

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
SINGLE BENCH : HON'BLE SHRI JUSTICE ALOK VERMA

M.Cr.C. No.2617 / 2017

Mehmood s/o Ramij Khan

Vs.

State of M.P.

Shri Sanjay Sharma, learned counsel for the applicant.

Shri Pankaj Vadhvani, learned counsel for the respondent/State.

ORDER
(Passed on 03/05/2017)

This application under Section 482 Cr.P.C is directed against the order passed by learned Additional Session Judge, Mahidpur, District Ujjain in Criminal Revision No.21/17, which was disposed of by learned Additional Sessions Judge on 02/02/2017 and dismissed the revision filed against order passed by learned Judicial Magistrate First Class, Mahidpur in Crime No.311/2016, Police Station Raghvi, District Ujjain by order dated 18/11/2016.

2) According to the relevant facts, present applicant is registered owner of vehicle, which was seized by police in aforesaid crime number for being used for transporting cow progeny for slaughter under the provisions of *M.P. Govansh Vadh Pratishedh Adhiniyam, 2004*. Earlier attorney holder of present applicant filed an application for obtaining interim custody of the vehicle under Section 451 and 457 Cr.P.C. The

application was dismissed, as it was not filed by registered owner of the vehicle, and thereafter, present applicant filed the application. Learned Magistrate dismissed the application on the ground that earlier the application under the same provision of law was dismissed, which was filed by an attorney holder. Now, the application is filed by the registered owner and according to learned Magistrate, there was no change in nature of application, and therefore, in opinion of Magistrate, the criminal Court was not empowered to review its own order, the application was dismissed.

3) Learned revisional Court observed in para 9 of impugned order that earlier a revision was filed, when the application filed by attorney holder Shakilabee was dismissed on the ground that proceedings of confiscation of vehicle were at an advance stage and also on the ground that the application was not filed by registered owner of the vehicle. It was argued before Magistrate and the revisional Court that under the provisions of *M.P. Govansh Vadh Pratishedh Adhiniyam, 2004*, the Magistrate has power to grant custody of vehicle till disposal of case and pending proceedings for confiscation of the vehicle had no bearing on the powers of Magistrate under Section 451 and 457 Cr.P.C.

4) Learned Sessions Judge observed in para 11 of the impugned judgment that the principle laid-down by coordinate Bench of this Court in the case of ***Sheikh Kaleem vs. State of M.P.*** [2015 (2) MPRD 1] were not applicable on present case, as in case of **Sheikh Kaleem (Supra)**, trial was already over and the applicant was acquitted from the

charges, however, according to revisional Court, the proceedings are still pending, however, the revisional Court observed that Magistrate had power to grant interim custody of the vehicle under the provisions of *M.P. Govansh Vadh Pratishedh Adhiniyam, 2004*, and thereafter, proceeded to dismiss the revision.

5) Learned counsel appearing for the applicant places reliance on order passed by this Court in the case of **Sarvan s/o Prahlad Suraha and another** vs. **State of M.P.** in **M.Cr.C. No.593/2015** dated **24/08/2015**.

6) After considering the various judgments including the judgment of **Sheikh Kaleem (supra)** and **Raees** vs. **State of M.P. [2013 (5) MPHT 233]**, judgment of co-ordinate Bench of this Court in the case of **Ramniwas** vs. **Game Range Chambal Sanctuary, Bhind, Headquarter, Ambah, District Morena [2012 (2) MPLJ 661]**, the Court framed following two questions :-

4. (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.

7) The Court answered the questions as under :-

14. 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.

8) In view of the opinion expressed by this Court, it is apparent that revisional Court misconceived the principles laid-down in the case of **Raees (supra)** and **Sheikh Kaleem (Supra)** and revisional Court erred in dismissing the revision. Accordingly, the application is **allowed**. The order passed by learned Judicial Magistrate First Class and revisional Court in aforesaid matters are set-aside. The District Magistrate, Ujjain is at liberty to continue proceedings for confiscation, however, the confiscation proceedings shall be subject to outcome of trial and only when it was found that the vehicle was used in commission of crime, the vehicle shall be confiscated. The application filed by the applicant under Section 451 and 457 IPC are hereby allowed and the Magistrate is directed to give the vehicle to registered owner, upon his furnishing a *Supurdaginama* to the tune of **Rs.5,00,000/- (Five Lac Rupees)** to the satisfaction of the concerning 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.

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

Certified copy as per rules.

(Alok Verma)
Judge