

(2018) 12 CAL CK 0029

In the Calcutta High Court

Case No : Criminal Revision No. 299, Criminal Application No. 1092 Of 2018

State Of West Bengal & Ors

APPELLANT

Vs

Susanta Singha Mahapatra

RESPONDENT

Date of Decision : 10-12-2018

Acts Referred:

Wild Life Protection Act, 1972 — Section 2(5), 2(8), 2(12B), 39, 39(1)(d), 43, 44, 48, 49, 50, 50(3), 50(4), 58(D), 58(H)
Indian Forest Act, 1927 — Section 2(b)(4), 2(4)(b)(iii), 3, 20, 29, 44(2), 44(2A), 52, 59(A), 59(B), 59(c), 59A(3)
Code of Criminal Procedure, 1973 — Section 5, 397, 399, 401, 451
Prevention of Money-Laundering Act, 2002 — Section 45
Biological Diversity Act, 2002 — Section 2, 5, 7, 55, 56

Citation : (2018) 12 CAL CK 0029

Hon'ble Judges : Shivakant Prasad, J

Bench : Single Bench

Advocate : Subhabrata Datta, Banibrata Datta, Prabir Kumar Mitra, Pinak Kumar Mitra, S. Ghosh

Final Decision : Dismissed

Judgement

Petitioners being the State of West Bengal, Divisional Forest Officer, Kharagpur Division and Forest Ranger Officer, Ghatal have challenged the order No. 12 dated December 15, 2017 in Criminal Revision No. 12 of 2016 passed by learned Additional District & Sessions Judge, Ghatal arising out of an order dated February 13, 2017 passed by learned Additional Chief Judicial Magistrate, Ghatal, Paschim Medinipur in connection with P.R. No. 03/G.T.L. of 2015/2016 and impugned order dated December 26, 2017 passed by the learned Additional Chief Judicial Magistrate, Ghatal, Paschim Medinipur directing the petitioners to be personally present on January 30, 2018 before the learned Additional Chief Judicial Magistrate, Ghatal, Paschim Medinipur.

The brief facts leading to the instant case is that having been informed by the Officer-in-Charge, Chandrakona (L) Police Station on February 15, 2016 at about

16:10 Hrs. the Forest Range Officer, Ghatal, Social Forestry Range along with the Police Officials attached with the Chandrakona Police Station, intercepted a vehicle being Registration No. WB 68 G/1215 at Halderdighi under Ward No. 2 of Khirpai Municipality area on Raipur, Bankura to Khirpai Road carrying some illicit forest produce as well as the animal article.

During search of the aforesaid intercepted vehicle, one Chameleon, which is a Scheduled Species under the Wildlife Protection Act, 1972 as amended up to date, had been found kept in a cage inside the said vehicle. On being asked, the person in charge of the said vehicle and others, who were present in the said vehicle, failed to produce any such document authorizing them to carry such wildlife article.

Thus, in exercise of the power conferred under sub-section (3) of Section 50 of the Wild Life Protection Act, 1972, the persons inside the vehicle were detained and arrested by the petitioner no. 3 herein and in exercise of the power conferred under Section 52 of the Indian Forest Act, 1927. The said vehicle No. WB 68 G/1215, which was used for carrying Wildlife Article, was seized after compliance of all procedural formalities.

On behalf of the petitioners it is contended that the petitioner no. 2 after arrest and seizure of the vehicle and relevant documents forwarded before the learned Additional Chief Judicial Magistrate with a prayer of the Authorized Officer for drawing up a proceeding under Section 59(A) of the Indian Forest Act, 1927, vide Memo No. 55/GTL-15 dated February 17, 2016.

It is submitted that having been informed, the Authorised Officer initiated a proceeding under Section 59(A) of the Indian Forest Act, 1927 and pursuant to the provision enumerated under Section 59(B) of the Indian Forest Act, 1927, a notice was given to the opposite party herein by providing clear 30 days time so as to enable him to give his reply to the show cause notice.

On replying being submitted the petitioner no. 2 Divisional Forest Officer gave personal hearing on July 25, 2016 by recording their deposition passed a reasoned order being Office Order No. 318/15-2 (P & L)/Confis./2016 dated, Kharagpur, the 17.10.2016 directing the petitioner no. 3 to take permanent charge of the vehicle under reference with immediate effect for the purpose of confiscating the same by the Authorised Officer.

On being aggrieved by the reasoned order the opposite party owner of the vehicle filed an application before the learned Additional Chief Judicial Magistrate, Ghatal, Paschim Medinipur for release of the vehicle and the learned ACJM, Ghatal rejected the application by order dated 13th February, 2017 without considering the observation in the decision reported in 2016 (2) C Cr LR (Cal.) 585 as the case was not apposite to the facts of the instant case as the cited decision was in respect of seizure of the taxi under Section 50 of the Wild Life (Protection) Act, 1972 when a confiscation of the vehicle was done by the Authorised Officer under Section 59A(3) of the Indian Forest Act as amended by

the State of West Bengal and the jurisdiction of the Magistrate Court to return the seized vehicle is ousted and in conclusion the learned ACJM, Ghatal was of the view that it is apparent from the report of E.O. the vehicle has been confiscated under Section 59(A) of the Forest Act as amended. Accordingly, the petition of the owner petitioner was rejected as the jurisdiction of the Magistrate is barred to return the same under the provision of Section 59(B) of the Forest Act.

Being aggrieved by the order dated 13.2.2017 passed by the ACJM, Ghatal, Paschim Medinipur, the opposite party herein preferred criminal revision under Sections 397/399 Cr.P.C. read with the Section 401 of the Code on the contention that on 16.2.2016 in connection with P.O.R. being No. 3/G.T.L. 2015-2016 dated 15.2.2016 vide memo no. 55/G.T.L. 15 lodged before the learned ACJM, Ghatal by the Forest Range Officer, Ghatal SF Range against P.O.R. the vehicle in question and one Bolero (steel colour) bearing Registration No. WB 68G/1215 was seized by the said Forest Range Officer which has been ordered for the confiscation by the authority under Forest Act.

It is submitted before this Court by learned counsel for the opposite party that the vehicle in question is lying in open sky and is being damaged day by day and the same date order to be returned to its registered owner the opposite party herein before the learned revisional Court below where the petitioner relied on the decision of this Hon'ble Court reported in (2016) 2 C Cr.L.R. (Cal.) 585. It is revealed from the order passed in the said criminal revisional application by the learned Additional District & Sessions Judge, Ghatal, Paschim Medinipur dated 15.12.2017 that finding no objection against the prayer of the revisionist petitioner, the opposite party herein found no bar to return the vehicle to its registered owner accordingly, ordered directing the respondent, the present petitioner to return the seized vehicle bearing Registration No. WB 68G/1215 seized by the Forest Range Officer, Ghatal with connected papers to its registered owner after proper verification and identification and furnishing a bond of Rs. 1,00,000/- (one lakh) only before getting the vehicle back with the condition that the petitioner shall have to reproduce the vehicle as and when it may be required by the Court.

This is the order impugned passed by the revisional Court below that is under challenge in this revisional application by the State of West Bengal through Divisional Forest Officer and Forest Range Officer, Ghatal.

It is argued on behalf of the petitioner that the learned revisional Court below should have considered that the learned ACJM, Ghatal rightly rejected the application due to lack of jurisdiction as the special statute does not confer any power on the ACJM to entertain any application challenging the propriety of the order of confiscation which has been passed in consideration of Section 59(A) of Indian Forest Act, 1927 and therefore, the revisional application is not applicable.

It is also submitted that the forum available under the general statute does not

have any jurisdiction to entertain any application assailing the propriety of order of confiscation passed in exercise of the power conferred under Section 59(A) of Indian Forest Act, 1927 and therefore, the learned revisional Court jurisdiction is hit by the doctrine of coram-non-judice.

It is also submitted that Indian Forest Act, 1927 is a special statute and the proceeding drawn on the strength of provision enumerated in the statute are having overriding effect in view of the provision of Section 59(A) of the Act which provides a non-obstante clause which reflects that the statute has to have the overriding effect of the Code of Criminal Procedure, 1973.

Learned counsel for the petitioner further argued that any person aggrieved by an order of confiscation can challenge the order before the Conservator of Forest in consonance under Section 59(C) of the Indian Forest Act, 1927. So, the opposite party herein had the remedy available against the order of confiscation before the competent authority under the said statute. Accordingly, it is submitted that learned revisional Court below ought not have entertained the revision against the order passed by the learned ACJM, Ghatal and the impugned order directing return of the seized vehicle not tenable as the revisional application is dehors the provision of special statute.

It is also argued that the learned Public Prosecutor-in-charge may have no objection against the prayer of the revisionist but by that act the dispute cannot be taken off by the revisionist as the statutory provision cannot be given a go by.

