

24.04.2024

Sl. No.: 27

Court No.30
BM

CRR 1639 of 2022

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IA No.: CRAN 3 of 2023

The State of West Bengal

Vs.

Chandan Kumar Jana

Mr. Debasish Roy, Ld. P.P
Mrs. Anasuya Sinha
Mrs. Subhasree Patel
Mr. Pinak Mitra

... for the petitioner/State

Mr. Ratan Das

... for the opposite party

1. The present revisional application has been preferred against an order dated 08.02.2022 passed by the learned Additional Chief Judicial Magistrate, Kakdwip, South 24 Parganas in C.R No.216 of 2020 (Regn No.216/2020) pending before the learned Additional Chief Judicial Magistrate, Kakdwip, South 24 Parganas arising out of POR No.2/NM of 2020-2021 dated 25.12.2020 under Section 51 of the Wild Life (Protection) Act, under Section 3 of the Prevention of Damage to Public Property Act thereby directing return of seized motorcycle to the opposite party.
2. Being aggrieved by the said order under revision vide which the learned Additional Chief Judicial Magistrate, Kakdwip, South 24 Parganas had returned the seized vehicle in a proceeding which was initiated under the Wild Life (Protection) Act, 1972 and under Section 3 of the Prevention

of Damage to Public Property Act, the present revision has been preferred.

3. On perusal of the order under revision, it appears that the findings of the learned Magistrate was that as the proceeding has been launched under the Wild Life (Protection) Act, 1972 there cannot be any confiscation proceeding under Section 59A of the Indian Forest Act, 1927.
4. The learned Magistrate relied upon the decision of the Hon'ble High Court as reported in (2016) 2 Calcutta Criminal Law Reporter (Cal) 585 wherein the Calcutta High Court held as follows:-

“Specific complaint against the accused persons before the court of learned Magistrate for violation of the provisions of Sections 9/39/44/48 and 49 of the Wild Life(Protection) Act, 1972, which is punishable under Section 51 of the Wild Life(Protection) Act, 1972. Since, the petitioner has lodged the complaint against the opposite party in order to prosecute him under Section 51 of the Wild Life (Protection) Act, 1972 and since the seizure of the taxi is done under Section 50 of the Wild Life (Protection) Act, 1972, I fail to understand how the Authorised Officer can initiate the proceeding for confiscation of the seized taxi under Section 59A of the Indian Forest Act, 1927 as amended by the State of West Bengal. In view of proposition of law laid down by the Supreme Court in “State of Madhya Pradesh v. Madhukar Rao” reported in (2008) 14 SCC 624, I am of the view that the seized taxi cannot be branded as the property of the Government under Section 39 of the Wild Life(Protection) Act, 1972 for denial of power of learned Magistrate to return the said seized taxi under Section 451 of the Code of Criminal Procedure on interim custody till conclusion of trial of the case pending before the competent court of law.”

5. The Learned Public Prosecutor on filing a short note of argument has submitted that after completion of

investigation the investigating agency has submitted a report being Memo No.808/LAW/15C-9 dated 02.05.2022, under Sections 9/39/44/49/50/55 of the Wild Life (Protection) Act and under Sections 2(4) (b)(iii)/52 of the Indian Forest Act, punishable under Section 51 of the Wild Life(Protection) Act against Sri Chandan Kumar Jana the opposite party, herein.

6. It is submitted that thus the provision of Section 59A of the Indian Forests Act shall be applicable in the present case.
7. It appears that the prosecution report submitted by the investigating agency is dated **02.05.2022**.
8. The order under revision is dated **08.02.2022**. As such as the said final prosecution report dated 02.05.2022 was not before the learned Magistrate, the learned Magistrate passed the order under revision dated 08.02.2022, which at **that stage appears to be in accordance with law**.
9. As a period of more than 2 years has passed since the date of the said order, the present status of the seized vehicle is not before this court. Accordingly, the criminal revision is disposed of directing the learned ACJM to act as per the prosecution report dated 02.05.2022, **if the order under revision dated 08.02.2022 has not been acted upon**. In case, the said order under revision has already been acted upon, the said order shall remain, and be subject to the result of the trial.
10. **The revisional application being CRR 1639 of 2022 stands disposed of.**
11. All applications connected thereto stand disposed of.

- 12.** Interim order, if any, stands vacated.
- 13.** Let a copy of the order be sent to the learned trial court for compliance.
- 14.** Urgent Xerox certified copies of this order, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)