

(2015) 08 GAU CK 0054
In the Gauhati High Court
Case No : Criminal Pet. 517 of 2014

Divisional Forest Officer-cum-Authorised Officer	APPELLANT
Vs	
Bimal Tumung	RESPONDENT

Date of Decision : 28-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 360, 397, 451, 482
Wild Life (Protection) Act, 1972 — Section 27, 29, 39(1)(d), 39(d), 50

Citation : (2015) 4 GLT 237

Hon'ble Judges : C.R. Sarma, J.

Bench : Single Bench

Advocate : R.K. Bora, Addl. Sr. GA, for the Appellant; D. Baruah, P. Sarma and M. Saikia, for the Respondent

Final Decision : Disposed Off

Judgement

C.R. Sarma, J.—By this application, filed under Section 482 read with Section 397 of the Criminal Procedure Code, 1973 (for short, Cr.P.C.), the petitioner i.e. the Divisional Forest Officer-cum-Authorized Officer, Guwahati Wildlife Division, has challenged the orders, dated 08.05.2014 and 22.05.2014, whereby the learned Chief Judicial Magistrate, Kamrup (M), Guwahati, directed release of the vehicle seized in connection with KWL/8/Offence/2014/674-75, under Sections 27 /29 /50(1) of the Wildlife (Protection) Act, 1972 (hereinafter called, the Act) in favour of the respondent, who claimed to be the registered owner of the said vehicle. The prosecution case, in brief, is that, on 01.04.2014, at about 3 A.M., the Forester-1, Khanapara Wildlife Range, 10th Mile, Jorabat, Guwahati, while performing night patrolling duty, in Pathalipani area, inside Amchang Wildlife Sanctuary, found that a Bolero pick up van bearing No. AS-01-EC- 9210 i.e. the seized vehicle, was used in unauthorisedly carrying teak logs from Amseng Wildlife Sanctuary. The Driver of the said vehicle was also found in the vehicle.

2. Accordingly, the said vehicle and the teak logs were taken to the range headquarters and seized vide Memo No. KWL/8/Offence/2014/674-75, under

Sections 27 /29 and 50(1)(C) of the Act.

Accordingly, on 10.04.2014, an offence report was submitted with the learned Chief Judicial Magistrate, Kamrup (M), Guwahati.

3. The respondent, claiming to be the registered owner of the said vehicle, by filing an application, approached the learned Chief Judicial Magistrate, Kamrup (M), Guwahati, seeking release of the said vehicle.

4. The learned Chief Judicial Magistrate, by order, dated 08.05.2014, exercising power under Section 451 Cr.P.C., came to the findings that the investigation into the case was completed and that the offence report was also submitted.

With the above observations, the learned Chief Judicial Magistrate, by his order, dated 08.05.2014, directed release of the seized vehicle, in the custody of the petitioner, subject to execution of bond of Rs. 6 Lakhs with the condition that the vehicle should not be alienated and that the same would be produced before the Court as and when required. Accordingly, the seizing authority was directed to submit compliance report on 22.05.2014.

5. Despite receiving the said order, the vehicle was not released and the seizing authority informed the learned Chief Judicial Magistrate that the seized vehicle was forwarded to the Divisional Forest Officer and that the Divisional Forest Officer initialed confiscation proceeding in respect of the said vehicle.

6. On being so informed, the learned Chief Judicial Magistrate, by his order, dated 22.05.2014, directed the Divisional Forest Officer, Guwahati Wildlife Division to immediately comply with the order, dated 08.05.2014, with regard to the release of the seized vehicle. By the said order, a compliance report was also called for fixing the case on 02.06.2014.

7. On 07.06.2014, the private respondent, by filing an application i.e. Petition No. 2707, dated 07.06.2014, informed the learned Chief Judicial Magistrate that the seized vehicle was not handed over to him and that the direction, made by the orders, dated 08.05.2014 and 22.05.2014, were not complied with.

8. In view of the above, the learned Chief Judicial Magistrate directed the Divisional Forest Officer i.e. the present petitioner as well as the seizing authority, to submit a report with regard to the non compliance with the said direction. Hence, the petitioner i.e. the Divisional Forest Officer, has come up with this petition for quashing of the said orders, made by the learned Chief Judicial Magistrate, Kamrup (M), Guwahati.

