

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :10.03.2017

CORAM:

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

Crl.R.C.No.165 of 2017

P.Antony Raj

... Petitioner/Accused No.3

Vs.

The State

Rep. by the Forest Range Officer,  
Anchetti Forest Range,  
Anchetti,  
Denkanikottai Taluk,  
Krishnagiri District.

... Respondent/Respondent

Prayer: Criminal Revision filed under Section 397 r/w 401 of Cr.P.C. praying to set aside the order passed by the learned District Munsif-cum-Judicial Magistrate, Denkanikottai made in Crl.M.P.No.3403 of 2016 on 05.01.2017 and consequently direct the District Munsif-cum-Judicial Magistrate, Denkanikottai to release the petitioner's Maruti Suzuki Ertiga, White Colour car bearing Registration No.KA-05-MQ-0058.

For Petitioner : Mr.S.Sathiaseelan

For Respondent : Mr.R.Ravichandran

Government Advocate (Crl. side)

सत्यमेव जयते

O R D E R

The petitioner is an accused in W.L.O.R.No.8 of 2016 pending on the file of the District Munsif-cum-Judicial Magistrate, Denkanikottai. The petitioner has been implicated in the above Criminal case on the ground that on 17.11.2016, when the Forest Officer was on inspection found the petitioner's vehicle carrying 3.5 kgs of 'dried deer meat' and he seized the vehicle and also filed a complaint against the petitioner and the above said case is pending before the learned District Munsif-cum-Judicial Magistrate, Denkanikottai. Now, the petitioner filed an application in Crl.M.P.No.3403 of 2016 before the Court below seeking return of the vehicle. The

learned Munsif-cum-Judicial Magistrate, Denkanikottai, dismissed the application holding that under Section 39 of the Wild Life (Protection) Act, 1972, only the District Forest Officer alone has the power to release the seized vehicle. Challenging the dismissal order, the present revision has been filed.

2. Heard Mr.S.Sathiaseelan, learned counsel appearing on behalf of the petitioner and Mr.R.Ravichandran, Government Advocate (Crl.Side) appearing on behalf of the respondent.

3. Learned counsel for the petitioner submitted that under Section 39 of the Wild Life (Protection) Act, the seized property becomes the property of Government, only after the competent Court gives finding that accusation against the accused were true and record a finding that the seized vehicle was used in the commission of offence, but not prior to that. Now, the trial is still pending and no order has been passed holding that the vehicle is used for commission of offence and under Section 50 of the Wild Life (Protection) Act, the Magistrate only has the power to release the vehicle.

4. The learned counsel for the petitioner relied upon judgments of Hon'ble Supreme Court and the relevant portions of the judgments are extracted hereunder:

(a) In State of M.P. V. Madhukar Rao reported in (2008) 14 SCC,

"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 no option but to approach the Magistrate directly for interim release of the seized vehicle."

(b) In Principal Chief Conservator of Forests and another vs. J.K.Johnson and other reported in (2011) 10 Supreme Court Cases, 794,

"In Madhukar Rao, albeit, the question was a little different but this Court considered the ambit and scope of Section 39(1)(d). That matter reached this Court from a Full Bench decision of the Madhya Pradesh High Court. The question before the Full Bench was whether as a result of deletion of sub-section(2) of Section 50 withdrawing power of interim release, there existed any power with the authorities under the 1972 Act or the Code to release the vehicle used in course of alleged commission of offence under the Act. The Full Bench of the High Court held that any property including vehicle seized on accusation or suspicion of commission of offence under the 1972 Act can be released by the Magistrate pending trial in accordance with Section 50(4) of the 1972 Act read with Section 451 of the Code. The full Bench also held that mere seizure of any property including vehicle on the charge of commission of offence would not make the property to be of the State Government under Section 39(1)(d) of the 1972 Act.

32. Against the decision of the Full Bench, the State of Madhya Pradesh preferred special leave petition in which leave was granted. This Court extensively considered the statutory provisions and approved the view of the Full Bench of the High Court that deletion of sub-section(2) and its replacement by sub-section (3-A) in Section 50 of the 1972 Act had no effect on the powers of the Court to release the seized vehicle during the pendency of trial under the provisions of the Code. While dealing with Section 3(1)(d), this Court also approved the view of the Full Bench of the High Court that Section 39(1)(d) would come into play only after a court of competent jurisdiction found that the accusation and allegations made against the accused were true and recorded the finding that the seized article was, as a matter of fact, used in the

commission of offence. This Court said:  
(Madhukar Rao case, SCC P.631, para 23)

"23.....Any attempt to operationalise Section 39(1)(d) of the Act merely on the basis of seizure and accusations/allegations levelled by the departmental authorities would bring it into conflict with the constitutional provisions and would render it unconstitutional and invalid."

