

**High Court of Madhya Pradesh: Bench at Indore**

**Single Bench: Hon'ble Shri Justice S.K. Awasthi**

**Miscellaneous Criminal Case No.1813/2019**

Abdul Vahab

vs.

The State of Madhya Pradesh

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Shri M.R. Sheikh, learned counsel for the applicant.

Shri Sandeep Mehta, learned Public Prosecutor for the respondent/State.

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**ORDER**

**(Passed on 15/05/2019)**

The applicant has filed this present petition under Section 482 of Code of Criminal Procedure, 1973 (for brevity 'The Code'), against the order dated 28/12/2018 passed by the Third Additional Sessions Judge, Ujjain, in Criminal Revision No.211/2018 whereby the order dated 22/09/2018 passed by Commissioner Ujjain, in Criminal Appeal No.1190/Appeal/2017-2018 has been affirmed, by which the Commissioner maintained the order of confiscation of the vehicle No. MP 09 GF 2159 dated 09/08/2017 passed by the Collector Agar, Malwa in case No.44/2016.

**02.** Brief facts of the case are that Eicher loading

vehicle no. MP 09 GF 2159 belonging to the present applicant was intercepted and searched and it was found that 17 cow progeny were being transported in the vehicle. Driver of the vehicle Surendra and one another person Nazir who was sitting in the vehicle were arrested and crime No.102/2013 was registered at Police Station Kannad, District Agar Malwa for offence under Section 4,9 of Madhya Pradesh Govansh Vadh Pratishedh Adhiniyam, 2004 (for brevity 'Adhiniyam, 2004') read with Section 11(D) of The Prevention of Cruelty to Animals Act, 1960 (for short 'the Act, 1960'). After completion of investigation, charge-sheet has been filed.

**03.** After completion of the trial, the Judicial Magistrate First Class, acquitted the accused persons from the alleged offence even then the concerned District Magistrate passed the order of confiscation of the vehicle against which the present applicant has preferred an appeal before the Commissioner Ujjain, and same was dismissed vide order dated 22/09/2018. The said order was challenged in the revision petition filed before the Sessions Court, which was also dismissed by 3<sup>rd</sup> Additional Sessions Judge, Ujjain by the impugned order. Being aggrieved by the aforesaid order, the applicant has preferred this petition under Section 482 of 'the Code' for quashment of the order by which the vehicle no. MP 09 GF 2159 has been directed to be confiscated.

**04.** Learned counsel for the applicant has submitted that the Courts below have not considered the fact that at the time of the incident, the applicant was not present in the vehicle and there is no evidence that in connivance with the applicant cow progeny were being illegally transported in the vehicle. During trial, the prosecution has failed to prove the charges against the

driver and other co-accused person, therefore, learned Judicial Magistrate has acquitted them from all the charges, thus, there is no evidence that at the time of the incident the vehicle was used for the purpose of illegal transportation of cow-progeny. Applicant is the registered owner of the vehicle, therefore he is entitled for the custody of the vehicle. Orders passed by the Courts below are contrary to the settled principles of law hence the petition be allowed and it may be directed that the custody of the vehicle be handed over to the applicant.

**05.** It is further submitted that the vehicle cannot be confiscated by Collector as the criminal case has already been decided by the Magistrate and the accused persons have been acquitted from the charges. In support of his submission, learned counsel placed reliance on the judgment passed by Hon'ble Apex Court in the case of *State of M.P. Vs. Madhukar Rao & Ors., reported in 2008(1) J LJ 427* and the judgment of this Court in the case of *Premdas vs. State of M.P., reported in 2013(1) MPJR SN 10* so also in the judgment dated 29/02/2016 passed by this Court in the case of *Nitesh S/o Dhannalal vs. The State of Madhya Pradesh (M.Cr.C. No.9363/2015)*.

**06.** On the contrary, learned Public Prosecutor for the respondent/State supported the impugned order passed by the Courts below by which the vehicle was directed to be confiscated.

