

Reserved

A.F.R.

Court No. - 32

Case :- WRIT - C No. - 5726 of 2020

Petitioner :- Devendra Kumar

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Mohd. Farooq

Counsel for Respondent :- C.S.C.

Hon'ble Salil Kumar Rai,J.

Hon'ble Surendra Singh-I,J.

Per : Hon'ble Surendra Singh-I, J.

Heard Mohd. Farooq, learned counsel for the petitioner and learned Standing Counsel representing the State.

2. The prosecution case against the petitioner, Devendra Kumar, and his son, Prashant Vishnoi in brief is that on receiving the information regarding illegal storage of large quantity of hide, trophies made of skulls and horn of prohibited forest animals including their meat kept in 47 packets on 29.04.2017 at 01:30 p.m., a joint team of officers of Directorate of Revenue Intelligence and Forest Department, Meerut Division, Meerut, raided the residence of the petitioner, Devendra Kumar, and his son, Prashant Vishnoi situated at 36/4, Civil Lines, Meerut. From the room situated at second floor of the house, hide of leopard, hide and skull of black deer, horns of sambar and deer in large quantity and a knife with handle made of tusk, was recovered. On the ground floor, meat of prohibited wild animals kept in 47 packets in freeze container (deep freezer) was also recovered. Details of articles recovered is as follows :-

(i) one hide of leopard

(ii) one hide of deer/antelope

(iii) one skull of large antelope

(iv) 3 horns of young large antelope

(v) 9 deer skull with two horns

(vi) One deer skull with neck and horn

(vii) 7 teeth of wild animals

(viii) one knife handle sized 12 cm x 1 cm made of elephant tusk, total length with cutting part 26 cm

(ix) On the ground floor, 47 packets of meat of prohibited forest animal kept in freezer (deep freezer)

3. The petitioner, Devendra Kumar, retired colonel, informed the raiding team that the frozen meat is that of wild boar. From the aforesaid recovery, Range Case No. 6/2017-18 u/s 9, 44, 49-A, 49-B, 50 and 51 of Wild Life (Protection) Act, 1972, Police Station- Civil Lines, District- Meerut, was registered against the petitioner and his son, Prashant Vishnoi.

4. The aforesaid articles recovered from the residence of the petitioner were seized, taken into possession and recovery memo was prepared in the presence of the witnesses. After investigation against the petitioner and his son, challan in complaint case under the aforesaid sections was sent to the court of jurisdictional Magistrate.

5. The raiding party also seized white Fortuner vehicle no. U.K. 06 V 0044 involved in the commission of the offence from the residence of the petitioner and prepared its seizure memo dated 05.09.2017 and sent it to the jurisdictional Magistrate.

6. The petitioner filed application for release of the vehicle which was rejected vide order dated 24.04.2018 by the Magistrate concerned. Thereafter, the petitioner filed Criminal Revision No. 227 of 2018, Devendra Kumar Vs. State of U.P. and another against the impugned order passed by the Magistrate which was rejected vide order dated 17.10.2018 passed by the Additional Sessions Judge, Court No. 7, Meerut. Against the aforesaid order passed by the revisional court, the petitioner instituted Matters under Article 227 No. 8477 of 2018, Devendra Kumar Vs. State of U.P. and Another before this Court. Later on, he not pressed it and the petition vide order

dated 29.03.2019 was dismissed as withdrawn with liberty to avail any other remedy available under the law.

7. Later on, the petitioner filed an application for release of aforesaid vehicle before the Prescribed Authority/Divisional Director, Social Forestry Division, Meerut which was rejected by the Divisional Director vide order dated 23.06.2019 on the ground that he has no jurisdiction to release a vehicle detained under Wild Life (Protection) Act, 1972. Against the aforesaid order of Divisional Director, Social Forestry Division, Meerut, the petitioner filed appeal before Principal Secretary of Forest/Appellate Tribunal, Department of Social Forestry, U.P. Government at Lucknow, which has been rejected by the aforesaid Principal Secretary vide order dated 14.10.2020.

