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BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

RESERVED ON : 18.09.2019

PRONOUNCED ON : 25.09.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

CRL. R.C. (MD) NO. 553 OF 2019

K.Viji

.. Petitioner

- Vs -

The Forest Range Officer
Velimalai Range
Tamil Nadu Forest Department
Kanyakumari District.

.. Respondent

Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure praying to call for the records relating to the order passed in Crl. M.P. No.73 of 2019 in W.L.O.R. 1 of 2019 pending on the file of the Learned Special Judge, Forest Offence, Nagercoil, and set aside the same as erroneous and consequently direct the respondent to release the vehicle of the petitioner, viz., Volkswagon LMV Car Ameo bearing Regn. No.TN-75-AF-2534 with Chases No.MEXHI7606HT145173 and Engine No.CWX 172014.

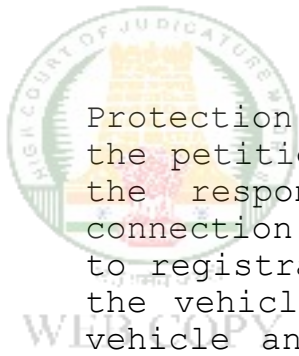
For Petitioner : Mr. K.P.Narayanakumar

For Respondents : Ms. M.Anantha Devi, GA
(Crl. Side)

ORDER

This revision petition is preferred against the order 04.07.2019, made in Crl. M.P. No.73 of 2019, on the file of the Special Judge, Forest Offences, Nagercoil, dismissing the petition filed by the petitioner u/s 451 Cr.P.C. for return of the vehicle.

2. It is the case of the petitioner in the petition as well as the submission of the learned counsel for the petitioner that she is the owner of the vehicle bearing Regn. No.TN-75-AF-2534. According to her, the alleged vehicle was seized by the Range Officer, Velimalai Reserve Forest and a case was registered u/s 2 (16), (33), 35, 39 (1) (A), (1) (D), 39(2), 52, 57, 50(1) r/w 51 of the Wild Life

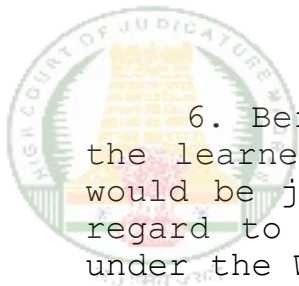


Protection Act, 1972 (for short 'the Act'). It is the submission of the petitioner that she has not committed any offence as alleged by the respondent/police, though the vehicle has been seized in connection with the case and has been in judicial custody pursuant to registration of the case. It is the case of the petitioner that the vehicle is kept in open places, which erodes the value of the vehicle and over a period of time, if it is not maintained, the vehicle would become valueless. Therefore, the petitioner filed Cr.M.P. No.73/2019 before the Special Court for Forest Offences, Nagercoil, for release of vehicle on conditions. However, the said petition was dismissed and, therefore, the present revision has been preferred before this Court.

3. Counter affidavit has been filed by the respondent refuting the averments made by the petitioner. Learned Government Advocate (Crl. Side) vehemently opposed the petition submitting that pending trial, if the vehicle is directed to be released to the petitioner, the petitioner may alienate the vehicle and, thereby, the said act would be very detrimental to the case of the prosecution. It is the further submission of the learned Government Advocate that the vehicle was seized with a dead wild cat inside it and that the said wild cat has been shot dead, as is evident from the injury on the body of the wild cat. However, the pellet that had entered the body of the wild cat is not yet traceable and in all likelihood, it is in the vehicle which is used in the commission of the offence and, therefore, the custody of the vehicle is very much required for obtaining forensic evidence and also to trace the missing pellet. Further, the other articles, viz., air guns, pistols, etc., were also seized from the vehicle. Learned Government Advocate drew the attention of this Court to the Section 39 of the Wild Life Protection Act to persuade this Court to dismiss this petition. It is also further contended that the order, passed u/s 451 Cr.P.C. is an interlocutory order and in view of the bar u/s 397 (2) Cr.P.C., the revision is not maintainable.

4. This Court bestowed its best attention to the submissions advanced by the learned counsel on either side and also perused the materials available on record.

5. The bar imposed u/s 397 (2) Cr.P.C. against filing of revision against an interlocutory order is no longer *res integra* in view of the decision of this Court in the case of **V.Vinoth - Vs - The State (Crl. R.C. No.1152/2018 dated 17.12.2018)**, wherein this Court has extensively considered the said argument and held that revision is maintainable against the order passed u/s 451 Cr.P.C., as the same is not interlocutory in nature, but such order determines the constitutional rights of the petitioner for return of properties or for disposing of properties.



