

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

*HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

+WRIT PETITION No.3582 OF 2018

09.03.2018

#Between:

Arun Bacher

...Petitioner

AND

State of Telangana
Rep. by its Principal Secreatry,
(Forest Department),
Secretariat, Hyderabad
and two others.

... Respondents

!Counsel for the Petitioner : Sri N.Indrasena Reddy

Counsel for the respondents : Govt.Pleader.

<Gist :

>Head Note:

? Cases referred:

¹ 2015 (1) ALT(CrI) 173

² 1978 (2) APLJ 191

³ 1996(4) ALT CrI.699=1996 (4) ALD 223

⁴ 1985(1) APLJ 47

⁵ (2004) 4 SCC 129

⁶ 1980 1 ALT page 8

⁷ (2002) 1 SCC 495

⁸ (2002) 9 SCC 90

⁹ (2004) 1 SCC 293

¹⁰ (2000) 7 SCC 18

¹¹ (2008) 14 SCC 624

¹² (2002) 4 SCC 713

¹³ AIR 2012 SC 61



HON'BLE Dr.JUSTICE B.SIVA SANKARA RAO

Writ Petition No.3582 of 2018

ORDER

The writ petitioner is the owner of Tractor and Trailer bearing Nos.TS01U2514 (amended as per orders in I.A.No.3 of 2018, dt.21.02.2018) and AP01Y0256. The respondents are the State represented by its Principal Secretary, Forest Department, the Divisional Forest Officer(for short, 'the DFO'), of Srpur, Khagaz Nagar Division, the Forest Range Officer,(for short 'the FRO') Srpur, Khagaz Nagar Division and the R.4-Chief Wild Life Warden of Telangana Forest Department, Hyderabad added as per the orders in I.A.No.2 of 2018,dt.19.02.2018.

2. The prayer in the writ petition reads as follows:-

"To issue a writ order, or direction more particularly one in the nature of writ Mandamus declaring the action of the 2nd respondent not releasing the petitioner vehicle i.e. Tractor bearing No. TS 01 UB 2514 and Trailor bearing No.AP 01 Y 0256 (amended as per orders in I.A.No.3 of 2018,dt.21.02.2018) were ceased in POR No.1852 of 158, dt.30.11.2017 by the 3rd respondent, as interim custody to the petitioner as being illegal, arbitrary and contrary to law and violation of Articles 14 and 21 of the Constitution of India and consequently direct the respondents to release the Tractor and Trailer bearing No. TS 01 UB 2514 and Trailor bearing No.AP 01 Y 0256 in favour of the petitioner and pass such other order or orders".

3. The supporting affidavit averments are that the petitioner engaged a driver for running the Tractor and Trailer supra and he came to know that those were seized by the FRO-R.3 supra by registering crime No.POR 1852/ 158,dt.30.11.2017 showing one K.Mallesh as A.1 and the driver of the vehicle of the petitioner G.Suresh as A.2, for the offences punishable u/ secs.20(i)©(ii), Sec.44,52 r/w 58 of A.P.Forest Act, 1967(for short,' the APF Act') u/ sec.9 r/ w 2(16), 39,50 r/ w 51 and 57 of Wild Life (Protection) Act, 1972 (for short,' WLP Act'). The main allegation is that A.1 hunted a wild Boar and thereafter with the help of A.2 transported the meat on the Tractor as passenger in white bag and

R.3 seized the same with the vehicle. The Writ Petitioner's contention is that he is innocent and not connected with the crime. He made an application to the DFO-R.2 for interim custody of the vehicle to eak out his livelihood therefrom, else the vehicle will be rusted and damaged if kept idle. However, the 2nd respondent rejected the interim custody application of the vehicle to the writ petitioner/owner and the writ petitioner therefrom filed a petition before the learned Judl. Magistrate of First Class, Srpur for release of the vehicle and the same was returned for want of jurisdiction referring to judgment of this Court in A.Satheesha Vs. State of A.P.¹ It is further averred that the petitioner is no way connected with the allegations in the crime registered against the vehicle driver and the driver without knowing the contents of white bag permitted the other person as passenger and thereby the seizure of the vehicle of the petitioner is unsustainable and he has no other alternative and constrained to file the writ petition.

