

(2023) 09 JH CK 0016

In the Jharkhand High Court

Case No : Writ Petition (Criminal) No. 389 Of 2023

Md. Noushad Khan @ Noushad

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 06-09-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 451
Jharkhand Bovine Animal Prohibition Of Slaughtering Act, 2005 — Section 4(A), 4(B),
12(1), 12(2), 12(3)

Citation : (2023) 09 JH CK 0016

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Sanjeev Kumar, Vineet Kumar

Final Decision : Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. This petition has been filed for quashing of the order dated 05.04.2022 passed in Confiscation Case No.76/2022 by the Deputy Commissioner, Koderma, whereby, confiscation proceeding of the seized vehicle bearing registration No. BR-02-PA-3539 in connection with Koderma P.S. Case No.136/2021 dated 03.08.2021 was started.

2. The FIR was registered on the complaint of the Police Inspector Sunil Paswan alleging therein that he got secret information that white colour Bolero vehicle bearing registration No. BR-02-PA-3539 is carrying two quintal of cow flesh from Nawada Bihar to Jalwabad in Koderma P.S. for sell, thereafter he with his team reached to Bagitand check post and started searching the vehicle coming from Bihar and at about 08:30 P.M., the said vehicle reached there and he along with his team stopped the said vehicle and on search, he found the vehicle was driven by Md. Arman Ansari and other person namely Md. Chunnu Alam, Md. Imtiyaz, Md. Arman, are resident of Akbarpur P.S., District- Nawada, Bihar were there and after search, 5 bags of cow flesh were found at the back seat of alleged vehicle

and thereafter, cow flesh were seized and the persons were arrested on the spot and later on, after interrogation, it has been stated by the driver of the said vehicle that owner of the said vehicle is Md. Noushad-petitioner from whom the said vehicle was purchased on hire purchase agreement in installments.

3. Mr. Sanjeev Kumar, learned counsel for the petitioner submits that there is no provision of confiscation under Jharkhand Bovine Animal Prohibition of Slaughter Act, 2005. He submits that only provision is under Section 12(3) of the Act, whereby, it transpires that the vehicle in question can be forfeited to State Government. He further submits that in view of Section 12(3), that will happen once after the trial comes to the conclusion of conviction of charged accused. He also submits that vehicle in questions is commercial and if it will be allowed to languish in the premise of Police Station, it will destroy. In terms of Section 451 of Cr.P.C. also, the case of the petitioner is fortified. To buttress his argument, he relied the case of *Mirza Dildar Beg & Others v. State of Jharkhand*; (2014 SCC OnLine Jhar 55). He further relied upon the judgment in *Md. Reyazuddin v. The State of Jharkhand*; (2014 SCC OnLine Jhar 985). He also relied upon the judgment passed by this Court in Criminal Revision No.1407 of 2016 in *Raju Prasad Keshri v. The State of Jharkhand*.

4. Mr. Vineet Kumar Vashistha, learned counsel for the State submits that the vehicle in question was seized under Sections 4(A) and 4(B) and Sections 12(1) and 12(2) of Jharkhand Bovine Animal Prohibition of Slaughtering Act, 2005. He submits that the case of the petitioner is fit to be rejected in view of the order passed by this Court in Cr.M.P. No.2503 of 2013 decided on 22.01.2018 in *Nawab Sher Khan v. State of Jharkhand*.

5. On perusal of the provision of Jharkhand Bovine Animal Prohibition of Slaughter Act, 2005, it is apparent that there is no provision of confiscation of vehicle or goods as provided under some Acts i.e. Essential Commodities Act and Forest Act. The aforesaid Acts prescribe forfeiture of vehicle particularly under Section 12(3) of Jharkhand Bovine Animal Prohibition of Slaughtering Act, 2005 which reads as under:

"Whenever a vehicle is found to have been used in transportation of Cattle or Beef contravening any provision of this Act the Vehicle shall be forfeited to the State Government."

6. On plain reading of the provision it is clear that the words used "Whenever a vehicle is found to have been used....." literally the use of word, found in the section connotes that a finding has to be arrived at that the vehicle was used in transportation of cattle or beef in contravention of the provision of the Act. Such finding can only be arrived only after the evidence is brought on record during an enquiry or trial meaning thereby that the charges/allegations have to be proved that the vehicle was used in contravention of the provision of the Act whereafter the vehicle shall be forfeited to the State Government. It is not disputed that in the instant case no proceeding has been initiated for forfeiture neither does the

Act provide for initiation of confiscation proceeding and the vehicle is lying at the police station without any use in an uncared manner.

7. On plain reading of the above provision, it is crystal clear from (Whenever a vehicle is found to have been used.....") and it further says that the vehicle should be forfeited to the State Government. Meaning thereby, once the trial is concluded and the conviction is held by the Trial Court then only the forfeiture of vehicle will come into effect. The vehicle in question is commercial as indicated and this aspect of the matter has been decided by the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai v. State of Gujarat*; [(2002) 10 SCC 283]. Paragraphs 5 and 17 of the said judgment are quoted hereinbelow:

"5. Section 451 clearly empowers the court to pass appropriate orders with regard to such property, such as:

- (1) for the proper custody pending conclusion of the inquiry or trial;
- (2) to order it to be sold or otherwise disposed of, after recording such;
- (3) If the property is subject to speedy and natural decay, the dispose of the same.

xxx xxx xxx

"17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles."

8. The judgment relied by Mr. Vineet Kumar Vashistha, learned counsel for the State in *Nawab Sher Khan* (supra) passed by this Court is also distinguishable in the facts and circumstances of the present case. In that case, this Court has come to conclusion that once the proceeding started under Sections 4(A) and 4(B) of Jharkhand Bovine Animal Prohibition of Slaughter Act, 2005, it will be deemed that confiscation has been started.

9. On perusal of Sections 4(A) and 4(B) of Jharkhand Bovine Animal Prohibition of Slaughtering Act, 2005, it transpires that there is no provision of confiscation in that Sections. This Section speaks Restriction on report and Permit for report. Thus, that judgment is distinguishable in the facts and circumstances of the case.

10. In view of the above facts and the settled law, the detention of vehicle is of no use as it will not only lead to damage and loss of utility of the vehicle but will also cause a loss of revenue to the Government due to non-pilance of the commercial vehicle.

11. The Deputy Commissioner, Koderma is directed to grant interim custody of vehicle bearing Registration No. BR-02-PA-3539 by ordering it to be released in favour of the petitioner on his giving an undertaking on the following terms and

conditions:-

(i) The petitioner shall furnish an indemnity bond of Rs. Three Lacs Fifty Thousand (Rs. 3.50 Lacs) with two sureties.

(ii) One of the surety must be a resident and owner of a commercial vehicle of District- Koderma.

(iii) The petitioner shall not sale, mortgage or transfer the ownership of the vehicle on hire purchase agreement or mortgage or in any manner.

(iv) He shall not change or tamper with the identification of the vehicle in any manner.

(v) He shall produce the vehicle as and when directed by the Deputy Commissioner, Koderma.

12. The Deputy Commissioner, Koderma is at liberty to impose any other terms and conditions which he deems fit and proper.

13. In view of the above facts, the order dated 05.04.2022 passed in Confiscation Case No.76/2022 by the Deputy Commissioner, Koderma in connection with Koderma P.S. Case No.136/2021 dated 03.08.2021 is quashed.

14. Accordingly, this petition is disposed of.

15. Interim order, if any granted by this Court, stands vacated.