

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1008 of 2017

Mustakim S/o Shri Rahim Baksh, Through the Vashim Kuraishi S/o
Shri Mustakim Kuraishi (Power of attorney holder) R/o Babarpur,
Pargana-Ajitmal, Civil & Revenue District Auraiya (U.P.)

---- Petitioner

Versus

State Of Chhattisgarh, Through Station House Officer, Police Station
Pendra, Civil & Revenue District Bilaspur (C.G.)

---- Respondent

For petitioner – Shri Surfaraj Khan, Advocate.
For State- Shri Adhiraj Surana, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

09/01/2018

Heard.

1. Instant petition is against the order dated 13/12/2016 passed by the Additional Sessions Judge, Pendra Road, District Bilaspur whereby the order passed by the Judicial Magistrate dated 2/11/2016 refusing to hand over the possession of the vehicle was dismissed.
2. As per the prosecution case on 13/04/2016 police intercepted the truck bearing No.UP/79 T 0885 wherein 16 live buffaloes were illegally transported to the slaughter house. During such search, police arrested one Mohd. Juber Quereshi whereas other accused Mohd. Bisar and driver Mohd. Ajad absconded from the place of incident. Subsequently, when notice was given under Section 91 of Cr.P.C. no valid document was produced by the accused as such crime was registered under Crime No.117/16 under section 6, 10, 11 of the Chhattisgarh Agricultural Cattle Preservation Act, 2004 and Section 11 (d) of the Prevention of Cruelty to Animals Act, 1960. Thereafter, charge sheet was filed.
3. Subsequently, the present petitioner who claims to be the owner of

the vehicle filed an application for custody of the vehicle same was not released on the ground that the vehicle as also owner of the truck belong to the other State and since confiscation proceeding were contemplated as such once the vehicle is released police may not be able to get back the vehicle.

4. Learned counsel for the petitioner would submit that as per sub section 3 of section 6 of the Act of 2004 statutory bar only lies and operate only for a period of 6 months and here in this case vehicle was seized on 13/04/2016 and 6 months have already been passed in October, 2016 and there is no bar is created under the Act to release the vehicle and if vehicle is kept in policy custody it will loose its moot condition and would not be road worthiness. Consequently, the vehicle which belong to the petitioner may be released.

5. Learned State counsel opposes the same.

6. Perused the order dated 13/12/2016. It is not in dispute that the truck bearing number No.UP/79 T 0885 was seized. The registration of the vehicle apparently appears to be of the U.P. The application for custody of the vehicle was initially dismissed on 2/11/2016 before the JMFC which when was subject of revision same was affirmed on 13/12/2016 by the impugned order.

7. Since the case was under the Act, 2004, sub-section 3 of Section 6 would be relevant, which is reproduced herein below :

“6 (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. In this case facts would suggest that vehicle was seized in the month of April 2016 and 6 months have already passed, therefore while deciding this issue bar of sub section 3 of section 6 of the Act of 2004

would not be applicable as 6 months have already expired and admittedly as appears that final judgement has not been passed. It is also not disputed by the State that final judgement has not been passed.

9. Considering the facts of this case, the bar of sub-section 3 of Section 6 of the Act, 2004 would not apply and the vehicle as appears is lying at the disposal of the authorities or at police station. Therefore, if it is kept in the police station it must be occupying space or is prone to cause natural decay and may lose its road worthiness when kept in stationary position. In context of subject matter the principle laid down in case of ***Multani Hanifbhai Kalubhai Vs. State of Gujarat & Anr.*** reported in ***(2013) 3 SCC 240***, ***General Insurance Council and others Vs. State of Andhra Pradesh and others*** reported in ***(2010) 6 SCC 768*** which has earlier reiterated principle laid down in case of ***Sunderbhai Ambalal Desai Vs. State of Gujarat*** reported in ***(2002) 10 SCC 283***, wherein it is held that keeping the vehicle in stationary position at the police station would not serve any purpose except the decay of its value interim custody of the vehicle can be handed over. Reply of the State is silent as to whether any confiscation proceeding has been commenced or not. In the facts of this case, keeping the vehicle for period indefinite in police station will destroy very nature of the vehicle as it may turn junk in future. Therefore, I am inclined to allow the application for interim custody of the vehicle.

10. In the result, order dated 13/12/2016 is quashed and petition is allowed. Vehicle is directed to be released to the petitioner Mustakim S/o Rahim Baksh on the following conditions:-

- a. Before release of the vehicle the petitioner Mustakim S/o Rahim Baksh shall furnish surety personal bond of Rs.7 lakhs and the like sum of bank guarantee should be furnished before release of the vehicle.

- b. Before release of the vehicle proper panchnama be prepared.
- c. Photographs of the vehicle should be taken and bond should also be produced that the article would be produced if required at the time of trial.

Sd/-

(Goutam Bhaduri)

JUDGE