**07.** Having heard learned counsel for the parties and perused the record.

**08.** It is not disputed that the Collector Agar, Malwa has passed the order of confiscation of the seized vehicle on 09/08/2017 i.e. after the conclusion of the trial by the Criminal Court. The Judicial Magistrate First Class has pronounced the

judgment of acquittal on 28/11/2016 holding that accused persons Surendra and Nazir have not committed the offence punishable under Section 4,9 of 'Adhiniyam, 2004' read with Section 11(D) of 'The Act, 1960'. The question arises before this Court for consideration is that-

- 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;
- ii. whether, an order, directing 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.

**09.** Entering into the facts of the present case, it is necessary to 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:-

- (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.
- (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.

10. While considering the corresponding provisions in M.P. Van (Vyapar Vinyaman) Act, 1969 for seizure and confiscation of the vehicle of the forest produce the Hon'ble Apex Court in the case of *The State of Madhya Pradesh & Ors. vs. Smt. Kallo Bai*, reported in *AIR 2017 SC 2516* has held as under:

“20. The broad scheme of the Adhiniyam is to punish those who are in contravention of the law at the hand of the criminal court. The confiscation being incidental and ancillary to the conviction, State of Madhya Pradesh, separated the process of confiscation from the process of prosecution. The purpose of the enactment seems to be that the power of the criminal court regarding the disposal of property is made subject to the jurisdiction of the authorized officer with regard to that aspect; the jurisdiction of criminal court in regard to the main trial remains unaffected.

21. Before we deal with the question concerned in this appeal it would be apt to have a look at three cases decided by this court. In Divisional Forest Officer And Anr. Vs. G.V. Sudhakar And Ors., this Court was concerned with the question as to whether the proceedings for confiscation of illegally felled timber by the respondent therein can be continued till the disposal of main criminal case pending against him. This Court after considering the various provisions of the Andhra Pradesh Forest Act came to the conclusion that there is no doubt that the object of the legislation was to provide for two separate proceedings before two different forums and that there is no conflict of jurisdiction as Section 45, as amended by the Amendment Act, in turn curtails the power conferred on the Magistrate to direct confiscation of timber or forest produce on conviction of the accused. This Court proceeded to observe-

The conferral of the power of confiscation of

seized timber or forest produce and the implements, etc. on the Authorized Officer under Sub-section (2a) of Section 44 of the Act on his being satisfied that a forest offence had been committed in respect thereof, is not dependent upon whether a criminal prosecution for commission of a forest offence has been launched against the offender or not. It is a separate and distinct proceeding from that of a trial before the Court for commission of an offence. Under Sub-section (2A) of Section 44 of the Act, where a Forest Officer makes report of seizure of any timber before the Authorized Officer along with a report under Section 44(2), the Authorized Officer can direct confiscation to Government of such timber or forest produce and the implements, etc., if he is satisfied that a forest offence has been committed, irrespective of the fact whether the accused is facing a trial before a Magistrate for the commission of a forest offence under Section 20 or 29 of the Act.

22. In the case of State of West Bengal vs. Gopal Sarkar, this Court again had an opportunity to deal with the confiscatory proceedings initiated for forest offences. This Court while relying on the judgment in Divisional Forest Officer vs G. V. Sudhakar Rao (Supra) has come to the following conclusion:

10. On a fair reading of the provision it is clear that in a case where any timber or other forest produce which is the property of the State Government is produced under sub-section (1) and an Authorised Officer is satisfied that a forest offence has been committed in respect of such property he may pass order of confiscation of the said property (forest produce) together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence. The power of confiscation is independent of any proceeding of prosecution for the forest offence committed. This position is manifest from the statute and has also been held by this Court in Divisional Forest Officer v. G.V. Sudhakar Rao [(1985) 4 SCC 573 : 1986 SCC (Cri) 34 : AIR 1986 SC 328].

23. In the case of State of M.P. vs. S.P. Sales Agencies, the brief facts therein were a truck was

intercepted by the police in the District of Gwalior. It was found that 281 cases of Kuttcha manufactured by M/s Harsh Food Products, respondent 2 therein were found in the truck. These wood cases were being transported without requisite transit pass under Rule 3 of M.P. Transit Rules thereafter; this matter was reported to Sub-Divisional Forest Officer, Gwalior, who initiated confiscation proceedings under Section 52 of the Act. This Court had an opportunity to deal with the question as to whether confiscation proceedings can be initiated under section 52 of the Act only after launching of the criminal prosecution or is it open to the forest authorities upon seizure of forest produce to initiate both or either. This Court relying on the cases in Divisional Forest Officer vs. G. V. Sudhakar Rao and State of West Bengal vs. Gopal Sarkar, came to the conclusion that the power of confiscation is independent of any criminal prosecution for forest offences committed.

24. In view of the foregoing discussions, it is apparent that Section 15 gives independent power to the concerned authority to confiscate the articles, as mentioned there under, even before the guilt is completely established. This power can be exercised by the concerned officer if he is satisfied that the said objects were utilized during the commission of a forest offence. A protection is provided for the owners of the vehicles/articles, if they are able to prove that they took all reasonable

care and precautions as envisaged under Sub-section (5) of Section 15 of the Adhiniyam and the said offence was committed without their knowledge or connivance.

25. Criminal prosecution is distinct from confiscation proceedings. The two proceedings are different and parallel, each having a distinct purpose. The object of confiscation proceeding is to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence while the object of the prosecution is to punish the offender. The scheme Adhiniyam prescribes an independent procedure for confiscation. The intention of prescribing separate proceedings is to provide a deterrent mechanism and to stop further misuse of the vehicle.”

11. Recently in the case of *The State of Madhya*

*Pradesh vs. Uday Singh and Ors.*, (Criminal Appeal No.524/2019 [Special Leave Petition (Cri.) No.2001 of 2012]) judgment dated 26/03/2019, while considering the power of High Court, under Section 482 of 'the Code' regarding release of the tractor trolley, which had been seized for the offence under Section 41, 52 and 52-A of Indian Forest Act, 1927 and Sections 27, 29, 39(1)(d), 51 and 52 of the Wildlife Protection Act, 1972, for being involved in illegal excavation of sand from the Chambal river, the Hon'ble Apex Court has observed as under:

“Our analysis of the amendments brought by MP Act 25 of 1983 to the Indian Forest Act 1927 leads to the conclusion that specific provisions have been made for the seizure and confiscation of forest produce and of tools, boats, vehicles and articles used in the commission of offences. Upon a seizure under Section 52(1), the officer effecting the seizure has to either produce the property 27 Writ Petition No 18818 of 2017 decided on 15 February 2018 before the Authorised Officer or to make a report of the seizure under sub-section (2) of Section 52. Upon being satisfied that a forest offence has been committed, the Authorised Officer is empowered, for reasons to be recorded, to confiscate the forest produce together with the tools, vehicles, boats and articles used in its commission. Before confiscating any property under sub-section (3), the Authorised Officer is required to send an intimation of the initiation of the proceedings for the confiscation of the property to the Magistrate having jurisdiction to try the offence. Where it is intended to immediately launch a criminal proceeding, a report of the seizure is made to the Magistrate having jurisdiction to try the offence. The order of confiscation under Section 52(3) is subject to an appeal under Section 52-A and a revision under Section 52-B. Sub-section (5) of Section 52-B imparts finality to the order of the Court of Sessions in revision notwithstanding anything contained to the contrary in the CrPC and provides that it shall not be called into question before any court.