8. The respondent no. 2 in his counter affidavit has emphasized the averment made in the challani report filed against the petitioner and his son. It has been stated in the counter affidavit that co-accused, Bablu son on Kartare, in his statement recorded u/s 161 Cr.P.C., has stated that on 06.11.2016 in the afternoon, co-accused Prashant Vishnoi by his mobile number 9410644444 rang him on his mobile number 7060127190 and asked him to come to his residence situated at 36/4, Civil Lines, Meerut. On reaching there, he told him that meat is kept in the freezer attached to the back side of his white Fortuner car no. U.K. 06 V 0044. He asked him to alight and bring it in his residence. On the direction of Prashant Vishnoi, co-accused, Bablu opened the aforesaid freezer attached to the car and found that large quantity of meat was kept in it. Prashant Vishnoi told him that the meat is of wild animals like *neelgai* and *padaa* which he has hunted from the jungle of the east. Co-accused, Bablu carried the meat from the Fortuner car and stored in a freezer which was placed at the ground floor of the house.

9. In the counter affidavit, it is also stated that on the basis of statement of co-accused, Bablu, it was found that the Fortuner car was used in the commission of wildlife crime relating to Range Case No. 6/2017-18, Meerut Range and, therefore, it was seized on 05.09.2017. It has also been stated in the counter affidavit that the petitioner preferred an appeal before the State Government on 17.06.2019 and during the pendency of the aforesaid appeal,

the present writ petition has been filed by the petitioner for release of the above-mentioned vehicle. It is also submitted that the appeal filed by the petitioner was rejected by the State Government by a detailed, reasoned and speaking order dated 14.10.2020 on the ground that jurisdiction for release of the vehicle detained under Wild Life (Protection) Act, 1972, lies within the jurisdictional Magistrate and not with the Divisional Director, Social Forestry Division, Meerut or the State Government. It has also been stated in the counter affidavit that on the basis of challan submitted by Forest Department, the trial of the case is pending against the petitioner in the court of Additional Chief Judicial Magistrate, Meerut and the petitioner has not yet been acquitted by the court. In the appeal, it was held that the vehicle seized under the provisions of Section 39(1)(d) of the Wild Life (Protection) Act, 1972, is a government property. The decision regarding the said vehicle lies only with the jurisdictional magistrate.

10. It has been submitted by learned counsel for the petitioner that there is no iota of evidence about the involvement of vehicle in the alleged offence committed under the Wild Life (Protection) Act, 1972, but the jurisdictional Magistrate as well as the revisional court illegally rejected petitioner's application for release of the vehicle. It has also been submitted that the trial of the case is still pending before the Magistrate and the petitioner as well as his son, Prashant Vishnoi have been released on bail by this Court in Criminal Misc. Bail Application Nos. 4681 of 2018 and 5275 of 2018 vide orders dated 07.02.2018 and 02.04.2018 respectively. It has also been submitted that no purpose would be served by detention of the vehicle, therefore, it should be released in favour of the petitioner. It has also been submitted that the State Government/Principal Secretary of Forest/Appellate Tribunal, Department of Social Forestry, U.P. Government at Lucknow, dismissed the appeal on the ground that there is no provision of appellate authority at the government level under the Wild Life (Protection) Act, 1972. Thus, decision/order can be passed by Hon'ble Court in the case.

11. The petitioner has stated in his rejoinder affidavit that the confessional statement of co-accused, Bablu is false and no action can be taken against the petitioner on the basis of statement of co-accused, Bablu.