4. Heard the learned counsel for the petitioner and the learned Govt. Pleader for Forest for respondents 1 to 4 supra and perused the material on record including the provisions of law.

5. As referred supra, the case registered is for the offences u/ sec. 20(i)©(ii), Sec.44,52 r/w 58 of APF Act, u/ sec.9 r/w 2(16), 39,50 r/w 51 and 57 of WLP Act. Thus, it is an offence not only under A.P.Forest Act but also under Wild Life Protection Act. The proceedings of R.3-FRO shows from the remand report of A.1 and A.2 supra produced before the JFCM, for judicial custody are that on 30.11.2017at 4.30a.m. when staff of Kagaznagar Range proceeded to Camp No.119 of Mandwa beat of Ankoda Section of Kaghaz Nagar Range i.e. Gannaram Village Sivar, and seen the accused persons 1 and 2 on the Tractor propelled with Trailer

¹ 2015 (1) ALT(GrI) 173

and on seeing them, in the suspicious manner that the A.1 K.Mahesh, traveling in the Tractor driven by A.2 G.Suresh, carrying the white bag in his hands left the bag in the Tractor and skulked away and they seized the bag having found therein meat of wild animal and also seized the vehicle and A.2 driver of the vehicle revealed of A.1 asked him to carry the white bag in the tractor and drop him at Gannaram village and when further questioned stated the meat pertains to wild Boar that was hunted in the reserve forest of Ankoda Section and when on verified found a wild Boar was hunted and the meat belongs to white Boar that was cut into pieces for sale at nearby village. A.1 was apprehended at his house on 01.12.2017 and on questioning made the same disclosure and it was disclosed the investigation about deliberate plan regarding hunting of wild animal on 29.11.2017 by trespassing into Mandwa beat Comp No.1, of Reserve Forest, Kadamba and erected wire snares and trapped the wild Boar in snares during night hours and on the early hours on 30.11.2017 A.1 went to the spot where snares were erected and found the wild Boar was trapped and died and then cut into pieces for sale in nearby villages and thus the accused persons are involved in the offence for hunting wild Boar and transporting the same. Thereby they are liable for the offences supra.

6. The writ petitioner-Owner of the vehicle applied on 16.12.2017 to the 2nd respondent-DFO for release of the vehicle saying he is no way concerned with the alleged offence and he has no prior information of the incident and the vehicle is his livelihood and if kept idle, it will be damaged and he also undertakes to produce as and when required and sought for release for interim custody but the same was rejected saying no jurisdiction.

7. The application filed before the learned Magistrate by him on 02.01.2012 u/ sec.457 CrPC speaks that he is the registered owner and the said vehicle seized in the forest offences by the FRO-R.3 and it is lying idle for more than one month and it will be damaged if kept idle, thereby sought for interim custody. As per the note put up by the office of the learned Magistrate referring to A.Satheesha supra, returned for want of jurisdiction.

8. In fact, a perusal of the facts in the expression of this Court in Satheesha supra the vehicle involved therein was in the offences covered by the A.P.Forest Act and A.P.Forest Products and Transit Rules and the Red Sandal Wood Possession Rule 1970 within the jurisdiction of JFCM, Allagadda of Kurnool District of the Qualis Maxi Cab of Karnataka registration for interim custody sought before Magistrate that was ended in dismissal for want of jurisdiction.

