



W.P.(MD)No.24162 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.24162 of 2023

Bala Ganesh

... Petitioner

versus

The Forest Range Officer,
Palayamkottai Branch,
Tirunelveli Forest Range
W.L.Or.No.17/23

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Mandamus, to permit the petitioner to surrender his motor vehicle car (Scorpio Classic S11 MT7S, Pearl White) vide Registration Number TN59 CQ 7878 before the learned Judicial Magistrate, Tirunelveli, in Crime No.W.L.Or.No.17/23 registered by the respondent and further direct the learned Judicial Magistrate-V, Tirunelveli, to consider the petition for return of



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property on the same date in connection with offences under Sections 9, 39(1)(b), 49(A), 50(1), 52, 57 of Wild Life (protection) Act 1972 r/w. Section 7, 25(1)(a), 25(1)(b) of Arms Act based on conditions set out in under Section 50(1)(c) & under Section 51(1) of Wild Life Protection Act 1972.

For Petitioner : Mr.I.Velpradeep

For Respondent : Mr.G.V.Vairam Santhosh,
Additional Government Pleader

ORDER

The petitioner has filed this writ petition seeking to grant permission to him to surrender his Car (Scorpio Classic S11 MT7S, Pearl White) vide Registration Number TN59 CQ 7878 before the learned Judicial Magistrate No.V, Tirunelveli, in Crime No.W.L.Or.No. 17/23 registered by the respondent and also for a direction to the learned Judicial Magistrate No.V, Tirunelveli, to consider the petition for return of property on the same day.



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2. The learned counsel appearing for the petitioner submits that the petitioner was arrested by the respondent as accused No.2, in W.L.Or.No.17 of 2023 that he along with other accused hunted three spotted deer. He was remanded on 30.08.2023 for the commission of offences under Sections 9, 39(1)(b), 49(A), 50(1), 52, 57 of the Wild Life (Protection) Act 1972 r/w. Section 7, 25(1)(a), 25(1)(b) of Arms Act and released on bail by the learned Principal Sessions Judge, Tirunelveli on 02.09.2023. In the confession statement, the accused No.1 has implicated the petitioner's vehicle bearing Reg.No.TN59 CQ 7878 that the vehicle was also used for commission of offence. Therefore, the petitioner is inclined to surrender his Scorpio Car bearing Reg. No.TN59 CQ 7878 before the concerned Judicial Magistrate and also inclined to pay penalty as per the provisions set out under Section 51(1) of Wild Life (Protection) Act, 1972. Therefore, the petitioner is before this Court.



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3. The learned counsel appearing for the petitioner has also relied upon a Judgment of the Hon'ble Apex Court in ***State of U.P. And another vs. Lalloo Singh*** reported in ***2007 (7) SCC 334*** and an order of this Court passed in Crl.R.C.No.306 of 2017 dated 23.09.2021 (***J.Babu vs. State through the Forest Range Officer, Forest Department, Sirkali Taluk*** reported in ***2021 (3) MWN (Cri) 531***)

4. The learned Additional Government Pleader appearing for the respondent, by referring to the provisions under Section 39(1)(d) of the Wild Life (Protection) Act 1972, submits that the vehicle, which has been used for commission of offence and has been seized under the provisions of this Act, shall be the property of the State Government. Therefore, the petitioner is not entitled for return of the property. However, he admits that the vehicle has not been confiscated so far.

5. This Court considered the rival submissions and perused the materials on record.



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6. The petitioner's vehicle has been seized by the respondent under the provisions of the Wild Life (Protection) Act, 1972. The petitioner now claims that he will surrender his vehicle before the concerned Judicial Magistrate.

7. In a similar circumstance, this Court, in ***J.Babu vs. State through the Forest Range Officer, Forest Department, Sirkali Taluk***, reported in ***2021 (3) MWN (Cri) 531***, by referring to Judgments of the Hon'ble Supreme Court in ***State of U.P. and another vs. Lalloo Singh*** reported in ***2007 (7) SCC 334*** and ***State of M.P. and others vs. Mahukar Rao*** reported in ***2008 (14) SCC 624***, has observed as follows:

“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 subsection (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 subsection (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 Crl.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.

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 Crl.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



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position as stated supra.”

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8. In view of the above decision, this writ petition is disposed of with liberty to the petitioner to file a petition under Section 451 of Cr.P.C. before the concerned trial Court. On filing of such petition, the same shall be disposed of by the concerned trial Court as per the ratio laid down as stated supra, within a period of one week from the date of filing of the petition. No costs.

09.10.2023

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NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.

To

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B.PUGALENDHI, J.

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