IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

(SB: Hon'ble Mr. Justice Alok Verma)

MCRC No.593/2015

Sarvan S/o Prahalad Suraha and another
Vs.
State of MP

Shri Umesh Sharma, learned counsel for the applicant.
Shri Yogesh Mittal, learned counsel for the respondent/State

ORDER
(Passed on this 24th day of August, 2015)

This application under section 482 of Cr.P.C. is directed against the order passed by learned 11th Additional Sessions Judge, Ujjain in Criminal Revision No.94/2014 dated 30.12.2014.

2. The facts giving rise to this application are that on 27.09.2012 about about 12:05 am, the Incharge of Police Station – Jeeran, received a source information that in vehicle bearing registration No.MP-44-LA-0302, three cows and one calf were being transported towards Dhulia for slaughtering them. The vehicle was intercepted on Neemuch Mandsaur

Highway in front of Harkiya Khal police post. When the vehicle was searched, three cows and one calf were recovered from the vehicle. During investigation, the vehicle and the cow progeny were seized. Learned District Magistrate, Neemcuh was intimated about the seizure who passed the order dated 17.02.2014 by which the vehicle and the cow progeny were ordered to be confiscated. Against this order, present applicants filed an appeal before the Commissioner, Ujjain, which was also dismissed by order dated 17.02.2014 and against this order, the revision was filed which was disposed of by learned 11th Additional Sessions Judge by the impugned order.

3. Aggrieved by this order, present application is filed placing reliance on the judgment of this Court in the case of **Raees Vs. State of MP** reported in 2013(5) MPHT 233 in which it was held that while the confiscation proceeding was going on, the vehicle may be handed over on interim custody under section 451 of Cr.P.C.

4. However, in this case, the vehicle is already ordered to be confiscated by the two courts below and also revision filed before the Sessions Court has been dismissed by the impugned order, therefore, following the questions arise in this case for

consideration (i) whether, under *MP Govansh Vadh Pratishedh Adhiniyam and Rules* made thereunder known as *MP Govansh Vadh Pratishedh Rules*, 2012 confiscation proceeding can continue parallel to the criminal proceeding pending before the Court of Judicial Magistrate; and (ii) whether, an order, ordering confiscation of the vehicle and cow progeny can only be passed after conclusion of trial before the Judicial Magistrate in which it was held that offence under the Act was committed and the vehicle was used for transporting cow progeny for slaughtering.

5. To begin with, we may go through *MP Govansh Vadh Pratishedh Rules*, 2012 (hereinafter referred as the Rules), Rules 5 and 6 provided as under:-

> 5. Confiscation by District Magistrate- In case of any violation of section 4, 5, 6, 6A and 6B, the police shall be empowered to seize the vehicle, cow progeny and beef, and the District Magistrate shall confiscate such vehicles, cow progeny and beef as per the provisions of section 100 of Criminal Procedure Code. 1973 (No.2 of 1974) in following manner:-
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> (i) He shall take possession of the vehicle;
>
> (ii) He shall intimate the Veterinary Department to take in custody of the cow-progeny and beef.
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> (iii) The beef of cow-progeny shall be disposed of by the department by such procedure as he deems fit.

6. Manner of Appeal- Any person aggrieved by an order of confiscation under sub-section (5) of section 11 of the Act, may prefer an appeal in writing to the Divisional Commissioner within thirty days of the date of knowledge of such order. Every appeal shall be made under sub-section (1) of section 11-A of the Act.

6. The corresponding provisions in the Forest Act for seizure and confiscation of the vehicle of the forest can also be reproduced here as under:-

52. Seizure of property liable to confiscation and procedure therefor.

(1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, boats, vehicles, ropes, chains or any other article used in committing any such offence may be seized by any Forest Officer or Police Officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, either produce the property seized before an officer not below the rank of an Extra Assistant Conservator of Forest authorised by the State Government in this behalf by notification (hereinafter referred to as the authorised officer) or where it is, having regard to quantity of bulk or other genuine difficulty, not practicable to produce the property seized before the authorised officer, make a report about the seizure to the authorised officer or where it is intended to launch criminal proceedings against the offender immediately, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that when the forest produce with

respect to which offence is believed to have been committed is the property of Government and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

(3) Subject to sub-section (5), where the authorised officer upon production before him of property seized of upon receipt of report about seizure, as the case may be, is satisfied that a forest offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded confiscate forest produce so seized together with all tools, vehicles, boats, ropes, chains or any other article used in committing such offence. A copy of order on confiscation shall be forwarded without any undue delay to the Conservator of Forests of the forest circle in which the timber produce, as the case may be, has been seized.

