

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2834 OF 2021

SARIKA NITIN SALUNKHE } PETITIONER

V/S.

THE STATE OF MAHARASHTRA } RESPONDENT

* * * *

Mr. Umesh R. Mankapure, Advocate for the petitioner.

Smt. S.V. Sonawane, APP for State.

Coram : Sandeep K. Shinde, J.

Tuesday, 21st December, 2021.

Oral Judgment :

1. Rule. Rule made returnable forthwith.
2. Question falling for my consideration is;
 - (i) Whether any property including vehicle seized under Section 50(1)(c) of the Wildlife Protection Act, 1972 ("Act of 1972" for short) on accusation or suspicion of commission of offence under the Act of 1972 can be released by the Magistrate pending trial in accordance with

Section 50(4) of the Act of 1972 read with Section 451 of the Criminal Procedure Code ?

3. Briefly stated, prosecution's case is; that on 26th October, 2020 the Forest Authorities intercepted the truck bearing Registration No.MH-09-EM-8479 ("vehicle" for short). The authorities, after search of the vehicle, found the said vehicle was allegedly carrying bauxite which was mined, in the area of Sanctuary without permit; whereafter the offences came to be registered vide Crime No.02/2020 under Sections 27, 29, 50 read with Section 51 of the Wildlife Protection Act, 1972 ('Act of 1972' for short). Soon thereafter Forest Officer, in exercise of the powers under Section 50(1)(c), seized the said vehicle. Afterwhich, vide order under Section 91 of the Cr.P.C., owner of the said vehicle was ordered to produce the ownership documents of the said vehicle. Pending investigation in the offences under Wildlife Protection Act, offences under the Indian Forest Act, 1927 were added. After which, Petitioner, being owner of the vehicle, moved an application, under Section 451 of the Cr.P.C. and sought interim custody of the said vehicle.

4. The forest authorities, primarily questioned maintainability of the application under Section 451 of the Cr.P.C. on the ground that once offence is registered under the Indian Forest Act in terms of Section 61G of the Forest Act, any forest produce together with any tool, rope, boat, vehicle used in committing any offence, when seized under sub-section (1) of Section 52 of the Forest Act, the authorised officer under Section 61A or the officers specially empowered under Section 61C or Sessions Judge hearing an appeal under Section 61D, have jurisdiction and therefore no one else can make an order with regard to the custody, possession delivery or distribution of such property. As such forest officer contended that learned Magistrate had no jurisdiction to entertain Petitioner's application under Section 451 of Cr.P.C. Yet, the learned Judicial Magistrate, First Class, Radhanagari, allowed the application and directed the forest authorities to handover interim custody of the said vehicle to the Petitioner. The correctness and legality of that order was questioned in Revision, by the State of Maharashtra through the Assistant Forest Officer, Radhanagari. The learned

Additional Sessions Judge held that the order of Magistrate was not sustainable for want of jurisdiction and as such by order dated 12th April, 2021 quashed and set aside the order of the Judicial Magistrate, First Class, Radhanagari.

5. Feeling aggrieved by order passed in Revision, Petitioner - owner of the vehicle, has approached this Court in its supervisory jurisdiction under Article 227 of the Constitution of India.

6. Heard. Mr. Mankapure, learned Counsel for the Petitioner and Mrs. Sonawane, learned APP for State.

7. Before advertng to the submissions of the Counsel for the parties, it may be said that, indisputably vehicle in question was seized under Section 50(1)(C) of the Act of 1972 and produced before the Jurisdictional Magistrate under subsection (4) of Section 50 of the said Act. In other words, the vehicle in question was neither seized under Section 52, nor seizure report was filed before Jurisdictional Magistrate under subsection (2) of Section

52 of the Indian Forest Act. Therefore, application moved by the Petitioner under Section 451 of Cr.P.C. was for seeking interim custody of the vehicle seized under the Wildlife Protection Act, 1972. In consideration of this fact, the objection of the forest officer as to jurisdiction of the learned Magistrate to entertain the application in view of the provision of Section 61G of the Indian Forest Act, was rightly overruled by the learned Magistrate. Yet, Mrs. Sonawane, learned Prosecutor argued that once vehicle has been seized for committing an offence under the Wildlife Protection Act, it shall be the property of the Government in terms of Section 39(1)(d) of the Act of 1972 and therefore the learned Magistrate erred in ordering to hand over the interim custody of the vehicle to the Petitioner.

8. Smt. Sonawane, learned APP for State, would contend that since vehicle has been seized on the allegations, that it was used for committing the offence under the Wildlife Protection Act, 1972, the same should not normally be returned to the parties seeking its release till the culmination of criminal proceedings in respect of the

offence, if the material so collected, prima-facie, discloses involvement of the vehicle in respect of the commission of offence under the Wildlife Protection Act. Smt. Sonawane, would rely on the judgment of the Division Bench of this Court in the case of **State of Maharashtra V/s. Gajanan D. Jambulkar, 2002 Cri. L.J. 349**, wherein it was held thus :

“If for any exceptional reason the Court feels that the vehicle is not prima facie involved in respect of the commission of the offence under the [Wild Life Protection Act](#), the Court should impose stringent conditions while ordering its release so that at the conclusion of the trial, if forfeiture is to be ordered, the vehicle is available in the same condition in which it was seized casual approach in ordering the release of the seized vehicles has to be seriously deprecated as such casual approach has resulted in frustrating the very object for which statute was enacted.”

