

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 232 of 2016

1. Chanchal Singh S/o Swarn Singh, aged about 40 years, R/o Tekanaka, Devinagar, Nagpur, Mahrastra.

---- Petitioner

Versus

1. State of Chhattisgarh Through Collector Durg, District Durg, Chhattisgarh.

---- Respondent

For Petitioner – Mr. Jitendra Gupta, Advocate.

For Respondent – Ms. M.Asha, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

24/02/2016

1. With the consent of the parties, the matter heard finally at the motion stage itself.
2. Brief facts required for adjudication of the instant Cr.M.P. are that vehicle No. CG 04 HA 4752 seized by police of Kumhari in connection with crime No.152/13 and after due investigation charge sheet was filed against one Naushad Ali before the Judicial Magistrate First Class, Bhilai-3, Durg, C.G. which was registered as Case No.536/13 under the provisions of Sections 4, 6, 10 of the the Chhattisgarh Agricultural Cattle Preservation Act, 2004 (in short 'the Act, 2004) and also under Section 11 of the Prevention of Cruelty to Animals Act, 1960 (in short 'the Act, 1960) and also under Sections 66/192, 130(3)/177, 3/181 of the Motor Vehicles Act, 1988 (in short 'the Act, 1988). The said trial had been completed on 15-10-2014 and accused Naushad Ali was held acquitted, but as there was a prayer in the charge sheet by the concerned police station to keep further investigation reserved against other co-accused under Section 173(8) of the Code of Criminal Procedure, 1973 (in short 'the Code'), the learned Magistrate not passed any order regarding disposal of the

property i.e. the truck concerned at the conclusion of the trial. Presently, the present petitioner along with other co-accused Islam Qureshi are facing trial for the offences as aforementioned before the Judicial Magistrate First Class Court. The petitioner is not in a position to state the fact whether the said trial is proceeding with the old number of the criminal case, i.e., 536/13 or there is any new number of the said case, but the crime number, police station and the offences are the same. An application had been filed by the petitioner for Supurdnama of the said truck under Section 457 of the Code. The trial Court after hearing the matter vide order dated 17-03-2015 dismissed the application. Against the said order, the petitioner had filed a criminal revision before the Vth Additional Sessions Judge, Durg. The Vth Additional Sessions Judge, Durg, C.G. vide order dated 02-07-2015 in Criminal Revision No.49/2015 though dismissed the revision, but directed on the basis of cited case law the trial Court to dispose of Supurdnama application filed on behalf of the revisioner in view of order passed in original Criminal Case No.536/13 (State Vs. Naushad). In compliance of the order passed by the revisional Court, the petitioner again filed an application under Section 457 of the Code before the concerned Magistrate. The Court below after hearing both the parties on 27-07-2015 dismissed the application appreciating the heinousness of the offence, accused were absconding after the incident and there were difference for registration number of the vehicle and as the applicant made the offence as profession. Against the said order the applicant/petitioner again preferred a criminal revision before the Vth Additional Sessions Judge, Durg, C.G. who vide order dated 13-01-2016 in Criminal Revision No.155/2015 disposed of the said revision petition and held that the second revision petition is not maintainable. Thus, the revisional Court not considered the merit of the case, simply disposed of the petition as the same is not maintainable. Against the said order the petitioner approached this Court by filing the instant Cr.M.P.

invoking the jurisdiction under Section 482 of the Code and it is prayed that the vehicle in question is seized on 31-07-2013, to till date two years 6 months 24 days have passed; before the trial Court there is no any admissible evidence regarding the fact that he is habituated offender. As per provisions of the Act, 2004, the vehicle shall not be released for temporary custody on bond or surety before six months from the date of seizure or till the final judgment of the court, whichever is earlier and said vehicle shall also be liable for confiscation at the end of the trial. It is submitted that the petitioner is praying for the interim custody till conclusion of the trial only. The vehicle in question is a machinery article, standing idle for two years, 6 months and 24 days till date thereby value is decreasing and as the interim custody only is praying, the vehicle may be given on interim custody till the conclusion of the trial against the present petitioner. It is also submitted that the petitioner had all the papers required under the Act, 1988 regarding ownership, insurance and other facts. Hence, only on the ground of the fact that the vehicle is lying idle for two years, 6 months and 24 days, the same may be given for interim custody and if at all there is any order for confiscation at the end of the trial, the petitioner may produce the same before the Court in question under the orders made under Section 452 of the Code regarding confiscation, if any.

3. On behalf of the State/respondent, the petition is opposed orally.
4. I have heard learned counsel for the parties and perused the record of the case.
5. Learned counsel for the petitioner entirely supported the grounds taken in the petition and submitted that the petition may be allowed and the vehicle in question may be given on Supurdnama for temporary custody till the conclusion of the trial.
6. On behalf of the respondent, it is submitted that looking to the heinousness of the offence, the petitioner was absconding after the incident, as

orally confessed before police though not admissible that he is engaged in the illegal trafficking of the cattle, the instant Cr.M.P. may be dismissed.

7. For appreciation on the arguments, the provision provided in Section 6(3) of the Act, 2004 is relevant which reads as under:

6. Prohibition on transport of Agricultural cattle for slaughter –

(1) xxxx xxxxx

(2) xxxxx xxxxx

(3) The vehicle or conveyance so seized under sub-section (2) shall not be released by the order of the court on bond or surety before the expiry of six months from the date of such seizure or till the final judgment of the court, whichever is earlier and such vehicle shall also be liable for confiscation at the end of the trial.

8. From the perusal of the above provision, it is apparent that before completion of six months from the date of seizure the vehicle in question shall not be released by the order of the court on bond or surety and such vehicle shall also be liable for confiscation at the end of the trial. From bare perusal of Section 452 of the Cr.P.C. it appears that after conclusion of the trial any criminal Court may make such order as he thinks fit for confiscation. Presently, the trial has not been concluded. Co-accused Naushad Ali has been acquitted by the judgment dated 15-10-2014. Undisputedly, till date 2 years, 6 months, 24 days from the date of seizure have expired. Since the vehicle in question is a machinery article which may deteriorate and other complication may arise if the vehicle in question be allowed to remain as idle, also the petitioner is merely asking for temporary custody that too till conclusion of the trial and if the court thinks it proper, in the judgment the court may order for confiscation after conclusion of the trial that may be depend upon the evidence adduced before the trial Court; till conclusion of the trial, in the considered view of this Court, looking to the entire facts that the vehicle in question is seized two years 6 months and 24 days ago and the same is standing in idle condition, it would be appropriate to allow the instant Cr.M.P. invoking inherent jurisdiction of this Court under Section 482 of the Code and to order for the interim custody for

the petitioner upon the facts that he must be owner under the provisions of the Act, 1988 and complies the other formalities as required along with the terms and conditions regarding the interim custody of the vehicle in question to the satisfaction of the trial Court.

9. On due consideration, this Court invokes inherent jurisdiction under Section 482 of the Cr.P.C. and is of the view that the petition is liable to be allowed. Consequently, the same is allowed and the order passed by the trial Court dated 17-03-2015 and dated 27-07-2015 are hereby set aside. The trial Court is directed to ascertain the ownership of the petitioner, also to ascertain that the petitioner is having all formalities required for interim custody of the said vehicle and the vehicle in question be given on Supurdnama with or without surety as per satisfaction of the trial Court till the conclusion of the trial for interim custody of the vehicle. The petitioner may file copy of this order before the Court below for compliance.

10. The petition allowed.

11. Certified copy as per rules.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE