



IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON
12.08.2021

ORDERS PRONOUNCED ON
23.09.2021

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.306 of 2017

J.Babu

.. Petitioner/Owner

.. Vs ..

State through the
Forest Range Officer,
Forest Department,
Sirkali Taluk.
(W.L.O.R.No.02 of 2016)

.. Respondent/Complainant

PRAYER : Criminal Revision Case filed under Section 397 r/w. 401 of the Criminal Procedure Code, praying to set aside the order passed in Crl.M.P.No.6039 of 2016, dated 30.01.2017 on the file of the learned Judicial Magistrate, Sirkali, to return of the vehicle Registration No.TV-82-6716, TVS Phoenix, Chassis Number MD6258F43EIE83254 and Engine Number CF4EE1082586 in W.L.O.R.No.02 of 2016 on the file of the respondent police.

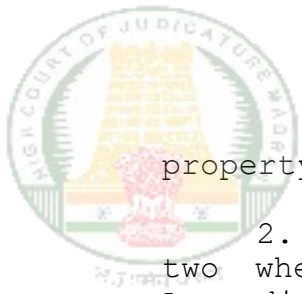
For Petitioner : Mr.Sarath for
M/s.K.M.Vijayan Associates

For Respondent : Mr.R.Vinoth Raja,
Government Advocate (Crl.Side)

ORDER

The matter is heard through "Video Conference".

The revision petitioner herein is a third party and he has filed a petition in C.M.P.No.6039 of 2016 before the learned Judicial Magistrate, Sirkali, for return of the vehicle remanded in the forest case in W.L.O.R.No.02 of 2016. The said petition was dismissed on the ground that the property shall be the



property of the State Government.

2. The petitioner herein has filed a petition for return of two wheeler bearing Registration No.TN-82-6716, TVS Phoenix. According to the petitioner, on 30.09.2016, his relative one Muthukumar has taken his vehicle for his personal work and on 01.10.2016, the respondent, forest officials have seized the said vehicle and registered a case in W.L.O.R.No.02 of 2016 for the offence under Section 49 r/w. 51 of the Wild Life (Protection) Act, 1972 (hereinafter referred to as the Act).

3. The main objection raised by the respondent forest department is that as per Section 39(1)(d) of the Act, the vehicle, if any, seized under the Wild Life (Protection) Act, shall be the property of the State Government. Citing so, the learned Judicial Magistrate, Sirkali, has dismissed the said petition.

4. On a perusal of the complaint filed in W.L.O.R.No.02 of 2016, it is seen that a case has been registered for the offences under Sections 39, 49 and 50 r/w. 51 of the Act. The accused Muthukumar was arrested and remanded to judicial custody. The vehicle used for committing the crime is seized and remanded as a case property. The allegation is that the foresters found two ducks in a covered bag, out of which, one was alive and the said Muthukumar has alleged to have carried the two ducks which is a "schedule animal" under the Act.

5. In view of the specific provision under Section 39(1) (d) of the Act, the vehicle seized shall be the property of the State Government and no confiscation order has been passed.

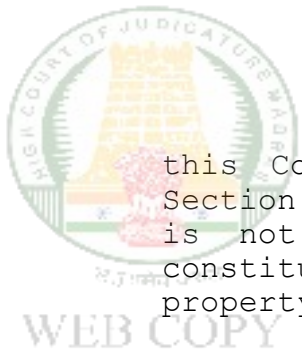
6. The core points that are to be determined are,

(1) whether the petition for interim custody of the vehicle seized alleged to have involved in the forest offence under Section 451 of Cr.P.C. before the Magistrate Court is maintainable?

2) If so, what are the parameters to be considered by the Magistrate?

7. A preliminary objection was raised by the learned Government Advocate that the order passed in the petition filed under Section 451 of Cr.P.C. is in the form of interlocutory order and therefore, the criminal revision case is not maintainable.

8 (a). In the decision of this Court in the case of V.Vinoth - Vs - The State (Crl. R.C. No.1152/2018, dated 17.12.2018),



this Court has held that Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C. is maintainable, since the same is not interlocutory in nature. Such order determines the constitutional right of the petitioner for return of the property or for disposing of the property.

8 (b). Whether, as to the petition for interim custody of the vehicle, is maintainable, in view of Section 39 of the Act, is, no longer res integra, since the Hon'ble Apex Court in the case of State of U.P. & Anr. - Vs - Lalloo Singh reported in (2007 (7) SCC 334), 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 subsection (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."