12. Per contra, learned Standing Counsel representing the State has opposed the writ petition on the ground that huge quantity of body parts and meat of prohibited wild animals was recovered from the residence of the petitioner. Apart from that, forensic report has been sent by the Wildlife Forensic Lab, Dehradun. After analysis of the blood, it was found that it belongs to *gallus gallus* (red junglefowl) which is prohibited under the Wild Life (Protection) Act, 1972. Thus, there is evidence of involvement of vehicle in the offence committed under the Wild Life (Protection) Act, 1972. There is no ground to release the vehicle. The Divisional Director, Social Forestry Division, Meerut, has no jurisdiction to release the vehicle detained under the Wild Life (Protection) Act, 1972. It has also been submitted that there is no provision for any appellate authority at the government level in the Wild Life (Protection) Act, 1972. Based on the revelation of involvement of the vehicle in the wildlife crime, the vehicle has been lawfully seized. The case is under trial before the Additional Chief Judicial Magistrate, Meerut and the accused have not yet been acquitted. If the accused is convicted after the conclusion of trial, the vehicle is liable to be confiscated. The vehicle has been seized under the Wild Life (Protection) Act, 1972 and not under provisions of Indian Forest Act, 1927. Hence, only the jurisdictional Magistrate has power to release the vehicle.

13. For the disposal of the petition, it is necessary to examine the relevant provisions of law. Chapter VI of the Wild Life (Protection) Act, 1972 (hereinafter referred to as the 'Act of 1972') contains provisions dealing with prevention and detection of offences. Section 50 of the Act of 1972 gives to the specified officers the powers of entry, search, arrest and detention. By the Amendment Act 44 of 1991 (w.e.f 02.10.1991), certain amendments were made in Section 50 of the Act of 1972. Before the amendment made in 1991, Section 50 had sub-section (2) which was as follows :-

“50. (2) Any officer of a rank not inferior to that of an Assistant Director of Wild Life Preservation or Wild Life Warden, who, or whose subordinate has seized any trap, tool ,vehicle, vessel or weapon under clause (c) of sub-section (1), may release the same on the execution by the owner thereof of a bond for the

production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.”

14. The Amendment Act 44 of 1991 deleted sub-section (2) and inserted in its place sub-section (3-A) which is as follows :-

“50. (3-A) Any officer of a rank not inferior to that of an Assistant Director of Wild Life Preservation or as 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.”

15. At the same time, amendments were made in Section 39(1)(d) after which it reads as follows :-

“39. Wild animals, etc., to be government property. - (1) Every
(a)- (c)
(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 animals 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, weapon, trap or tool used in such hunting shall be the property of the Central Government.”

16. Section 50(1)(c) of the Act of 1972 authorises a Director or any other Officer authorized by him in this behalf or the Chief Wild Life Warden or the authorized officer or any Forest Officer or any police officer not below the rank of a Sub-Inspector, having reasonable grounds for believing that any person has committed an offence against this Act to seize any captive animal, Wild Life animal, article, meat, trophy, in respect of which the offence against this Act appears to have been committed in the possession of any person together with trap, tool, vehicle or weapon used for committing any special offence.

17. Before the deletion of Section 50(2) of the Act of 1972, any officer of a rank not inferior to that of an Assistant Director of Wild Life Preservation

or Wild Life Warden, who, or whose subordinate has seized any trap, tool, vehicle, vessel or weapon under clause (c) of sub-section (1), could release the same on the execution by the owner thereof of a bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence.

18. After aforesaid amendment made in the Act of 1972 which is effective from 02.10.1991, the aforesaid officers of the Forest Department or Police Department don't have jurisdiction to release the aforesaid seized articles trap, tool, vehicle, vessel or weapon, etc. in favour of its owner.

19. Under the provisions of Section 50 (3-A), any officer of a rank not inferior to that of an Assistant Director of Wild Life Preservation or Assistant Conservator of Forests, is competent to give the custody of any captive or wild animal seized under clause (c) of sub-section (1) of Section 50 of Act of 1972 to any person on execution of a bond for the production of such animal if and when so required, before the Magistrate having jurisdiction to try the offence.