9. Mr. R.K. Bora, the learned Addl. Sr. Govt. Advocate, Assam, referring to the provision prescribed by Section 50 of the Act, has submitted that the concerned vehicle was used for unauthorizedly carrying forest produce and as such the same has been rightly seized by the forest officials, on duty and that, in view of the initiation of a confiscation proceeding, the impugned orders, passed by the learned Chief Judicial Magistrate, directing release of the seized vehicle, are bad

in the eye of law and as such the impugned orders are liable to be set aside.

10. Referring to the Section 39 (d) of the Act, the learned State Counsel has submitted that as the seized vehicle was used in committing offence under the Act, the same is to be treated as the property of the State Government and as such there can be no question of releasing the same in favour of the registered owner.

11. Referring to the provision of Rules 52 and 53 of the Assam Wildlife Protection Rules, the learned State Counsel has submitted that the Forest Officer has the power to confiscate a vehicle seized in connection with commission of offence under the Act. It is also submitted that notices were issued asking the petitioner to appear in the confiscation proceeding, but he failed to appear in the said confiscation proceeding.

12. In support of his contention, the learned State Counsel has relied on the following decisions:

"(i) State of Bihar Vs. Murad Ali Khan and Others, ; and

(ii) State of Karnataka Vs. K. Krishnan, ."

13. The learned Counsel for the petitioner has also produced the relevant records, maintained by the authorized officer.

14. Refuting the said argument, advanced by the learned Additional Senior Government Advocate, Mr. D. Baruah, learned Counsel, appearing for the respondent, has submitted that the learned Magistrate has the power to release the seized vehicle, under Section 451 Cr.P.C. and as such the impugned orders, passed by the learned Chief Judicial Magistrate, directing release of the said vehicle, was lawful and the petitioner ought to have carried out the said lawful order, passed by the learned Chief Judicial Magistrate.

15. Referring to the provision of Section 39(1)(d) of the Act, Mr. Barua has submitted that a vehicle, vessel, weapon, trap etc. seized under the provision of the Act can be treated as State property only after the case is tried and decided by the Court of appropriate jurisdiction.

16. The learned Counsel for the respondent has submitted that, immediately after the seizure and during the pendency of the trial, the forest officials have no jurisdiction to confiscate seize the vehicle and flout the lawful order passed by Court of law. It is also submitted that in the Act, no provision has been provided for confiscation of a seized vehicle by the Forest Officer, that too before the trial is over.

17. Mr. Barua has further submitted that the respondent, being the registered owner of the seized vehicle, was entitled to get the custody of the vehicle, during the trial, and as such the learned Chief Judicial Magistrate committed no error or illegality by passing the interim orders aforesaid, in exercise of powers under Section 451 Cr.P.C.

18. In support of his contention, the learned Counsel for the respondent has relied on the decisions, held in the following cases:

"(i) State of M.P. and Others Vs. Madhukar Rao, ;

(ii) Princl. Chief Conservator of Forest and Another Vs. J.K. Johnson and Others, ; and

(iii) State of U.P. and Another Vs. Lalloo Singh, ."

19. Having heard the learned Counsel for both the parties, I have carefully perused the impugned orders and the relevant records. Admittedly, the forest officials, on duty, found the vehicle loaded with unauthorized forest produce i.e. teak logs and seized the same on 01.04.2014. The driver of the said vehicle was found in the said vehicle.

20. After seizure of the said vehicle, the respondent, claiming to be the registered owner of the seized vehicle, approached the learned Chief Judicial Magistrate, Kamrup (M), Guwahati, seeking release of the same and the learned Chief Judicial Magistrate, relying on the decisions, held in the cases of Madhukar Rao (Supra) and J.K. Johnson and Others (Supra) and that in exercise of his power under Section 451 Cr.P.C, directed release of the said vehicle in favour of the respondent. But, despite receiving the said direction, the forest officials i.e. the petitioner did not release the vehicle, on the ground that a confiscation proceeding was initiated.

21. As the vehicle was not released, the learned Chief Judicial Magistrate was compelled to pass the subsequent orders, dated 22.05.2014 and 07.06.2014, directing release of the vehicle.

