

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON.MR. JUSTICE ALOK VERMA, JUDGE

M.Cr.C. No.1196/2017

Anil Jatav S/o Ganeshram

Vs.

State of Madhya Pradesh & others

Shri Ranjeet Sen, learned counsel for the applicant.

Shri Ashish Choubey, learned counsel for the respondent/State.

ORDER

(Passed on this day of May, 2017)

This application is filed under Section 482 of Cr.P.C. challenging the order passed by learned Additional Commissioner, Ujjain Division, in an appeal directed against the order passed by learned Additional District Magistrate, dated 31.03.2015 whereby the learned Additional District Magistrate passed an order directing confiscation of vehicle bearing registration No. MP-09-HG-1868 under the provisions of the Madhya Pradesh Govansh Vadh Pratishedh Adhiniyam, 2004.

2. The facts necessary for disposal of this application are that a

crime was registered by Police Station-Agar, District Agar as Criminal Case No.1167/2013 under the provisions of Madhya Pradesh Govansh Vadh Pratishedh Adhiniyam.

3. According to prosecution story A.S.I. Babulal Choudhary received a source information on 21.12.2013 that a truck is coming from Sunser bearing registration No. MP-09-HG-1868 in which, cow progeny were being transported in a cruel manner. The truck was intercepted by the police. There were four persons travelling in the vehicle. They were Anil Jatav, Javed, Anarsingh, and Bhanwar singh. There were twenty-nine cow progeny loaded in the truck, and therefore, the crime was registered under Section 9 of Madhya Pradesh Govansh Vadh Pratishedh Adhiniyam and Section 11(C) of Cruelty towards Animal Act, 2004. The charges were framed by the learned Magistrate and by a judgment dated 23.06.2015 (Annexure-P/3) the present applicant was acquitted from the offence under Section 9 of Madhya Pradesh Govansh Vadh Pratishedh Adhiniyam and he was convicted under Section 11(C) of Cruelty Towards Animal Act.

4. Meanwhile, the proceedings for confiscation of the aforesaid vehicle was started and the District Magistrate by order dated 31.03.2015 ordered confiscation of the vehicle that was before the final order passed by the learned Magistrate in Criminal Case No.1167/2013. An appeal was filed before the Additional Commissioner, which was disposed of as appeal was found barred by

limitation. After aggrieved by this, the present application is filed.

5. According to learned counsel for the applicant, the present applicant was not found guilty under the provisions of Madhya Pradesh Govansh Vadh Pratishedh Adhiniyam and he was found guilty under the provision of Cruelty Towards Animal Act, however, the learned District Magistrate ordered the confiscation under the provisions of Madhya Pradesh Govansh Vadh Pratishedh Adhiniyam, which is not legal as the confiscation of the vehicle can only be ordered when it was found that the vehicle was used in commission of the crime under the provisions of Madhya Pradesh Govansh Vadh Pratishedh Adhiniyam, and therefore, it is prayed that the impugned order passed by learned District Magistrate and the Additional Commissioner in appeal may be quashed and it is ordered that the possession of the vehicle should be given back to the present applicant.

6. Learned counsel for the State opposed the application.

7. After hearing both the counsels and taking their rival contentions into consideration and also going through the legal provisions of Madhya Pradesh Govansh Vadh Pratishedh Adhiniyam, I find that orders passed by learned District Magistrate and Additional Commissioner, Ujjain Division in utter violation of principles laid down by this Court and Hon'ble the Apex Court in various cases. The case law was considered by this this Court in case of *Shravan S/o Prahlad Suraha & another Vs. State of M.P.* in M.Cr.C. No.593/2016

order dated 14.08.2016. The questions before the Court in this case were (i) whether under Madhya Pradesh Govansh Vadh Pratishedh Adhiniyam and the rules made thereunder known as Madhya Pradesh Govansh Vadh Pratishedh Rules, 2012. The confiscation proceedings can continue partially to the criminal proceedings pending before the Court of Judicial Magistrate; and (ii) whether an order of 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 vehicle was used for transporting the cow progeny for slaughtering.

8. This Court considered the principles laid down in case of ***Rahim Vs. State of M.P. reported at 2013(5) MPHT 223***, in which, it was held that while the confiscation proceedings was going on, vehicle may be handed over on interim custody under Section 451 of Cr.P.C.

9. The Court also took into consideration the law laid down in case of ***Ramniwas Vs. Game Range Chambal Sanctuary, Bhind, Headquarter, Ambah, District - Morena reported in 2012 (2) MPLJ 661*** and answered the aforesaid questions as follows:-

(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.

10. The order passed by learned District Magistrate and Additional Commissioner were in violation of the principle laid down in this case. As in this case, the present applicant was acquitted from the charge under Section 9 of Madhya Pradesh Govansh Vadh Pratishedh Adhiniyam by the learned Judicial Magistrate First Class and only found guilty under Section 11(C) of Cruelty Towards Animal Act, which do not contain any provision of confiscation of the property.

11. In this view of the matter, the application deserves to be allowed and hereby allowed. The impugned order passed by learned Additional Commissioner dated 08.02.2016 and learned District Magistrate 31.03.2015 are hereby set aside. It is directed that the vehicle bearing registration No. MP-09-HG-1868 be handed over to the present applicant subject to the order by any appellate Court if any appeal is filed against the order passed by learned Judicial Magistrate in Criminal Case No.1167/2013 dated 23.06.2015.

With observation and direction as aforesaid, the application stands disposed of.

(Alok Verma)
Judge

Ravi