Section 52-C stipulates that on the receipt of an intimation by the Magistrate under sub-section (4) of Section 52, no court, tribunal or authority, other than an Authorised Officer, an Appellate Authority or Court of Sessions (under Sections 52, 52-A and 52-B) shall have jurisdiction to pass orders with regard to possession, delivery, disposal or distribution of the property in regard to which confiscation proceedings have been initiated. Sub-section (1) of Section 52-C has a non obstante provision which operates notwithstanding anything to the contrary contained in the Indian Forest Act 1927 or in any other law for the time being in force. The only saving is in respect of an officer duly empowered by the State government for directing the immediate release of a property seized under Section 52, as provided in Section

61. Hence, upon the receipt of an intimation by the Magistrate of the initiation of confiscation proceedings under sub-section (4)(a) of Section 52, the bar of jurisdiction under sub-section (1) of Section 52-C is clearly attracted. The scheme contained in the amendments enacted to the Indian Forest Act 1927 in relation to the State of Madhya Pradesh, makes it abundantly clear that the direction which was issued by the High Court in the present case, in a petition under Section 482 of the CrPC, to the Magistrate to direct the interim release of the vehicle, which had been seized, was contrary to law. The jurisdiction under Section 451 of the CrPC was not available to the Magistrate, once the Authorised Officer initiated confiscation proceedings.”

**12.** In the *MP Govansh Vadh Pratishedh Adhiniyam, 2004* (hereinafter referred to as 'the Act, 2004') 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, 2004' and also the beef and the animals which were transported for slaughter. However, 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*”.

**14.** Although Section 11(5) of 'the Act' or Rule 5 and 6 are silent about the release of the property which is seized under 'the Act, 2004'. Section 11(5) does not give any powers to the Court or District Magistrate for releasing the vehicle in interim custody, however, Section 11(a)(4) gives power to the appellate authority (Divisional Commissioner) for orders of interim nature for custody or disposal of the seized property (if necessary) subject matter of confiscation as may appear to be just or proper in the circumstances of the case. Similarly there is no provision under 'the Act, 2004' that during pendency of the criminal case or before passing the order of the conviction of the accused no vehicle or seized article shall be liable to be confiscated. In the case of *Nitesh S/o Dhannalal (Supra)* the co-ordinate Bench of this Court considering the judgment passed by the Hon'ble Supreme Court in the case of *State of M.P. Vs. Madhukar Rao & Ors., reported in 2008(1) J LJ 427*, 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. However, in the case of *State of M.P. vs Smt. Kallo Bai (Supra)* the Hon'ble Apex Court has clearly held that the criminal prosecution is distinct from confiscation proceedings. The two proceedings are different and parallel, each having a distinct purpose. The object of confiscation proceeding is to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence while the object of the prosecution is to punish the offender. The Adhiniyam prescribes an independent procedure for confiscation. The intention of prescribing separate proceedings is to provide a deterrent mechanism and to stop further misuse of the vehicle.

15. Therefore, applying the principles laid down by Hon'ble Apex Court in the case of *State of M.P. vs. Smt. Kallo Bai (Supra)* and *The State of Madhya Pradesh vs. Uday Singh and Ors.(Supra)*, this Court is of the considered view that the Collector has not committed any error by passing the order of confiscation of vehicle even after acquittal of the accused persons from the criminal case, which is also affirmed in the appeal by the Commissioner and in revision petition by the 3<sup>rd</sup> Additional Sessions Judge, Ujjain. This Court is not having any jurisdiction under Section 482 of 'the Code' to quash the proceedings for confiscation of the vehicle seized under 'the Act, 2004'. Therefore, the miscellaneous criminal case is hereby dismissed.

Certified copy as per Rules.

**(S. K. AWASTHI)**  
**JUDGE**

**THE HIGH COURT OF MADHYA PRADESH**

**Single Bench: Hon'ble Shri Justice S.K. Awasthi**

**M.Cr.C. No.1813/2019**

**(Abdul Vahab vs. The State of Madhya Pradesh)**

**Indore, Dated:26/03/2019**

Shri M.R. Sheikh, learned counsel for the applicant.

Shri Sandeep Mehta, learned Public Prosecutor for the respondent/State.

Arguments heard.

Reserved for order.

**(S. K. AWASTHI)**  
**Judge**

**Indore, Dated: 15/05/2019**

Order delivered, signed and dated separately.

**(S. K. AWASTHI)**  
**Judge**