophy, uncured trophy, meat, ivory, imported into India or an article made from such ivory, any specified plant, or part or derivative thereof in respect of which the offence has been committed, and any trap, tool, vehicle, vessel or weapon, used in the commission of the said offence be forfeited to the State Government and that any licence or permit, held by such person under the provisions of this Act, be cancelled.

9. Reading of sub-section 2 of Section 51 of the Act, 1972 contemplates that the order of confiscation of vehicle or goods so used for commission of the offence be forfeited to the State Government. Meaning thereby, the forfeiture can be ordered by the Court trying the offence itself.

10. As has been held by the Supreme Court in case of **State of Madhya Pradesh & Others v. Madhukar Rao** reported in **(2008) 14 SCC 624**, the Court interpreted the effect of sub-section 3A of Section 50 and observed that reading of sub-section 3A of Section 50 and the provisions of Chapter-VI of the Act, 1972 do not exclude the application of provisions of Cr.P.C. It was held that Section 50 of the Act, 1972 has several provisions dealing with the prevention and detection of offence under the Act. Sub-section 5 of Section 51 exclude the application of Section 360 of Cr.P.C. and the provisions of Probation of Offenders Act, 1958. While interpreting sub-section 4 of Section 50 of the Act, 1972 it is held

that after the things have been seized it has to be taken to the concerned Magistrate to be dealt with in accordance with law and not according to the provisions of the Act i.e. Act of 1972. Therefore, necessary implication would be that the provisions of Cr.P.C. would apply for the custody of the vehicle, which has not been executed. Finally at para 22, the Supreme Court has observed that the provisions of Section 50 of the Act, 1972 and the amendments made thereunder do not in any way affect the Magistrate's power to make an order of interim release of the vehicle under Section 451 of the Code.

11. In the instant case, this fact has not been disputed that still the proceedings of criminal case is pending adjudication before the Judicial Magistrate, therefore, the Judicial Magistrate will have all the power to exercise the power vested in it under Section 451 of Cr.P.C. The Supreme Court has reiterated the fact that when the offence has been committed, for interim release of the vehicle, the only remedy to the aggrieved person is to approach the Magistrate for interim release of the seized vehicle.

12. It is matter of common knowledge or experience that as and when the vehicles are seized and kept in police stations, not only do they occupy substantial space in police stations, but upon being kept in open are also prone to fast natural decay on account of whether conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than two weeks. Apart from the above, it is also matter of common knowledge that several valuable and costly parts of the said vehicle are either gets junked or are cannibalized so that the vehicles become unworthy of being driven on road. Therefore, no

purpose will be served to keep the vehicle in police custody for a long time as it will turn junk and also occupy the substantial place of police station.

13. Considering the entirety of the facts, the reason assigned by the learned Court below in the impugned order dated 01.02.2018 cannot be appreciated.
14. Under the circumstances, following the principles laid down in **(2010) 6 SCC 768** and **(2002) 10 SCC 283**, I am inclined to release the vehicle in favour of the petitioner. Accordingly, the vehicle shall be released on the following conditions :-

- (i) Before release of vehicle proper Panchnama be prepared.
- (ii) Photographs of vehicle should be taken and bond should also be produced that the vehicle would be produced if required at the time of trial.
- (iii) Proper security i.e., personal bond of Rs.10 Lacs and like sum of surety be obtained before release of vehicle.

15. In view of foregoing discussion, the petition succeeds and is allowed.

Sd/-
(Goutam Bhaduri)
Judge