

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA,J

M.Cr.C. No.1937/2015

Firoz Quireshi

Vs.

State of M.P.

Shri Harshwardhan Pathak, learned counsel for the applicant.

Ms. Mamta Shandilya, learned P.L. For the respondent/State.

ORDER

(Passed on 06/07/2015)

This application is filed under section 482 Cr.P.C.

2. The facts giving rise to this application are that on 12.04.2013 Police Station -Khargone, District Khargone received a source information on the basis of which, vehicle bearing registration No.MP46-G-0324 was intercepted and it was found that in the vehicle some cow progeny were being transported in cruel conditions and it was alleged that cow progeny was being taken to Maharashtra for slaughter.

3. On receipt of confiscation of aforesaid vehicle, the concerning District Magistrate at Khargone initiated a confiscation proceedings and vide order dated 29.07.2013 an order was passed against the present applicant confiscating the vehicle then the

present applicant filed an appeal against this order and the Commissioner while sitting as appellate authority under the Act also dismissed the appeal and confirmed the order passed by the Collector.

4. Meanwhile, the applicant also faced trial under section 4/6 Madhya Pradesh Gauvansh Pratishedh Adhiniyam and section 11-A of Cruelty towards Animal Act in Criminal Case No.1101/2013 before the Judicial Magistrate Second Class, Khargone. The learned Magistrate vide judgment dated 08.09.2014 acquitted the accused from the charges under the aforementioned sections and further for disposal of seized property the learned Magistrate directed that vehicle be handed over to the registered owner of the vehicle after period specified for filing of appeal is lapsed.

5. Placing reliance on judgment of Division Bench of this Court in the case of **Madhukar Rao vs. State of Madhya Pradesh; 1999 MP CANDID 425** which was also reported in **2000 1 MPLJ 289** and judgment of Single Bench of this Court in **Premdas vs. State of M.P.; 2013(2) MPLJ218** in which it was held that till conclusion of criminal trial a confiscation of vehicle should not be done.

6. In the case of **Madhukar Rao (supra)** Division Bench of this Court answered the question whether as a result of deletion of

sub section 2 of section 50 of Wild Life (Protection) Act 1972 and as an effect of provisions of section 39 (1) D of the Act there exists no power with the authorities under the Act to release any vehicle used in the course of alleged commission of an offence and also whether the provisions of the Act barred the jurisdiction of Magistrate under section 452 Cr.P.C. for interim disposal of the seized property.

7. Division Bench of this Court observed in para 23 of the judgment as under :-

“23. In our respectful opinion as the Supreme Court has not dealt with the legal question involved, we can consider the correctness of the Division Bench decision and decide a legal question referred to us by the learned Single Judge. As a result of the detailed discussion above, we hold that any property including vehicle seized on accusation or suspicion of commission of an offence under the Act can, on relevant grounds and circumstances, be released by the Magistrate pending trial in accordance with Section 50 4 read with Section 451 of the Code of Criminal Procedure, 1973. We also hold that mere seizure of any property including vehicle on the charge of commission of an offence would not make the property to be of the State Government under Section 39 1 (d) of the Act. The legal question thus posed by the learned Single Judge is answered accordingly. Let this petition and the connected petitions be now placed before the appropriate Bench for their decision on merits.”

8. In this judgment, it is also observed by this Court that provisions of Wild Life Act are different than provisions of Forest Act and therefore, two acts cannot be acquitted with each other.

9. Similarly, in Madhya Pradesh Gauvansh Pratishedh Adhiniyam, there are not provisions analogous to the provisions of the Act that on receipt of information, the District Magistrate is given a power to confiscate the property seized under the Act. In this view of the matter, whether till disposal of the criminal trial, confiscation of the property can be done by Collector or he is under an obligation to wait for outcome of the criminal proceeding is a question to be decided.

10. In this case, both the criminal proceeding as well as confiscation proceeding are over and, therefore, using extraordinary jurisdiction granted to this Court under section 482 Cr.P.C., this Court is not empowered to interfere in the order of the District Collector and that of Commissioner as an appellate authority which were passed using the statutory authority granted to them under the Act. The only remedy available for the applicant is to file a petition for issuance of appropriate writ against the order. Accordingly, this application is dismissed with liberty to the applicant to file a petition for issuance of appropriate writ before this Court.

11. With aforesaid observation, this application stands disposed of.

(ALOK VERMA)
JUDGE