20. Thus, the aforesaid various officers are authorised only to give custody of any captive or wild animal which has been seized under clause (c) of sub-section (1) of Section 50 of Act of 1972. They have not been authorised to release the trap, tool, vehicle, vessel or weapon which has been seized under Section 50(1)(d) of Act of 1972. The State Government or the Central Government is also not authorised to release and handover the custody of trap, tool, vehicle, vessel or weapon in the custody of the owner thereof on execution of a bond for production of the property so released before the Magistrate having jurisdiction to try the offence.

21. Sub-section (4) of Section 50 of Act of 1972 provides that when any of authority or police officer mentioned in paragraph 1(c) of this section seizes any captive animal, wild animal, article, meat, trophy, etc. in respect of which an offence against this Act appears to be have been committed or arrests and detains any person in this connection shall forthwith take him before the Magistrate ***“to be dealt with according to law.”***

22. Sub-section (4) of Section 50 of Act of 1972 reads as follows :-

“(4) Any person detained, or things seized under the foregoing power, 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 authorized by him in this regard).”

23. The Hon’ble Apex Court has held in **State of Madhya Pradesh and Others Vs. Madhukar Rao, (2008) 14 SCC 624** which is as hereunder :-

“18. It has to be noted here that the expression used in the sub-section is “according to law” and not “according to the provisions of the Act”. The expression “according to law” undoubtedly widens the scope and plainly indicates the application of the provisions of the Code.

19. We find that the Full Bench of the High Court has correctly taken the view that the deletion of sub-section (2) and its replacement by sub-section (3-A) in Section 50 of the Act had no effect on the powers of the Magistrate to release the seized vehicle during the pendency of trial under the provisions of the Code. The effect of deletion of sub-section (2) and its replacement by sub-section (3-A) may be summed up thus: as long as sub-section (2) of Section 50 was on the statute book, the Magistrate would not entertain a prayer for interim release of a seized vehicle, etc. until an application for release was made before the departmental authorities as provided in that sub-section. Further, in case the prayer for interim release was rejected by the departmental authority, the findings or observations made in its order would receive due consideration and would carry a lot of weight before the Magistrate while considering the prayer for interim release of the vehicle. But now that sub-section (2) of Section 50 stands deleted, an aggrieved person has not option but to approach the Magistrate directly for interim release of the seized vehicle.

22. We have, therefore, no doubt that the provisions of Section 50 of the Act of 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.”

24. Law relating to release of vehicle, vessel, trap, tool seized by the Forest Officer or police Officer u/s 50(1)(c) of Act of 1972 has been settled by the Apex Court in the case of **State of U.P. and Another Vs. Lalloo Singh, (2007) 7 SCC 334**. In paragraph nos. 13, 14, 15, 16 and 17 of the aforesaid judgement, the Apex Court has held as hereunder :-

“13. For appreciating this contention reference is necessary to Section 39 of the Act. Clause (d) of sub-section (1) of Section 39 deals with a situation when any vehicle, vessel, weapon, trap or tool has been used for committing an offence and has been seized under the provisions of the Act. The twin conditions are that the vehicle, etc. must have been used for committing an offence and has been seized. Mere seizure of the property without any material to show that the same has been used for committing an offence does not make the seized property, the property of the Government. At this juncture, it is also to be noted that under sub-section (1) of Section 50 action can be taken if the official concerned has reasonable grounds for believing that any person has committed an offence under the Act. In other words, there has to be a reasonable ground for belief that an offence has been committed. When any person is detained, or things seized are taken before the Magistrate, he has the power to deal with the same “in accordance with law”.