9. This Court discussed in Satheesha supra several expressions to the conclusion. One of which is the earlier Division Bench expression of this Court in Hazi Begum Vs. State of A.P.² where it was held the Magistrate got jurisdiction. It was on facts of the vehicle intercepted was while carrying red sandal logs without permit that was seized and produced before the DFO, from the crime registered, when sought for custody of the vehicle before the Magistrate by application under Section 451CrPC, the Magistrate ordered interim custody and against which writ petition filed. A Single Judge of this Court allowed the Writ Petition by setting aside the order releasing the vehicle holding that the Magistrate has no jurisdiction u/ sec.44 of the Act. The same when impugned in writ appeal supra before the Division Bench referring to Sections 44,50,53,58 and 58-A of the APF Act, 1967 amended by Act 17/ 76; the Division Bench

² 1978 (2) APLJ 191

of this Court observed that as per the proviso to Section 44 of the Act, 1967, the property seized is that of the Central or the State Government and the Forest Officer seized the property in forest offences may order confiscation of the seized produce and the tools, boats, ropes, chains, vehicles and cattle etc., used in commission of the offences, no doubt, and after giving the person from whom the property was seized a notice informing the grounds on which the property proposed to be confiscated and after an opportunity of making written representation and after hearing before passing such order for confiscation if the owner of the vehicle or person interested proves to the satisfaction of the Forest Officer of same used in carrying the property without his knowledge or connivance in its use in the commission of offence, despite he has taken reasonable and necessary precautions against such use to release by imposing penalty if any and it is subject to that, the confiscation be made. For a person if at all aggrieved against such confiscation order, there is a statutory right of civil appeal to impugn before the District Court. In *Satheesha supra* it was categorically held that the FRO out of two options available to him can exercise any one viz; either to produce the vehicle or other property before the Forest Officer or making report of seizure to the learned Magistrate and it is his option that is material to exercise jurisdiction. For the FRO there is no obligation at all to report seizure to the Magistrate. If the offence is not compounded by the Forest Officials, the officials before whom the property produced have the recourse to the procedure prescribed for confiscation, if any. Once there is report of seizure to the Magistrate, the Magistrate is empowered to take such measures necessary, besides trial of the accused, for disposal of the property and the powers thus enumerated are dehorse powers of Magistrate u/ sec.45 Cr.P.C. for any interim custody as disposal pending

trial or to order for disposal at conclusion of trial as per CrPC. Thereby as held in *Satheesha supra* Section 44 (4) of the APF Act, 1967 speaks the power of the learned Magistrate to dispose of the forest produce, tools or vehicles etc., only where a report is received by him from the FRO. It is then under Section 44(5) of the APF Act, interim arrangements also can be made. Another Single Judge of this Court in a later expression in *State of A.P.V. Anandmal Surajmal Sethia*³ held from the FRO seized the lorry and produced before the DFO, Kadapa for owner of the lorry approached the Magistrate u/ sec.457 CrPC for interim custody of the vehicle that was ordered subject to furnishing bank guarantee and when challenged in revision before the Court of Sessions, modified from bank guarantee to deposit registration certificate book and other documents with an undertaking to produce before the Court or DFO as and when required and the same is impugned before High Court in a quash petition under Section 482 CrPC, the learned Single Judge of this Court observed that when the seized vehicle was produced before the DFO and not before the Magistrate, from the wording of Section 44 of the APF Act, 1967, it is the Forest Officer that is competent to confiscate or release the vehicle pending investigation and the Magistrate or the learned Sessions Judge, have no jurisdiction. For that conclusion, the learned Single Judge placed reliance on the earlier expression of the Division Bench in *DFO, Warangal Vs. District Judge, Warangal*⁴ and held that the decision referred by the learned Magistrate and Sessions Judge, of earlier decision of 1981 (2) An.W.R. is not good law. It is observed thereby in *Satheesha supra* that at as the seized vehicle not produced before the Magistrate and that too when produced before the DFO under the Forest Act by the FRO, it is the

³ 1996(4) ALT CrI.699=1996 (4) ALD 223

⁴ 1985(1) APLJ 47

DFO that is only empowered to confiscate or release the vehicle and the produce and not the learned Magistrate.