9. Smt. Sonawane, learned APP would therefore contend, since bauxite illegally mined from the prohibited areas of the Sanctuary, was seized from the vehicle owned by the petitioner, there was sufficient material to show that, vehicle had been used for committing the offence under the Wildlife Protection Act and therefore in view of the law laid down in the judgment in the case of Gajanan D.

Jambhulkar (supra), learned Magistrate ought not to have granted interim custody of the vehicle to the Petitioner.

10. Per-contra, Mr. Mankapure, learned Counsel for the Petitioner would contend that provision of Section 39(1) (d) of the Act of 1972 cannot be used against exercise of Magistrates' power to release the vehicle during the pendency of trial. Mr. Mankapure in support his contention would rely on the judgments of the Hon'ble Apex Court, in the case of State of **Madhya Pradesh and Ors. V/s. Madhukar Rao, (2008) 14 SCC 624** and in the case of **Principal Chief Conservator of Forests and Anr. v/s. J.K. Johnson and Ors., (2011) 10 SCC 794**, by which, the Apex Court has held;

(i) that the provisions of Section 50 of the Wildlife Protection Act and the amendments made thereunder, do not in any way, affect the Magistrate's power to make an order of interim release of the vehicle under Section 451 of the Code; and;

(ii) that mere seizure of any property including vehicle on the charge of commission of offence under the Wildlife

Protection Act, would not make the property to be of the State Government under Section 39(1)(d) of the 1972 Act. In para-23 of the judgment in the case of State of Madhya Pradesh (supra), the Apex Court has held :

“8. Learned counsel submitted that [Section 39\(1\)\(d\)](#) of the Act made the articles seized under [Section 50\(1\)\(c\)](#) of the Act as government property and, therefore, there was no question of their release. The submission was carefully considered by the Full Bench of the High Court and on an examination of the various provisions of the Act it was held that the provision of [Section 39\(1\)\(d\)](#) would come into play only after a court of competent jurisdiction found the accusation and the allegations made against the accused as true and recorded the finding that the seized article was, as a matter of fact, used in the commission of offence. Any attempt to operationalise [Article 39\(1\)\(d\)](#) of the Act merely on the basis of seizure and accusations/allegations leveled by the departmental authorities would bring it into conflict with the constitutional provisions and would render it unconstitutional and invalid. In our opinion, the High Court has taken a perfectly correct view and the provisions of [Section 39\(1\)\(d\)](#) cannot be used against exercise of the Magisterial power to release the vehicle during pendency of the trial.

. Mr. Mankapure therefore submitted that provision of

Section 39(1)(d) of the said Act would come into play only after the Court of competent jurisdiction concludes that the accusations and allegations made against the accused were true and records the finding that the seized vehicle was used in the commission of offence. Thus, Mr. Mankapure argued that while granting the interim custody of the seized property, Section 39(1)(d) of the said Act has no application.

11. I have carefully considered the submissions of the Counsel for the parties and perused the material on record.

12. In so far as, jurisdiction of Magistrate to entertain the application to grant interim custody under Section 451 of the Cr.P.C. is concerned, it may be stated that since the vehicle in question was seized under Section 50(1)(c) and produced before the Jurisdictional Magistrate under subsection (4) of Section 50 of the Wildlife Protection Act, AND not under Section 52(1) of the Indian Forest Act, 1927, provision of Section 61A, 61C and 61D of the Indian Forest Act has had no application and therefore application moved by the Petitioner under Section 451 of the Cr.P.C.

before the learned Magistrate was perfectly maintainable. As a result, the learned Judge has not committed jurisdictional error in passing the order and therefore order cannot faulted with. The next contention/ objection of the Prosecution was that the learned Magistrate could not have directed interim custody of the vehicle to Petitioner in view of provision of Section 39(1)(d) of the Act of 1972. This objection requires no consideration in light of law enunciated by the Hon'ble Apex Court in the case of State of Madhya Pradesh (supra) and in the case of Principal Chief Conservator of Forests (supra). In these judgments, the Hon'ble Apex Court has held that mere seizure of property including a vehicle on the charge of commission of offence under the Wildlife Protection Act, would not make the property to be of the State Government under Section 39(1)(d) of the Act, 1972. Therefore, the judgment in the case of Gajanan D. Jambulkar (supra) relied on by Mrs. Sonawane, learned Prosecutor for State, would not govern the issue in hand.

13. That even otherwise, the Apex Court in the case of **Sunderbhai Ambalal Desai V/s. State of Gujarat, (2002) 10 SCC 283**, has held that the powers under Section 451 of the Criminal Procedure Code, should be exercised expeditiously and judiciously. In so far as, vehicles are concerned, the Hon'ble Supreme Court has held ;

“It is of no use to keep such seized vehicles at the police Stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of application for return of such vehicles.”

14. Therefore, in consideration of the facts, and for the aforestated reasons, the order passed by the learned Magistrate, directing the State to handover interim custody of the said vehicle to the petitioner, cannot be faulted with. The question is answered accordingly. As a result, the order passed in the Revision No.01/2021 by the Additional Sessions Judge, District-Kolhapur, is quashed and set aside. The petition is allowed in terms of prayer clause (a).

15. Rule is made absolute. Petition is disposed of accordingly.

(Sandeep K. Shinde, J.)

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