(4) No order confiscating any property shall be made under sub section (3) unless the authorised officer-

(a) sends an intimation in form prescribed about initiation of proceedings for confiscation of property to the magistrate having jurisdiction to try the offence on account of which the seizure has been made;

(b) issues a notice in writing to the person from whom the property is seizure, and to any other person who may appear to the authorised officer to have some interest in such property;

(c) affords an opportunity to the persons referred to in clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation, and

(d) gives to the officer effecting the seizure and the person or persons to whom notice has been issued under clause (b), a hearing on date to be fixed for such purpose.

No order of confiscation under sub-section (3)

of any tools, vehicles, boats, ropes,chains or any other article (other than the timber or forest produce seized shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorised officer that any such tools, vehicles, boats, ropes, chains or other articles were used without his knowledge or connivance or as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission."

Section 52A (Madhya Pradesh Amendment) reads as under:-

"**52A. Appeal against the order of confiscation**.-- (1) Any person aggrieved by an order of confiscation may, within thirty days of the order, or if the fact of such order has not been communicated to him, within thirty days of date of knowledge of such order, prefer an appeal in writing, accompanied by such fee and payable in such form as may be prescribed, along with certified copy of order of confiscation to the conservator of forests (hereinafter referred to as Appellate Authority) of the forest circle in which the forest produce has been seized.

Explanation-(1) The time requisite for obtaining certified copy of order of confiscation shall be excluded while computing period of thirty days referred to in this sub section. (2) The Appellate Authority referred to in sub-section (1), may, where no appeal has been preferred before him, "suo motu" within thirty days of date of receipt of copy of order of confiscation by him, and shall on presentation of memorandum of appeal issue a notice for hearing of appeal or, as the case may be, of "suo motu" action to the officer effecting seizure and to any other person (including appellant, if any) who in the opinion of the Appellate Authority, is likely to be adversely affected by the order of confiscation, and may send for the record of the case:

Provided that no formed notice of appeal need be issued to such amongst the appellant, officer effecting seizure and any other person likely to be adversely affected as aforesaid, as may waive the notice or as may be informed in any other manner of date of hearing of appeal by the Appellate Authority.

(3) The Appellate Authority shall send intimation in writing of lodging of appeal or about "suo motu" action, to the authorised officer.

(4) The Appellate Authority may pass such order of "Interim" nature for custody preservation or disposal (if necessary) of the subject matter of confiscation , as may appear to be just or proper in the circumstances of the case.

(5) The Appellate Authority having regard to the nature of the case or the complexities, involved, may permit parties to the appeal to be represented by their respective legal practitioner.

(6) On the date fixed for hearing of the appeal or "suo motu" action, or on such date to which the hearing may be adjourned, the Appellate Authority shall peruse the record and hear the parties to the appeal if present in person, or through any agent duly authorised in writing or through a legal practitioner, and shall thereafter proceed to pass an order of confirmation, reversal or modification order of confiscation:

Provided that before passing any final order the Appellate Authority may if it is considered necessary for proper decision of appeal or for proper disposal of "suo motu" action make further inquiry itself or cause it to be made by the authorised officer, and may also allow parties to file affidavits for asserting or refuting any fact that may raise for consideration and may allow proof of facts by affidavits.

(7) The Appellate Authority may also pass such orders of consequential nature, as it may deem necessary.

(8) Copy of final order on an order of consequential nature, shall be sent to the authorised officer for

compliance or for passing any appropriate order in conformit with the order of Appellate Authority.

Section 52B (Madhya Pradesh Amendment) reads as under:-

“52B. Revision before Court of Sessions against order of Appellate Authority.-- (1) Any party to the appeal, aggrieved by final order or by order of consequential nature passed by the Appellate Authority, may within thirty days of the order sought to be impugned, submit a petition for revision to the Court of Sessions division whereof the headquarters of the Appellate Authority are situate.

Explanation.- In computing the period of thirty days under this sub-section the time requisite for obtaining certified copy of order of Appellate Authority shall be excluded.

(2) The Court of Sessions may confirm, reverse or modify any final order or an order of consequential nature passed by the Appellate Authority.

(3) Copies of the order passed in revision shall be sent to the Appellate Authority and to the Authorised Officer for compliance or for passing such further order or for taking such further action as may be directed by such Court.

(4) For entertaining, hearing and deciding a revision under this section, the Court of session shall as far as may be, exercise the same powers and follows the same procedure as it exercises and follows while entertaining, hearing and deciding a revision under the Code of Criminal Procedure, 1973 (Act No. 2 of 1974).

(5) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure , 1973 (Act No. 2 of 1974) the order of the Court of Sessions passed under this section shall be final and shall not be called in question before any Court.

Sec. 52C of Madhya Pradesh Amendment

Bar to jurisdiction of courts etc. under certain circumstances:- (1) On receipt of intimation under

> Sub-section 4 of Section 52 about initiation of the proceeding for confiscation of the property by the Magistrate having jurisdiction to try the offence on account of which the seizure of the property which is subject matter of confiscation, has been made, no court, tribunal or authority (other than the authorized officers, appellate authority and the court of Sessions referred to in Section 52, 52-A, and 52-B), shall have jurisdiction to make order with regard to possession, delivery, disposal of distribution of the property in regard to which proceedings for confiscation are initiated under Section 52, notwithstanding any thing to the contrary contained in this Act or any other law for the time being in force.
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> Explanation : where under any law for the time being in force two or more courts have jurisdiction to try forest offence, then receipt of intimation under sub-section 4 of Section 52 by one of the courts of Magistrate having such jurisdiction shall be construed to be in receipt of intimation under that provision by all the courts and the bar to exercise jurisdiction shall operate on all such courts."

7. The provisions of Indian Forest Act and the amendment incorporated therein was considered by the Coordinate Bench of this Court in the case of **Ramniwas Vs. Game Range Chambal Santuary, Bhind, Headquarter, Ambah, District – Morena** reported in 2012(2) MPLJ 661.

8. The Court compared analogous provisions in Bengal Amendment Act, 1927 and observed by placing reliance on the judgment of Hon'ble the Supreme Court in the case of **State of West Bengal and others Vs.Sujeet Kumar Rana** 2004(4) SCC

159 in para 17 reads as under:- 17

> 17. The principles which can be culled out from the provisions of the 1927 Act and the judgment in Sujeet Kumar Rana's case (supra) are as under:-
> (i) Forest Act is a Special Act;
> (ii) M.P. Amendments provide a complete Code in itself by giving sufficient safeguards both substantive and procedural against any arbitrary exercise of power. It also prescribe hierarchy of adjudicatory bodies;
> (iii) Section 52-C creates a bar on the jurisdiction of courts as described in it. Because of non-obstante clause used in Section 52-C it will have an overriding effect on other laws including general provisions of Cr.P.C.;
> (iv) Once intimation of initiation of confiscation proceedings is given to Magistrate, the jurisdiction ofMagistrate is ousted;
> (v) Magistrate and revisions Courts can't grant interim custody of vehicle de hors the bar of Section 52-C.
> (vi) Once confiscation proceeding is initiated, the jurisdiction of criminal courts in terms of Section 52-C of the 1927 Act is barred, the High Court also cannot exercise its jurisdiction under section 482 Cr.P.C. for interim release of such vehicle/property.

9. Thus, it may be seen that amendment in the Madhya Pradesh in Indian Forest Act provides a complete code in itself and also section 52 (c) quoted above have overriding effect on other laws including general provisions of Cr.P.C. However, in *MP Govansh Vadh Pratishedh Adhiniyam* (hereinafter referred to as the Act), such analogous provisions are not incorporated and, therefore, the Coordinate Bench of this Court in the case of

Sheikh Kalim Vs. State of MP in MCRC No.1296/2015 dated 13.07.2015 placed reliance on the judgment of Full Court decision in the case of **Madhukar Rao Vs. State of MP and others** reported in 2000(1) JLJ 304 and also on the judgment of Hon'ble the Supreme Court in the case of **State of MP and others Vs. Madhukar Rao** reported in 2008(1) JLJ 427 and observed that when the trial Court did not find the accused guilty of alleged offence under the Act, confiscation of the property is not possible.

10. Before proceeding further, the observations made in the case of **Madhukar Rao** (supra) by the Full Bench of this Court may be quoted here with some benefit in para 18 of the judgment:-

> 18.--
> If the argument on behalf of the State is accepted a property seized on accusation would become the property of the State and can never be released even on the compounding of the offence. The provisions of Clause (d) of Section 39 have to be reasonably and harmoniously construed with other provisions of the Act and the Code which together provide a detailed procedure for the trial of the offences. If, as contended on behalf of the State, seizure of property merely on accusation would make the property to be of the Government, it would have the result of depriving an accused of his property without proof of his guilt. On such interpretation Clause (d) of Section 39(1) of the Act would suffer from the vice of unconstitutionality. The interpretation placed by the

State would mean that a specified officer under the Act merely by seizure of property of an accused would deprive him of his property which he might be using for his trade, profession or occupation. This would be a serious encroachment on the fundamental right of a citizen under Article 19(1)(g) of the Constitution to carry on his trade, occupation or business. The power thus would be exercised by an Executive Officer and without any proof of commission of an offence. Such arbitrary and uncannalised powers cannot be allowed to any Executive Authority. That would be against basic structure of the Constitution. The Constitution envisages trial of offences by an independent judiciary. An interpretation which would render Clause (d) of Section 39(1) to be unconstitutional has to be eschewed and interpretation which makes it constitutional should be preferred. See the following observations of the Supreme Court in Kedarnath v. State of Bihar (AIR 1962 SC 955) :

"It is well settled that if certain provisions of law, construed in one way, would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction."