22. By order, dated 07.06.2014, the learned Chief Judicial Magistrate asked the petitioner to submit a report as to why the orders dated 08.05.2014 and 22.05.2014 were not complied with.

The plea of the petitioner, with regard to non compliance with the said orders, is that a confiscation proceeding was initiated.

Now, the question is, as to whether the forest officials can defy the order passed by the Court of jurisdiction, on the ground that confiscation proceeding was initiated and if the Forest Officer has the power to confiscate a seized vehicle, before the trial is over?

23. The order, directing release of the vehicle was made on 08.05.2014. Perusing the records, produced by the learned Sr. Addl. Govt. Advocate, appearing for the petitioner, I find that, in the order sheets, maintained by the Forest Officer, the first order was passed on 08.07.2014 and the subsequent orders were passed on 22.07.2014, 21.08.2014, 18.09.2014, 09.03.2014 and 12.08.2014.

24. From the said orders, it appears that the accused persons, namely, Sri Bimal Tumung i.e. the petitioner and Sri Ananda Boro i.e. the Driver of the seized

vehicle, were directed to appear before the authorized officer. However, the petitioner and the driver aforesaid appeared before the authorized officer on 12.08.2014 and their statements were recorded. The said order sheet, maintained in connection with Offence Report No. KNPR/002 of 2014, does not indicate that any confiscation proceeding was initiated till 08.07.2014 and thereafter. What the authorized officer did was that he had summoned the petitioner and the driver i.e. the accused person to appear before him and after their appearance, on 12.08.2014, their statements were recorded. Hence, there is nothing, on-record, to that any confiscation proceeding was initiated, before 08.05.2014 or 22.05.2014 or 07.06.2014, i.e. the dates on which the release orders, in respect of the said vehicle, were passed by the learned Chief Judicial Magistrate.

25. Hence, it appears that on 08.05.2014, on which date, the first order for release of the vehicle was made, no confiscation proceeding was initiated. Therefore, the refusal, to release the vehicle, on the plea of initiation of confiscation proceeding, is found to be without any basis.

26. Section 50(4) of the Act, which reads as follows:

"(4) Any person detained, or things seized under the foregoing power, shall forthwith be taken before a Magistrate to be dealt with according to law [under intimation to the Chief Wild Life Warden or the officer authorized by him in this regard]"

Provides that the seized things including vehicle etc. are required to be produced before the Magistrate, immediately after such seizure and the Magistrate is required to deal with the matter according to the law under intimation to the Chief Wild Life Warden or the officer authorized by him in this regard.

27. The said provision clearly indicates that the Magistrate has the authority to pass necessary order with regard to the seized vehicle and such order is required to be passed with intimation to the officer authorized.

28. Chapter VI of the Act, which includes the provision for seizure of vehicle etc. and penalties with regard to the commission of an offence under the Act, do not provide the provision for confiscation of a seized vehicle by the authorized officer. Chapter VIA provides the provision for forfeiture of property derived from illegal hunting and trade and not the property i.e. vehicle etc. used in committing the offence.

29. The learned Counsel for the petitioner, referring to the provision of Rule 52 and 53 of the Assam Wildlife Protection Rule, 1997, has submitted that the forest officials has the power to confiscate a seized vehicle used for unauthorisedly carrying a forest product.

Rule 52 provides the forms to be used in initiating a confiscating proceeding and Rule 53 provides the provision for preferring an appeal to the Chief Wildlife Warden against the decision, rendered by an Authorized Officer. The said

provision do not prescribe the stage at which the confiscation proceeding is to be initiated. There is nothing to find that the confiscation proceeding can be initiated before the trial is completed.

30. In the case of Madhukar Rao (Supra), the Supreme Court observed:

"17. We are also unable to accept the submission that Section 50 and the other provisions in Chapter VI of the Act exclude the application of any provisions of the Code. It is indeed true that Section 50 of the Act has several provisions especially aimed at prevention and detention of offences under the Act. For example, it confers powers of entry, search, arrest and detention on Wild Life and Forest Officers, besides police officers, who are normally entrusted with the responsibility of investigation and detection of offences; further sub-section (4) of Section 51 expressly excludes application of Section 360 of the Code and the provisions of the Probation of Offenders Act to persons eighteen years or above in age. But it does not mean that Section 50 in itself or taken along with the other provisions under Chapter VI constitutes a self-contained mechanism so as to exclude every other provision of the Code. This position becomes further clear from sub-section (4) of Section 50 that requires that any person detained, or things seized should forthwith be taken before a Magistrate.