33.We are in complete agreement with the view of this Court in Madhukar Rao that on the basis of seizure and mere accusations/allegations, Section 39(1)(d) of the 1972 Act cannot be allowed to operate and if it is so done, it would be hit by the constitutional provisions."

5.Per contra, the learned Government Advocate (Crl. side) would contend that since the property was seized by the Forest Officer, under section 39 of the Wild Life (Protection) Act, the property has become the government property and the court has no power to release the judicial custody, and under Section 58(i) of Wild Life (Protection) Act, the District Forest Officers alone has the power to forfeit the vehicle, and there is no infirmity in the order passed by the Court below.

6.Considering the rival submissions, this issue is no longer res integra, in view of the Hon'ble Supreme Court judgments cited supra, the Magistrate only has the power to release the vehicle. In the above circumstances, since, the vehicle was seized on 17.11.2016 and is exposed to sun and rain, the Court below is directed to release the vehicle to the petitioner on fulfilling the following conditions:

- i.the petitioner shall prove his ownership of the vehicle by producing the R.C.Book and other relevant records;
- ii.the petitioner shall not alienate or encumber the vehicle in any manner;
- iii.the petitioner shall execute a bond for a sum of rs.20,000/-(Rupees twenty thousand only) before the court concerned;
- iv.the petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future; and

v. the petitioner shall also produce the vehicle as and when required by the court below.

7. Accordingly, the Criminal Revision is disposed of.

Sd/-  
Asst. Registrar

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Sub Asst. Registrar

To

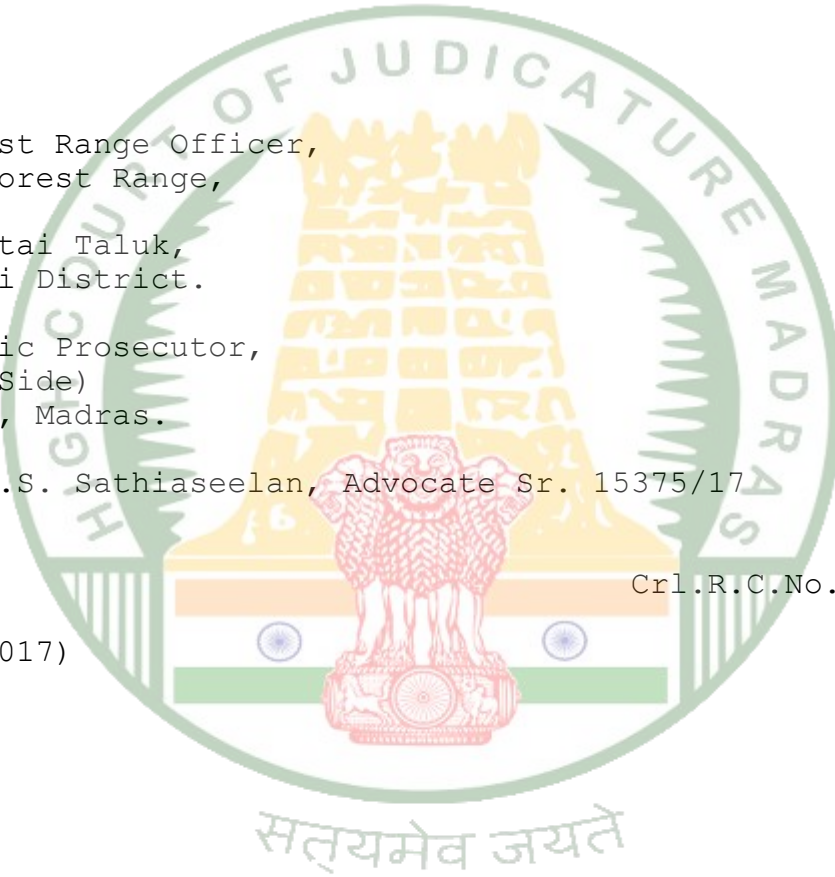
1. The Forest Range Officer,  
Anchetti Forest Range,  
Anchetti,  
Denkanikottai Taluk,  
Krishnagiri District.

2. The Public Prosecutor,  
(Criminal Side)  
High Court, Madras.

+1cc to Mr. S. Sathiaselvan, Advocate Sr. 15375/17

SR(CO)  
VR(13/03/2017)

Cr1.R.C.No.165 of 2017



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