10. Apart from it, in *State of West Bengal Vs. Sujith Kumar Rana*⁵, the Apex Court in dealing with the application under the West Bengal Forest Act, particularly referring to Section 52 and 52(g) of the West Bengal Forest Act, that the object of confiscation of the property involved in the Forest offences is to protect and maintain balance of ecology and prevent forest crimes and to preserve the forest as national wealth as per the spirit of Articles 48(a) and 58(g) of the Constitution of India and held confiscation is permissible once ownership of forest produce is clear and there is a statutory remedy of appeal against the order of confiscation for any aggrieved however, the confiscation proceedings to commence is only by ordering notice and opportunity and confiscation envisages civil liability in respect of the property generally must be proceeded by a judgment of conviction or the like, criminal Courts although have jurisdiction under CrPC, for property disposals, once confiscation proceedings are initiated by the Forest officials as per the Forest Act, the Criminal Court has no jurisdiction as it is excluded and thereby any Court of appeal or revision against the Magistrate's order even including High Court cannot exercise any inherent power to assume jurisdiction of criminal Court to pass orders for property disposal.

11. The Apex Court in *Sujith Kumar Rana* supra referred to the DB expression of this Court in *Md. Yasim Vs. Forest Range Officer*⁶ saying that was also approved by another Bench in saying as per Section 44 of the APF Act, 1967 one is trial of a person accused of an offence under the

⁵ (2004) 4 SCC 129

⁶ 1980 1 ALT page 8

APF Act, and the other is confiscation of property which forming part of the subject matter of offence.

12. The Apex Court in Sujith Kumar Rana supra referred the earlier another expression of Apex Court in State of West Bengal Vs. Gopal Sarkar⁷ saying Forest Produce which is property of State Government once produced before Forest Officer in respect of forest offence committed, he may pass order of confiscation together with the tools, ropes, chains, boats, vehicles and cattle etc., and the power of confiscation is independent of any proceeding of prosecution.

13. It also referred another expression of the Apex Court in the State of Karnataka Vs. KA Kunchidammed⁸ relating to sandalwood under Karnatana Forest Act saying the Forest officer when empowered to confiscate the seized forest produce in respect of the forest offence, the general power vested in the Magistrate for dealing with the interim custody of the seized vehicle under CrPC has to go away and order of Magistrate confirmed by the Sessions Judge, in revision of interim custody is unsustainable but for the officer authorized under the Forest Department.

14. The expression in Kunchidammed supra referred earlier expression of the Apex Court in Second Forester Vs. Mansoor Ali Khan⁹ which followed the earlier expression in State of Karnataka Vs. K. Krishnan¹⁰ saying when a vehicle is involved in the forest offence same is not to be released to the offender or to the claimant as a matter of routine till the culmination of the proceedings which may include confiscation of such vehicle.

⁷ (2002) 1 SCC 495

⁸ (2002) 9 SCC 90

⁹ (2004) 1 SCC 293

¹⁰ (2000) 7 SCC 18

15. From this, coming back to the Apex Court's expression in K.Krishnan supra of the year 2000 under the Karnataka Forest Act, what was observed is the seized Forest products and the vehicle etc., used in commission of offence should not be released even if the Court is inclined to release the same, the Forest Officer must satisfy the reasons therefrom and must insist on furnishing of bank guarantee as the minimum condition for the Forest Produce transported without permit in that vehicle that was seized. The Apex Court found fault in K.Krishnan supra the High Court in ordering the release on two sureties in an application u/ sec.482 Cr.P.C. and without even insisting bank guarantee.

16. Thus from the above expressions under the respective State Forest Act offences particularly under Section 44 of the A.P.Forest Act in the States of Andhra Pradesh and Telangana, the vehicles involved once not produced before Magistrate but before the concerned Forest Officials, the Magistrate has no power to order release of the vehicle including for interim custody or even final property disposal, but for the order for confiscation or release with or without penalty to the owner by the Forest Officials and that too for confiscation or forfeiture after notice with opportunity to file written objections and after hearing by passing a reasoned order which is appealable before the District Judge as a civil appeal to decide.

17. The above portion is different if the vehicle or other property involved is not under the respective State Forest Acts, but excluding under the WLP Act, 1972.