19. We find that the Full Bench of the High Court has correctly taken the view that the deletion of sub-section (2) and its replacement by sub-section (3-A) in Section 50 of the Act had no effect on the powers of the Magistrate to release the seized vehicle, during the pendency of trial under the provisions of the Code. The effect of deletion of sub-section (2) and its replacement by sub-section (3-A) may be summed up thus: as long as sub-section (2) of Section 50 was on the statute book the Magistrate would not entertain a prayer for interim release of a seized vehicle, etc. until an application for release was made before the departmental authorities as provided in that sub-section. Further, in case the prayer for interim release was rejected by the departmental authority, the findings or observations made in its order would receive due consideration and would carry a lot of weight before the Magistrate while considering the prayer for interim release of the vehicle. But now that sub-section (2) of Section 50 stands deleted, an aggrieved person has no option but to approach the Magistrate directly for interim release of the seized vehicle.

22. We have, therefore, no doubt that the provisions of Section 50 of the Act and the amendments made there under do not in any way affect the Magistrate's power to make an order of interim release of the vehicle under Section 451 of the Code.

23. Learned counsel submitted that Section 39(1)(d) of the Act made the articles seized under Section 50(1)(c) of the Act as government property and, therefore, there was no question of their release. 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. Any attempt to operationalise Section 39(1)(d) of the Act merely on the basis of seizure and accusations/allegations levelled by the departmental authorities would bring it into conflict with the constitutional provisions and would render it unconstitutional and invalid. In our opinion, the High Court has taken a perfectly correct view and the provisions of Section 39(1)(d) cannot be used against exercise of the magisterial power to release the vehicle during pendency of the trial. "

31. In the case of J.K. Johnson and Others (Supra), two gunny bags, containing hunted wild boar and three rabbits were found carried in a jeep and accordingly, the said jeep vehicle was seized and a case was registered under Section 9 of the Act. The Divisional Forest Officer, by way of composition of the offence, ordered that the offence be compounded and the vehicle, used in committing the offence, be forfeited. The said order was put on challenge. It was argued that Section 39(1)(d) of the Act did not give sanction to an officer empowered under Section 54 of the Act to forfeit the seized items.

The Supreme Court, in the above cited case, observed:

"25. One thing is clear that the statutory provisions noticed above do not in explicit terms provide for the forfeiture of the seized items by the departmental authorities from a person who is suspected to have committed offence(s) against the 1972 Act. Chapter VI-A, which has been inserted in the 1972 Act by Act 16 of 2003 that provides for forfeiture of property derived from illegal hunting and trade is entirely different provision and has nothing to do with forfeiture of the property seized from a person accused of commission of offence against the 1972 Act. Insofar as Section 39(1)(d) of the 1972 Act is concerned, it provides that every vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of the Act shall be the property of the State Government and in a certain situation, the property of the Central Government."

32. As held by the Supreme Court, in the said case, in order to attract the provision of Section 39(1)(d) , there can be categorical finding by the competent Court of law about the use of the seized items, such as, vehicle, weapon etc. for commission of the offence.

33. As provided by Section 51(2) of the Act, order for forfeiture of the property including seized vehicle etc. can be made on conviction of a person in connection with an offence under the Act and if it is proved that the said vehicle or article etc. was used in commission of the offence under the Act.

34. Therefore, in order to attract the provision of Section 39(1)(d) , alleged offence under the Act, has to be legally ascertained and adjudicated in trial by a competent Court of jurisdiction. Pending such decision, the seized property can't

be treated as the property of the State Government or the Central Government as the case may be.

35. As held in the case of Madhukar Rao (Supra), pending trial of offence under the Act, property including vehicle seized by accusation or suspicion or commission of offence under the Act can be released by the Magistrate, under Section 50(4) of the Act read with Section 451 of the Code.

36. In the case of J.K. Johnson and Others (Supra), the Supreme Court observed that forfeiture by the executive authority merely on suspicion or accusation may amount to depriving a person of his property without authority of law.