9. In the case of State of M.P & Ors. - Vs - Madhukar Rao reported in (2008 (14) SCC 624), the power of the Magistrate to release the vehicle has been considered by the Hon'ble Apex Court and in the said context, the Hon'ble Apex Court has 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 subsection. 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."

10. Thus, the bar codified under Section 39 of the Act will not stand in the way. Aggrieved person has to approach the Magistrate Court directly for interim release of the seized vehicle under Section 451 of Cr.P.C. and hence, in view of the settled position as stated in the above citation of the Hon'ble Apex Court, the learned Judicial Magistrate, is empowered to pass an order under Section 451 of Cr.P.C. for the 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 in Madhukar Rao case cited supra.

11. This Court in CrI.O.P.No.11945 of 2019, dated 06.06.2019, has considered the similar objection raised by the learned Government Advocate on the footing that once the proceedings ends under Section 49(a) and (b) of the Forest Act, the Magistrate cannot entertain the petition for return of the vehicle, in exercise of jurisdiction under Section 451 or 457 of Cr.P.C.



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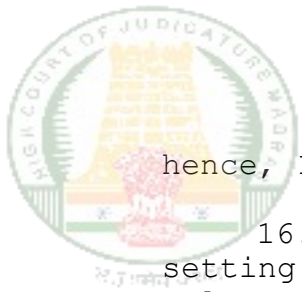
12. Brother Justice N.Anand Venkatesh, on drawing parallel lines and comparing Section 14(4) of the Tamil Nadu Prohibition Act, held that the provisions of Section 49A of the Act does not in any way take away the Jurisdiction of the Magistrate Court to exercise its power under Section 451 or 457 of Cr.PC and held as follows:-

"The confiscation of a vehicle involved in the commission of an offence under the Tamil Forest Act is not only punitive in nature but also a deterrent. When a vehicle is involved in the commission of offence under the Tamil Nadu Forest Act and there are prima facie materials to show that the owner of the vehicle did not have any knowledge or connivance in the commission of the offence, he can always file an application for return of vehicle under Section 451 or 457 of Cr.PC. But, however the Court while exercising its powers will have to do it with care and caution and should provide an opportunity to the Public Prosecutor and also must keep in mind the spirit behind Section 49A of the Tamil Nadu Forest Act, 1882 and its benevolent object."

13. A similar view was expressed by Brother Justice V.Parthiban in CrI.R.C.(MD) No.553 of 2019, dated 25.09.2019 and thus, I find that the first question is no longer res integra, in view of the settled legal position as stated supra.

14. The case of the prosecution is that the petitioner is the owner of the two wheeler bearing Registration No.TN-82-6716, TVS Phoenix and it is alleged that at the time of routine vehicle check up by the forest officials, it was found that there was two ducks in a covered bag, out of which, one was alive. It is the further case that one Muthukumar, who is the relative of the petitioner, was arrested in connection with that crime number. The case was registered against the said Muthukumar in W.L.O.R.No.02 of 2016 for the offence under Section 49 r/w. 51 of the Wild Life (Protection) Act, 1972. It is alleged to have used for committing the offence of two forest ducks. As per the R.C. book, it is seen that it stands in the name of the petitioner and without his knowledge, the said vehicle is said to have been used.

15. It remains to be stated that the revision petitioner is not an accused and the offence registered under Section 49 r/w. 51 of the Act is a compoundable offence. There is no scope of confiscation. So far, no confiscation proceeding was initiated against the vehicle and no notice was received by the revision petitioner. The above position has been ascertained by the Government Advocate that the R.C. book stands in the name of the petitioner and no confiscation proceeding was initiated and



hence, I am inclined to allow the above criminal revision case.

16. Accordingly, this criminal revision case is allowed setting aside the order dated 30.01.2017 passed in CrI.M.P.No.6039 of 2016 by the learned Judicial Magistrate, Sirkali. The vehicle, bearing Registration No.TV-82-6716, 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 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 learned Judicial Magistrate, Sirkali, till the conclusion of the trial;

iii) The petitioner shall deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) before the learned Judicial Magistrate, Sirkal, as non-refundable deposit;

iv) The petitioner shall give an undertaking that he 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;

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

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

vii) The petitioner shall extend full co-operation by producing the vehicle as and when required at the time of trial."

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Jr1



To

1. The Judicial Magistrate - V,
Sirkali.
2. The Chief Judicial Magistrate,
Nagapattinam.
3. The Forest Range Officer,
Forest Department,
Sirkali Taluk.
3. The Public Prosecutor,
High Court, Madras.

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Order made in
Crl.R.C.No.306 of 2017

PCH (CO)
SU (04/10/2021)