18. In relation to the WLP Act, coming to the expressions of the Apex Court, in State of MP Vs. Madhukar Rao¹¹, where a vehicle was

¹¹ (2008) 14 SCC 624

seized u/ sec.50(1)© of WLP Act, for carrying in Tata Sumo 206 Kgs of antlers that was found seized and the question was whether the Magistrate got jurisdiction to order release of the vehicle for the interim custody? Where the JFCM was informed about the crime and seizure of the vehicle. The Magistrate then allowed interim custody. But the Court of Sessions in revision set aside the order saying the Magistrate ignored Section 39(1)(d) of the WLP Act in passing the order u/ sec.451CrPC. Then the matter went before the High Court and it was referred to Full Bench where it was held that the Magistrate's power to release the vehicle during the pendency of the trial was not, in any way, affected by the legislative changes in the WLP Act and in appropriate cases, the Magistrate is fully justified to pass interim release order of the vehicle. It is when the matter went before the Apex Court impugning the Full Bench judgment, the Apex Court by referring to Kunchindammed supra, observed as unable to accept the proposition in that expression in Kunchindammed supra of the Apex Court in saying the wording of Section 39(1)(d) of the WLP Act of the in saying the use of a vehicle in the commission of an offence, without anything else would bar its interim release appears to be quite unreasonable and unable to see why vehicle should not be released for interim custody during pendency of trial. It referred Section 50(4) of the WLP Act, which says any person detained, or things seized under the foregoing power, shall forthwith be taken before the learned Magistrate to be dealt with according to law. The WLP Act, 1972 is amended by addition of the words to Section 50(4) of the WLP Act that under intimation to the Chief Wild life Warden or the officer authorized by him in this regard.

19. The Full Bench of Madhya Pradesh High Court in Madhukar Rao supra held correctly by taken the view of the decision in Kunchindammed

supra is of no help as that decision was rendered referring to the provisions of the Karnataka Forest Act, 1963 and not under the WLP Act. The Apex Court in Madhukar Rao supra in approval of the Full Bench of Madhya Pradesh expression, also referred to the earlier expression of the Apex Court in Motilal Vs. CBI¹² where the offence committed was under the WLP Act, and when the investigation was handed over to the CBI and the action was assailed as the enactment is a special law with comprehensive provisions for investigation, inquiry, search, seizure, trial and punishment and thereby the CBI investigation under the Delhi Special police Establishment Act, provisions not empowered by the WLP Act. That contention was no doubt rejected by the Apex Court after examining in detail referring to Section 50 of the WLP Act, which says for trial of offences when Crpc is required to be followed and for that there is no other specific provision to the contrary. Further the special procedure prescribed is limited to take cognizance of offence as well as powers are given to other officers mentioned in Section 50 for inspection, arrest, search and seizure as well as of recording statements. It is concluded therefrom of Section 50 of the WLP Act and the amendment made supra to Section 50(4) of the WLP Act, do not in any way affect the Magistrate's power to make an order of interim release of the vehicle u/ sec.451 Crpc. and the Full Bench of Madhya Pradesh High Court is perfectly correct in its view that Section 39(1)(d) of the WLP Act, cannot be used against the exercise of Magistrate's power to release the vehicle during pendency of the trial in view of Section 50(4) of the WLP Act.

20. In fact, subsequent to that, there is another two judge bench expression of the Apex Court in Principal Chief Conservator of Forest Vs.