6. Before proceeding to appreciate the contentions advanced by the learned counsel on either side on the merits of the issue, it would be just and necessary to appreciate the ratio laid down with regard to release of vehicles, more especially in cases, falling under the Wildlife Protection Act.

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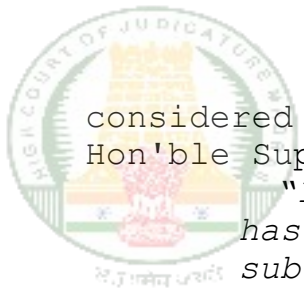
7. In **State of U.P. & Anr. - Vs - Lalloo Singh (2007 (7) SCC 334)**, the Hon'ble Supreme had considered the scope of Section 39 of the Wildlife Protection Act and held as under :-

"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."

8. In **State of M.P & Ors. - Vs - Madhukar Rao (2008 (14) SCC 624)**, the power of the Magistrate to release the vehicle has been

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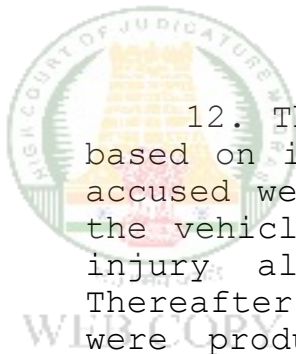
considered by the Hon'ble Supreme and in the said context, the Hon'ble Supreme Court held as under :-

"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."

9. Thus, it is clear that the Magistrate is empowered to pass orders u/s 451 Cr.P.C. for release of the vehicle by way of interim custody, if no confiscation proceeding is pending relating to the vehicle involved in the forest offence, as held by the Supreme Court in *Madhukar's case (supra)*.

10. In the case on hand, it is not the case of the respondent that confiscation proceeding is pending and, therefore, there would be no embargo on the court below to hear the petition for release of vehicle, which petition, the Magistrate has heard, twice, and dismissed the same. It is to be pointed out at this juncture, that at the first instance, when the petitioner herein had filed the petition for release of the vehicle, the Court, by a detailed order, has refused to grant the relief of release of the vehicle. At the next instance, the court below, holding that no change in circumstance has been shown, has once again dismissed the petition for release of the vehicle.

11. Is the dismissal order passed by the court below, on the basis of the ratio laid down by the Apex Court in *Laloo Singh's case* and *Madhukar's case (supra)* justifiable, is the question that falls for consideration, more so, when the court below has relied on the decision in *Laloo Singh's case (supra)* to reject the relief.



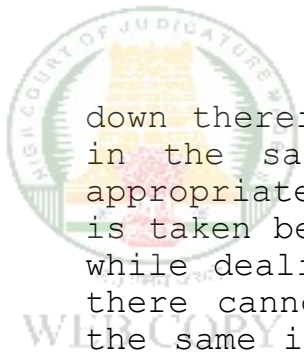
12. The spot mahazar, prepared by the respondent, reveals that based on information received in the morning hours on 21.3.19, the accused were enquired at the police station, and on examination of the vehicle in question, a dead wild cat was seized with a bullet injury along air gun, etc., were seized from the vehicle. Thereafter, after following the procedural formalities, the accused were produced before the appropriate authority along with the vehicle. A case u/s 2 (16), (33), 35, 39 (1)(A), (1)(D), 39(2), 52, 57, 50(1) r/w 51 of the Wild Life Protection Act was registered and the criminal machinery was set in motion.

13. In the above backdrop, the first application for release of the vehicle was filed by the petitioner, which, after consideration, was dismissed by the Special Court vide order dated 30.04.2019. Therein, the learned Principal Subordinate Judge, while recording all the particulars, as noted above, has gone on further to record the fact that the post-mortem of the cat reveals that a punctured wound was noticed in the left lateral jugular area of the neck region and that the wound can be caused by the pellet used in the air gun seized from the accused. The Court has also observed that the photograph produced by the prosecution shows that the seized animal is a wild cat and not a domestic cat.

14. While the petitioner seeks release of the vehicle, a stand has been taken by the respondent in the counter stating that the pellet which is alleged to have been shot from the air gun, which was recovered from the vehicle, had caused the death of the alleged wild cat and that the said pellet has not yet been recovered and it is likely to be in the vehicle and, therefore, the release of the vehicle is objected to pending recovery of the pellet. Though such a stand is taken by the respondent in the counter affidavit filed in this revision, however, it is to be noted here that there is no mention about non-recovery of the pellet from the body of the wild cat in the order passed by the court below. Further, the order also does not reveal such a stand taken by the respondent before the court below. However, opinion has been given that wound found on the body of the wild cat could have been caused by the pellet discharged from the air gun.