37. In the said case, the Supreme Court observed:

"42. In view of the above, the order passed by the Conservator of Forests, Nizamabad for forfeiture of the vehicle and two rifles to the State Government is dehors the provisions of the 1972 Act and is unsustainable. The High Court has rightly set aside -such illegal order. However, the Single Judge was not right in his order dated 29.3.2005 in directing the respondents therein (present appellants) to release the vehicle and rifles. The Division Bench also erred in maintaining the above direction. Since the items were seized in exercise of the power under Section 50(1)(c) , the seized property has to be dealt with by the Magistrate under Section 50(4) of the 1972 Act. Respondents 1 to 3 must accordingly apply to the Magistrate concerned for the return of seized items who obviously will consider such application according to law."

38. In the case of Lalloo Singh (Supra), the Supreme Court observed:

"14. There is a significant addition in sub-section (4) by Act 16 of 2003 i.e. requirement of intimation to the Chief Wildlife Warden or the officer authorized in this regard as to the action to be taken by the Magistrate when the seized property is taken before a Magistrate. A combined reading of the omitted sub-section (2) and the substituted sub-section (3-A) of Section 50 makes the position clear that prior to the omission, the officials under the Act had the power to direct release of the seized article. Under sub-section (1), the power for giving temporary custody subject to condition that the same shall be produced if and when required by the Magistrate is indicative of the fact that the Magistrate can pass appropriate orders in respect of the purported seized property which is taken before him.

16. It appears that insertion in sub-section (4) relating to the intimation to the Chief Wildlife Officer or the officer authorized by him is intended to give the official concerned and opportunity of placing relevant materials on record before the Magistrate passes any order relating to release or custody. In appropriate cases on consideration of materials placed before him, prayer for such release or custody can be rejected."

39. From the above decisions, there is no difficulty in understanding that the Magistrate has the power under Section 451 Cr.P.C. to pass necessary order with

regard to the custody of the seized vehicle during the pendency of the trial and no confiscation proceeding can be initiated by the concerned authorized officials during the pendency of the trial.

40. The learned State Counsel has referred to the decision held in the case of Murad Ali Khan and Others (Supra). The said decision relates to Magistrate's power to take cognizance on the basis of the complaint and scope of the High Court under Section 482 Cr.P.C.

In the present case, the Magistrate's power in taking cognizance is not in challenge. Hence, the decision, rendered in the said case, is not applicable in the present case.

41. In the case of K. Krishnan (Supra), while dealing with the provision of Sections 71-A, 71-C, 71-G, 62 & 2(7) of Karnataka Forest Act, 1963, the Supreme Court has observed that conditional order for release of seized vehicle can be made subject to furnishing sufficient surety including bank guarantee etc. In the said case, it was observed that when any vehicle is seized, the same should not ordinarily be returned to a party till the culmination of proceeding in respect of such offence, including confiscatory proceeding, if any. However, it was held that for any exceptional reasons Court may release the vehicle during the pendency of the trial subject to furnishing bank guarantee.

In view of above, there is no bar in releasing a seized vehicle by an interim order in connection with a forest offence.

42. In the present case also, it is found that the learned Chief Judicial Magistrate passed the order for releasing of the vehicle as interim measure, subject to execution of a bond of Rs. 6 Lakhs with the condition that the same would be released as and when so required. So, the said order for release was not a absolute order. In fact, the same was a temporary order and the said order was passed by imposing certain conditions. That apart, in view of the pendency of the trial, it has not yet been decided as to whether the petitioner had used or allowed to use his vehicle for committing the offence under the Act.

43. In view of what has been discussed above, I have no hesitation in holding that the learned Chief Judicial Magistrate, Kamrup (M), Guwahati, committed no error or illegality by passing the impugned orders. It was the duty of the petitioner to comply with the lawful order passed by the competent Court of law.

44. I find no merit in this petition requiring interference. The petitioner shall comply with the direction made by the learned Chief Judicial Magistrate, Kamrup (M), Guwahati with regard to the release of the vehicle and submit his report explaining non compliance of the said order.

45. On receipt of the said report, the learned Chief Judicial Magistrate, Kamrup (M), Guwahati, shall pass necessary order, as per law. With the above this criminal petition is disposed of. Return the record produced by the learned Additional Sr. Govt. Advocate, Assam.