¹² (2002) 4 SCC 713

Johnson¹³ which is also a case under the WLP Act, arising from the then State of AP for the offences committed was in Medak District. The facts are that on 24/25.07.2004 intervening night at Pothamsettipalli cross roads, during vehicular checks the Sub Inspector of Police, Kulcharam, Medak District inspected the jeep and the 3 respondents with two others (accused) were found in the jeep and one gunny bag was also found tied to the front side of the bumper of the jeep and the gunny bag had two bags inside; that one bag contained a hunted wild Boar and the other had 3 rabbits and the same were seized under cover of panchanama proceedings and Cr.No.43 of 2004 was registered under Section 9 of the WLP Act, and the DFO Medak was informed who recorded the statement of the said persons who stated about the wild pig and three rabbits and rifles in their possession and the offence was done by them in ignorance and were willing to pay money by way of composition of the offence u/sec.54 r/w 51 of the Act r/w 360 CrPC or PO Act, 1958. The conservator of Forest, Nizambad on the report of the DFO permitted compounding for Rs.30,000/- and the vehicle and weapons used in commission of the offence were forfeited. Same was in challenge before the Principal Chief Conservator of Forest, A.P. who by order dated 09.10.2004 held appeal not maintainable however reduced the compensation to Rs.25,000/-. The seized items i.e. vehicle and rifles thereby forfeited to the State. When the matter is in challenge by writ petition before the Single Judge of the High Court on 29.03.2005, it set aside the order of forfeiture of the vehicle and two rifles (reported in 2006 CrI.LJ1480) when there is intra Court appeal before DB that was ended in dismissal and the state representing by the Forest officials preferred appeal before the Apex Court. There was amendment to

¹³ AIR 2012 SC 61

Section 54(2) of the WLP Act, by Act 16 of 2003 and the occurrence is subsequent to that amended Act came into force. It is contended that the WLP Act, 1972, Section 54(2) amended Act 16 of 2003 was not came for consideration in Madhukar Rao supra of 2008 by the Apex Court which speaks about regulating hunting of wild animals and birds, regulate possession acquisition, transfer of, or trade in, wild animals, animal articles, trophies, taxidermy thereof and provide penalties for contravention of the Act. Section 39(1)(d) of the WLP Act, speaks of vehicle , vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of the Act, shall be the property of the State Government if hunted in a sanctuary of 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. Section 50(3)(9) speaks any officer not inferior to the Asst. Director of Wild life or Asst. Conservator of Forest or whose subordinate seized any captive animal or wild animal, may give the same for custody of execution by a person on a bond for production of such animal as and when so required before the learned Magistrate having jurisdiction to try the offence on account of which the seizure has taken place. Amended Act, 16 of 2003 to the WLP Act, 1972 provides for forfeiture of property derived from illegal hunting and trade is entirely different provision and has nothing to do with forfeiture of property seized from a person and accused of commission of offence. The words used for committing an offence under Section 39(1) (d) of WLP Act, is to understand the kind of absolute vesting of seized property in State Government, on mere suspension of offences committed against the 1972 Act, could not have been intended by the Parliament. Section 39(1)(d) of

the WLP Act, does not get attracted where the items, suspected to have been used for commission of an offence, are seized under the provisions of the Act, for there must be a categorical finding by the competent Court of law about the use of seized items such as vehicle and weapon etc., for commission of offence. Section 51(2) of the WLP Act provides for forfeiture on conviction. Forfeiture and seizure have different meaning. As forfeiture bears penalty for breach of prohibitory direction and seizure is a forcibly taking possession under legal process as a temporary measure. Section 39(1)(d) of the WLP Act, provides seized property used in the commission of offence shall be the property of the State Government or the Central Government. Section 51(2) provides forfeiture of the property in certain situations. In Madhukar Rao supra, it was considered the ambit and scope of Section 39(1)(d) of Section 50(2) and also by Full Bench expression of Madhya Pradesh High Court confirmed by the Apex Court of any property including vehicle seized on acquisition or suspicion of commission of offences u/ sec.1972 Act can be released by a Magistrate pending trial in accordance with Section 50(4) of the Act r/w 451 CrPC. For mere seizure of the property and the vehicle on the charge of commission of offence would not make it property of the State. The Apex Court approved the view of the Full Bench expression in saying any attempt to operationalise section 39(1)(d) merely on basis of seizure and accusation/ allegations by the departmental authorities would bring it into conflict with the constitutional provisions and render it unconstitutional and invalid. On the question whether Section 54(2) of the WLP Act, 1972 Act amended by the Act 16/ 2003, empowers the specified officer to order forfeiture of property in respect of offences against the Act suspected to have been committed by such person even on composition of such offence. It is necessary to confer power on specified officer to order

