

Jakir Khan Vs. State of M.P.**13/04/2017**

Shri H.K.Shukla, counsel for the applicant.

Shri BPS Chauhan, PP for the respondent/state.

This Criminal Revision under Section 397, 401 of Cr.P.C has been filed against the order dated 7.2.2012 passed by the Sessions Judge, Morena in Cr.Revision No.223 of 2011 setting-aside the order dated 12.12.2011 passed by JMFC, Morena in M.Cr.C No.369 of 2011 by which, the Magistrate had allowed the application filed by the applicant under Section 457 of Cr.P.C for release of the vehicle.

Necessary facts for the disposal of the present revision in short are that a Tractor bearing Registration No.MP06/A-2808 was seized by the forest authorities in connection with an offence punishable under Section 27, 29, 39(1) (d), 550, 551 and also under Section 41 and 42 of Indian Forest Act, 1927. The said vehicle was confiscated by the order dated 7.3.2011. Against the order of confiscation, the applicant filed an appeal which was allowed and the matter was remanded back to the prescribed officer to decide confiscation proceedings afresh. During pendency of the confiscation proceedings, the applicant filed an application under Section 451 and 457 of Cr.P.C for release of the vehicle on supurdginama. The said application was allowed and the vehicle was directed to be released on supurdginama in favour of the applicant.

Being aggrieved by the order of the Magistrate, the respondent filed a criminal revision before the Sessions Court Morena. The said revision has been allowed by order dated 7.2.2012 passed by Sessions Judge, Morena

in Cr.Revision No.223 of 2011. Hence, this revision has been filed by the applicant.

It is submitted by counsel for the applicant that in view of the judgment passed by the Supreme Court in the case of **State of M.P. Vs. Madhukar Rao reported in 2008 Volume 1 JT 364**, the Magistrate did not commit any mistake in releasing the vehicle on interim supurdgi and the revisional Court has wrongly set-aside the order of Magistrate.

Per-contra, it is submitted by counsel for the applicant that once an information has been given to the Magistrate with regard to the initiation of the confiscation proceedings, then, he loses all its jurisdiction to release the vehicle on interim custody.

This Court in the case of **State of M.P. Vs. Shivdayal (Cr.Revision No.24 of 2012)** has held as under :

"It appears that the revisionary Court has relied upon the order passed by the single Bench of this Court in M.Cr.C. No. 7937/2008 (Dilip Vs. State of M.P.) which was dependent upon the judgment of Apex Court in case of Madhukar Rao. However, if case of "Madhukar Rao Vs. State of M.P. and others" reported in 2000 (1) MPLJ 289, decided by full Bench of this Court is considered then in Para 20 of that judgment, it is held that if property is seized under [Indian Forest Act](#) then situation would be different. The entire case decided by the full Bench was relating to the provision of confiscation in [Wild Life Protection Act](#). In [Wild Life Protection Act](#), there is no provision of any inquiry or confiscation proceeding and, therefore, such view was given by the full Bench of this Court, which was duly confirmed by the Supreme Court. However, in [Forest Act](#), various provisions of [Sections 52, 52-A, 52-B](#) and [52-C](#) were enacted, in which the proceeding of confiscation is provided. No Court including the Apex Court has declared such provision to be ultra virus and, therefore, according to those provisions when intimation is given to the concerned

Magistrate that the property seized under the Indian Forest Act is under confiscation then Magistrate has no right to release the property either temporarily or finally. In various cases, the Supreme Court has its firmed view that no Court can go against the provisions enacted in the Forest Act. Hence, when provisions under Sections 52, 52-A, 52-B and 52-C of the Indian Forest Act have not been declared ultra virus then those cannot be defeated by any of the Court. Position of Madhukar Rao's case is different. It was not related to the Indian Forest Act and, therefore, by relying upon the judgment of that case, if any single Bench of this Court has passed an order to release the vehicle or property seized by the Forest Officer under the Forest Act then such order is nothing but per curiam and that cannot be applied for."

Considering the fact that there is specific provision under Section 52 of the Indian Forest Act which provides for the confiscation proceedings and remedies against the said order. It is clear that once an intimation is given to the Magistrate with regard to the initiation of the proceedings or confiscation, then, he loses its jurisdiction to release the vehicle on Supurdgi. In the present case also, undisputedly, confiscation proceedings had begun. In fact, the confiscation order was passed and the matter was remanded back by the appellate court and therefore, this court is of the view that the Magistrate had no jurisdiction to release the Tractor on Supurdgi. The revisional court did not commit any mistake by setting-aside the order of Magistrate.

At this stage, it is prayed by counsel for the applicant that he may be granted liberty to file an application in the confiscation proceedings for release of the vehicle on Supurdginama.

The prayer made by counsel for the applicant appears to be just and proper.

Accordingly, this application is dismissed with liberty to the applicant that if he so desires, he may file an application for release of the vehicle in the confiscation proceedings. In case, if such an application is filed, the same shall be decided by the authority in accordance with law.

This application is dismissed with the aforesaid liberty.

(G.S.Ahluwalia)
Judge

Rks.