*14. There is a significant addition in sub-section (4) by Act 16 of 2003 i.e. requirement of intimation to the Chief Wildlife Warden or the officer authorised in this regard as to the action to be taken by the Magistrate when the seized property is taken before a Magistrate. A combined reading of the omitted sub-section (2) and the substituted sub-section (3-A) of Section 50 makes the position clear that prior to the omission, the officials under the Act had the power to direct release of the seized article. **Under sub-section (1), the power for giving temporary custody subject to the condition that the same shall be produced if and when required by the Magistrate is indicative of the fact that the Magistrate can pass appropriate orders in respect of the purported seized property which is taken before him.***

*15. While dealing with an application for temporary release of custody, there cannot be a complete adjudication of the issues involved as the same is a matter for trial. **While dealing with the application the Magistrate has to take into account the statutory mandate that the seized property becomes the property of the State Government when the same has been used for commission of an offence under the Act and has been seized.***

16. It appears that insertion in sub-section (4) relating to the intimation to the Chief Wildlife Officer or the officer authorised by him is intended to give the official concerned an opportunity of placing relevant materials on record before the Magistrate passes any order relating to release or custody. In appropriate cases on

consideration of materials placed before him, prayer for such release or custody can be rejected.

17. It is to be noted that under sub-section (1) of Section 50 for the purpose of entry, seizure, arrest and detention the official has to form the belief on reasonable grounds that the person has committed an offence under the Act. The Magistrate is, therefore, required to consider these aspects while dealing with the application as noted above. It cannot be a routine exercise. As noted above, the High Court is not justified in holding that Section 457 of the Code has application.

25. Learned A.G.A. for the State has submitted that Section 39(1)(d) of the Act of 1972 made the articles seized u/s 50(1)(c) of Act of 1972 as government property and, therefore, there was no question of their release by the Magistrate.

26. In view of the above-mentioned pronouncement of the Hon'ble Apex Court, the contention of the learned A.G.A. cannot be accepted.

27. From the analysis of the aforesaid pronouncements of the Apex Court in the cases of **Madhukar Rao (supra)** and **Laloo Singh (supra)** that while disposing the application given for the release of vehicle detained u/s 50(1)(c) of the Act of 1972 states that the Magistrate should ascertain whether the vehicle was used for committing any such offence.

28. We have to analyse the recovery of vehicle and other articles made from the accused-petitioner to ascertain whether the Magistrate was justified in rejecting the release application of the vehicle by the impugned order.

29. From the perusal of the recovery memo, it is clear that large quantity of animal articles, parts of animal body, animal meat and a knife having its handle made of elephant tusk was recovered from the house of the accused-petitioner. The details of the articles recovered is mentioned in paragraph no. 2 of this judgement. From the perusal of the aforesaid recovery and the statement u/s 161 Cr.P.C. of co-accused Babloo, it prima facie appears that animal articles, animal parts and meat of such animals were stored after hunting by the petitioner.

30. Thus, prima facie vehicle was used in the commission of the offence made punishable under the Act of 1972.

31. The petitioner has relied on the judgement of the Apex Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat, 2002 LawSuit (SC) 1346** and has argued that during the pendency of trial, the case property/vehicle should be released in favour of the owner after obtaining undertaking and surety and preparing panchnama of the case property/vehicle. In the present case, the vehicle, prima facie being used in the commission of offence under the Act of 1972 has become government property. Therefore, the law laid down by Hon'ble Apex Court in **Sunderbhai Ambalal Desai (supra)** shall not be applicable on the release application of the vehicle.

32. Under these facts and circumstances of the case, the learned Magistrate has not committed any illegality in rejecting the vehicle release application of the petitioner. The learned revisional court has also rightly rejected the revision filed against the impugned order of the learned Magistrate.

33. From the aforesaid discussion, we are of the considered view that vehicle no. U.K. 06 V 0044 seized in Range Case No. 6/2017-18 u/s u/s 9, 44, 49-A, 49-B, 50 and 51 of Wild Life (Protection) Act, 1972, was prima facie used in committing the offence under the aforesaid Act and, therefore, under the provisions of Section 39(1)(d), the vehicle is the property of the State Government and is not liable to be released during the pendency of the trial. There is no ground to interfere in the impugned order passed by the learned Magistrate and the revisional court.

34. The petition is dismissed, accordingly.

Order Date :- 15.12.2023

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