forfeiture of seized property, it is nothing but one form of penalty in the context of the WLP Act, secondly the power of forfeiture conferred on executive authority merely on suspicion or accusation made, amounts to depriving of a person of his property without authority of law. The parliament by the Amended Act consciously deleted from Section 54, provision concerning release of seized property liable to be forfeited on payment of value of property by the amended Act 16/ 2003, however there is no replacing of the deleted words by express provision. Property seized has to be dealt with by a Magistrate according to law. Section 54 of the WLP Act, as per the amended Act 16 of 2003, does not empower the specified officer to deal with the seized property. In view of the above, the order passed by the Conservator of Forests for forfeiture of the vehicle, and two rifles to State Government is held unsustainable, as rightly concluded by the High Court however saying the High Court was not right in ordering release of the vehicle and rifles since said items seized have to be dealt with by the Magistrate u/ sec.50(4) of the WLP Act, 1972.

21. The settled principle which cannot be forgotten in this regard is that the expressions of the Apex Court in K.Krishnan, Second Forester, K.A.Kunchidammed and Sujith Kumar Pana supra, in clear terms say the interim custody of vehicles involved in Forest Offences is not a matter of course or in routine in wild life protection and Forest Offences. Even the latest expression to the above in J.K.Johnson supra speaks that is the Magistrate's judgment in trial of the criminal case of the WLP Act offence can determine to pass orders of confiscation/ forfeiture of the vehicle if any, for mere seizure of the property and the vehicle on the accusation/ charge of commission of offence under the WLP Act would not make it property of the Government under Section 39 of the WLP Act

automatically, for seizure is different from forfeiture and confiscation and for that an enquiry preceded by show cause notice for written explanation and hearing with opportunity to pass reasoned order is required.

22. Thus, the law is fairly settled from the expressions supra that where the offence involved is under WLP Act irrespective of what is stated in Section 39(1)(d) of WLP Act, the property seized will not automatically become the property of the Government but for if at all to forfeit or confiscate after giving show cause notice and receiving of written explanation if any submitted and with opportunity of hearing by conducting enquiry and passing of a reasoned order and in the meantime there is no bar from the Magistrate u/ sec.50 of the WLP Act, enabling the Magistrate to pass interim release or custody of the vehicle no doubt not as a matter of course for mere asking that too, with bank guarantee always better to pass final order, for confiscation or release if any from such enquiry and otherwise by considering the finding of the criminal case before the Magistrate as the case may be.

23. However neither Madhukar Rao nor J.K.Johnson supra overruled the earlier settled expressions under the State Forest Act, including the expressions of the Apex Court in Gopal Sarkar of 2002, K.A.Kunchidammed of 2002, Second Forester of 2004 and Sujith Kumar Rana of 2004 besides other expression K.Krishnan of 2000 holding that under the State Forest Act respectively from the provisions once the property and the vehicle involved in the Forest Offence seized and produced before the Forest Officials, only the Forest Officials got jurisdiction either to confiscate or to release including for any interim custody and not by the Magistrate under general CrPC provisions, by virtue of the special provisions under the State Forest Act, as also held in categorical terms by the Apex Court in G.V.Sudhakar

Rao Vs. District Forest Officer¹⁴ that the general provisions of CrPC, must necessarily yield to the A.P.Forest Act, special provisions with regard to forfeiture or confiscation or disposal otherwise of the property seized under the A.P.Forest Act offences.

24. Thus so far as the State of Andhra Pradesh and Telangana concerned, because of the specific provision u/ sec.44 of the AP Forest Act, 1967, only the Forest Officials got jurisdiction either to confiscate or to release including for any interim custody and the Magistrate court concerned has no jurisdiction either under Section 451 or 457 CrPC for ordering interim custody, once the vehicle seized produced before the Forest Officials and not produced before the Magistrate. Needless to say, in case of offence involving exclusively WLP Act, the Magistrate got jurisdiction to pass orders for custody and disposal by virtue of the Apex Court's expressions in Madhukar Rao, J.K.Johnson supra with reference to Sections 39 read with 50 of the WLP Act.