11. The matter travelled upto Hon'ble the Supreme Court where the Supreme Court in the case of **State of MP and others Vs. Madhukar Rao** (supra) observed as under:-

The submission was carefully considered by the Full Bench of the High Court and on an examination of the various provisions of the Act it was held that the provision of section 39(1)(d) would come into play only after a Court of competent jurisdiction found the accusation and the allegations made against the accused as true and recorded the

> finding that the seized article was, as a matter of fact, used in the commission of offence.

12. Reverting back to the provisions of the Act, we find that section 11(5) which was inserted by the amended Act in the year 2010 and which was notified to be effective from 05.03.2012, section 11(5) of the Act is inserted by the aforesaid amendment provides thus:-

> In case of any violation of Section 4, 5, 6, 6A and 6B, the police shall be empowered to seize the vehicle, cow progeny and beef, and the District Magistrate shall confiscate such vehicles, cow progeny and been in such manner as may be prescribed.

13. This section gives power to the District Magistrate for confiscation of the vehicle used in the offence under the Act and also the beef and the animals which were transported for slaughter. However, in section 11(5) provides that the manner in which such confiscation is to be done, should be provided by the State Government under section 17 of the Act which gives power to the State Government to frame rules for carrying out the provisions of this Act, in the year 2012 itself, Rules 5 and 6 quoted above were notified. Rule 5 provides that confiscation by the Collector should be done in the following manner and Sub Rule (i) of Rule 5 only provides that *"he shall take possession of*

the vehicle”. No such procedure is provided in Indian Forest Act. So far as the District Magistrate is concerned, the provisions of section 100 of Cr.P.C. cannot be applied because provisions of section 100 of Cr.P.C. pertain to search and seizure and not confiscation of the property. Search and seizure is to be done by the police officer or any person authorised by the competent authority on the spot while confiscation is to be done by the District Magistrate when the property is placed before him.

14. Therefore, in the considered opinion of this Court, the manner in which the property is to be confiscated, is not provided by the Act and the rules and, therefore, applying the principles laid down in the case of **Madhukar Rao** (supra), the District Magistrate has no power to confiscate the vehicle till it is held by the competent court of Magistrate that offence was infact committed and the vehicle was used in commission of the offence. In this view of the matter, the questions framed in para 4 may be answered thus:-

(i) The proceedings for confiscation before the District Magistrate can continue, however, no final order can be passed.

(ii) Final order in the proceedings can be passed only after conclusion of trial before the Judicial Magistrate in which it was held that offence under the Act was committed and the vehicle was used for transporting cow progeny for slaughter.

15. Consequently, the order passed by the Collector is against the principles laid down by Hon'ble the Supreme Court in the case of **Madhukar Rao** (supra) and is liable to be set aside and so is the order passed by the Commissioner in appeal.

16. As the learned Additional Sessions Judge did not take this aspect of the matter into consideration, the order passed by learned Additional Sessions Judge is also not in line with principle laid down in aforementioned cases and liable to be set aside.

17. Accordingly, this application under section 482 of Cr.P.C. deserves to be allowed and is hereby allowed. Resultantly, the order passed by District Magistrate dated 24.06.2013 in the Case No.04/B-121/2012-13, order passed by the Commissioner, Ujjain Region, Ujjain in Case No.169/Appeal/2012-13 dated 17.02.2014 and the impugned order passed by learned 11th Additional Sessions Judge, Ujjain in Criminal Revision No.94/2014 dated 30.12.2014 are set aside. The District Magistrate, Neemuch, is at liberty to initiate proceedings for confiscation after conclusion of trial by the concerned Magistrate, in case, it is found that offence was committed by the accused and the vehicle in question was used in commission of the crime. Till then, the seized vehicle bearing registration No.MP-44-LA-0302 is given on interim custody to the present

applicants if they are registered owner of the vehicle or to the registered owner of the vehicle, as the case may be, upon their furnishing a Supurdginama to the tune of **Rs.5,00,000/-** to the satisfaction of the concerned Magistrate on the following conditions:- (i) that they will not alienate or transfer the vehicle during pendency of the trial or till the confiscation proceedings are completed. (ii) that they will not commit crime under the provisions of *M.P. Govansh Vadh Pratished Adhiniyam, 2004*, till the matter is decided. (iii) that they shall also not change its appearance, colour etc. (iv) that they shall produce the vehicle whenever and where ever they are directed to do so by the criminal Court or the District Magistrate, as the case may be.

18. Breach of the conditions would entail cancellation of this order automatically.

19. With the aforesaid observations and directions, this M.Cr.C. stands disposed of.

C.c. as per rules.

(Alok Verma)
Judge

Kratika/-