15. At this juncture, it is to be pointed out that the vehicle has been seized and has been in the custody of the respondent since 21.03.2019. By now almost six months have passed during which time the forensic team would have searched the entire vehicle with a fine toothed comb for any forensic evidence connected with the crime. However, it is the stand of the respondent that the pellet is yet to be recovered and for that purpose the custody of the vehicle in question ought not to be handed over to the petitioner, else the prosecution case would be hampered.

16. The court below, though has taken the aid of the decision in *State of Karnataka v. Appa Balakrishna Lingappa* case (*supra*), has not appreciated the ratio laid



down therein, in proper perspective. It has been clearly laid down in the said decision that the Magistrate is empowered to pass appropriate orders in respect of the purported seized property which is taken before him. While the Magistrate himself has recorded that 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. Such being the case, the vehicle having been under the custody of the respondent since 21.3.2019, by now the investigative procedures ought to have been completed, and, therefore, the investigative lacunae, if any, cannot be cured or allowed to continue to the detriment of the petitioner, by keeping the vehicle in an open place, which would definitely erode the value of the vehicle due to natural factors, thereby increasing the depreciable value of the vehicle. The lethargic attitude and non-adherence to the basic investigative procedures cannot be put against the petitioner to deny her the relief sought for. Therefore, in the above scenario, the balance of convenience definitely tilts in favour of the petitioner for return of the vehicle.

17 This Court, taking cue from the observations made by the Hon'ble Supreme Court in a catena of decisions, and also keeping in mind the fact that the property, which is sought to be returned will lose its value and ultimately would be of no use to the stake holder, if it is not maintained, which could only be the inference that could be drawn if it is left in the custody of the respondent and, therefore, in all fairness and fitness of things, pending trial or investigation, the vehicle, as far as possible, shall be returned to the owner. Therefore, this Court is of the considered view, that the vehicle in the present case, bearing Regn. No.TN-75-AF-2534, which is the subject matter of impugned order dated 04.07.2019, made in Cr.M.P.No.73 of 2019 in W.L.O.R. No.1 of 2019, on the file of the Special Judge, Forest Cases at Nagercoil, should be released.

18. Accordingly, this criminal revision case is allowed setting aside the order dated 04.07.2019, made in Cr.M.P.No.73 of 2019 in W.L.O.R. No.1 of 2019, on the file of the Special Judge, Forest Cases at Nagercoil, . The vehicle, bearing Regn. No.TN-75-AF-2534, which is covered under Cr.M.P. No.73 of 2019 on the file of the Special Judge, Forest Cases at Nagercoil, is ordered to be released within a period of one week from the date of receipt of a copy of this order, subject to the following conditions :-

- "i) The petitioner shall produce the necessary documents before the respondent to establish ownership of the vehicle in question;*
- ii) The petitioner shall deposit the RC Book with the custody of the Special Judge, Forest Cases at Nagercoil, till the conclusion of the trial;*
- iii) The petitioner shall deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) before the*



Special Judge, Forest Cases at Nagercoil, as non-refundable deposit;

iii) The petitioner shall give an undertaking that she will not use the vehicle for any illegal activities in future and shall produce the same as and when required by the respondent for the conduct of the trial;

iv) The petitioner shall not alienate the vehicle in question till the disposal of the proceedings before the authority concerned;

v) Before handing over possession of the above vehicle to the petitioner, the respondent shall take appropriate photographs of the said vehicle; and

vi) The petitioner shall extend full cooperation by producing the vehicle as and when required at the time of trial."

Sd/-

Assistant Registrar (Ad-II)

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Sub Assistant Registrar(CS)

GLN

To

- 1) The Special Judge
Forest Cases, Nagercoil.
- 2) The Forest Range Officer
Velimalai Range
Tamil Nadu Forest Department
Kanyakumari District.
- 3) The Addl. Public Prosecutor
Madurai Bench of Madras High Court
Madurai.

+1 CC to Mr.K.P.NARAYANA KUMAR, Advocate SR-89895.

ORDER IN

CRL. R.C. (MD) NO. 553 OF 2019

Pronounced on 25.09.2019

CS (11.10.2019) 7P 5C