25. No doubt, in W.P.No.15911 of 2009, Single Judge expression of this Court,dt.29.10.2009 under A.P.Forest Act and the WLP Act offence involved of the Tractor used in transporting a chattel that was killed in the reserve forest, Section 39 of the WLP Act only was referred and not Section 44 of the AP Forest Act in directing the Forest Officials to conclude confiscation proceedings within three months. There the earlier expression of the Apex Court in Madhukar Rao supra which interpreted Section 39 of the WLP Act not cited and brought for consideration. Thus the Judgment in W.P.No.15991 of 2009 is not laid down correct law, though the conclusion is correct by virtue of Section 44 of the AP Forest Act as per which where the offence involved is both under AP Forest Act and WLP Act and once the property produced before the Forest Officials and not before Magistrate,

¹⁴ 1985 4 SCC 573

only the Forest Officials under the AP Forest Act have to pass property disposal orders either by confiscation or forfeiture if on enquiry found involved in the Forest Offence with knowledge of owner of property where he could not establish that despite all reasonable care taken with due diligence the driver, without owner's knowledge involved the vehicle of owner in commission of the offence; then to release by imposing any penalty rather confiscation.

26. Thus what the learned Magistrate taken the decision in return of the petition for interim custody sought by the present writ petitioner for want of jurisdiction referring to a Single Judge expression of this Court in A.Satheesha supra is absolutely correct. It is because though under the WLP Act, the Magistrate got jurisdiction to pass order for interim custody pending final order for forfeiture or confiscation or release of the seized property including vehicle or vessel etc, so far as the A.P.Forest Offence concerned by virtue of Section 44 of the Act that too, once the vehicle and other property produced before the Forest Officials concerned, it is only the Forest Officials concerned that got jurisdiction for release of the vehicle for interim custody of the vehicle subject to any bank guarantee of its value and not by Magistrate concerned where the crime is pending, with or without filing of chargesheet for ordering any interim custody under Section 451 or 457 CrPC, by the Magistrate. Once such is the case, when it is not an offence exclusively under the WLP Act for the Magistrate to order interim custody of the vehicle subject to any bank guarantee even, for the offence involved also under the A.P. Forest Act, there is no question of Magistrate exercising the power of ordering interim custody, but for the Forest Officials concerned under the A.P. Forest Act including from any involvement of the WLP Act offence also, but for where offence involved is exclusively under the WLP Act for Magistrate to order interim custody of the

vehicle. It is also made clear that where interim custody ordered, the final order of confiscation or forfeiture or release with or without penalty, shall be after end result of criminal case trial from Judgment of Criminal Court covering findings about involvement of the vehicle in the offence and otherwise where no interim custody granted by the Forest Officials, they shall issue show cause notice to owner of vehicle or other private property to submit explanation as to why the property seized not liable for confiscation/ forfeiture and from explanation to give opportunity of hearing by conducting enquiries and pass orders for disposal, which shall be as early as possible, without waiting for the trial result of the criminal case before Magistrate court concerned so that the vehicle or vessel shall not lose utility from disuse and becomes junk, leave about there is statutory right of civil appeal to the District Court against any order for final disposal of the property.

27. With above clarification and clearing cloud the order of the Magistrate returning application of the interim custody of the vehicle to the petitioner for want of jurisdiction in view of the vehicle seized in the offence under the WLP Act and AP Forest Act is upheld for remedy is to approach the District Forest Officer who has to pass orders under the AP Forest Act Section 44 from the vehicle produced before the Forest Officials initially from seizure in the crime and not before the Magistrate.

28. Accordingly and in the result, the Writ Petition is disposed of with a direction to the petitioner to approach the District Forest Officer who got jurisdiction to pass property disposal orders by conducting enquiry including for any interim custody. The District Forest Officer is directed to issue show cause notice, receive explanation of owner of vehicle and on enquiry pass an appropriate order within six weeks from date of receipt of the order.

Any further grievance of writ petitioner is to approach the District Court by statutory civil appeal.

29. Consequently, miscellaneous petitions if any pending in this Writ Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:09.03.2018.

Note: L.R.copy to be marked.
b/o. vvr