Learned counsel for the State/petitioner has referred to a decision in case of State of West Bengal v. Gopal Sarkar reported in (2002) 1 Supreme Court Cases 495 to argue that the provision contained in Section 59-A(3) provides that where any timber or other forest produce which is the property of the State Government is produced before an Authorised Officer under sub-section 1 and Authorised Officer is satisfied that a forest offence has been committed in respect of such property, he may, whether or not a prosecution is instituted for the commission of such offence, order confiscation of the property together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence.

Reliance has been made to the observation in paragraphs 10 and 11 of the cited decision which reads thus-

"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 and Anr. v. G. V. Sudhakar Rao and Ors., AIR (1986) SC 328. Therein this Court elucidating the provision held as

follows :

"The conferral of power of confiscation of seized timber or forest produce and the implements, etc., on the Authorised Officer under sub-s.(2A) of S.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-s.(2A) of S. 44 of the Act, where a Forest Officer makes report of seizure of any timber or forest produce and produces the seized timber before the Authorised Officer along with a report under Section 44(2), the Authorised 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."

11. As noted earlier, on the facts of the present case, the finding of fact recorded by the Authorised Officer which remained undisturbed was that he was satisfied that the band saw and the implements in question were used in commission of the forest offence in illicit removal and use of the timber from the forest area. It is relevant to note the validity of confiscation of timber was conceded before the High Court. It follows that the finding recorded by the Authorised Officer that the Band Saw and implements in question were used in commission of the forest offence relating to the illicit felling and removal of the timber remained undisturbed. The High Court, therefore, clearly erred in interfering with the confiscation order of the Band Saw and the implements. The position of law that is manifest on a reading of the provision of the Statute is that if tools, implements, vehicles etc. seized were used in commission of the forest offence alleged, it is open to Authorised Officer to pass order of confiscation under Section 59A(3). In that view of the matter the judgment under challenge is clearly unsustainable and has to be set aside."

It would appear from the facts of the case that the bandsaw and implements in question were used in commission of the forest offence relating to the illicit felling and removal of the timber.

In *State of M.P. v. S.P. Sales Agencies and others* reported in (2004) 4 Supreme Court Cases 448, the observations made in paragraphs 9, 10 and 11 relied on by the learned counsel for the petitioner is reproduced thus for profitable understanding-

"9. The next question that arises in the present case is as to whether confiscation proceeding can be initiated under Section 52 of the Act only after launching of criminal prosecution or it is open to the Forest Authorities upon seizure of forest produce to initiate both or either. Under Section 52 of the Act when a forest officer or a police officer has reasons to believe that a forest offence has been

committed in respect of any forest produce, he may seize the same whereupon confiscation proceeding can be initiated. 'Forest offence' has been defined under Section 2(3) of the Act to mean an offence punishable under this Act or any rule framed thereunder. Section 41 empowers State Government to frame rules for regulating transit of forest produce. Section 42 further empowers the State Government to frame rules prescribing thereunder penalties for breach of the rules framed under Section 41 of the Act. Section 76 confers additional powers upon the State Government to make rules for, inter alia, carrying out provisions of the Act. Purporting to act under Sections 41, 42 and 76 of the Act, the Government of Madhya Pradesh framed Transit Rules referred to above, rule 3 whereof lays down that no forest produce shall be moved either within the State of Madhya Pradesh or beyond its territory without obtaining a transit pass. Sub-rule (1) of rule 29 lays down that whosoever contravenes any of the provisions of these Rules shall be liable to be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

10. In the present case, the allegations are that by committing breach of rule 3 a forest offence within the meaning of Section 2(3) of the Act has been committed for which a criminal prosecution under rule 29 of the Transit Rules as well as a confiscation proceeding under Section 52 of the Act could be initiated. From the scheme of the Act, it would appear that for contravention of rule 3, two independent actions are postulated one criminal prosecution and the other confiscation proceeding. The power of confiscation, exercisable under Section 52 of the Act, cannot be said to be in any manner dependant upon launching of criminal prosecution as it has nowhere been provided therein that the forest produce seized can be confiscated only after criminal prosecution is launched, but the condition precedent for initiating a confiscation proceeding is commission of forest offence, which, in the case on hand, is alleged to have been committed. Reference in this connection may be made to a decision of this Court in the case of Divisional Forest Officer & Anr., vs. G.V. Sudhakar Rao and others, (1985) 4 SCC 573, wherein it has been clearly laid down that the two proceedings are quite separate and distinct and initiation of confiscation proceeding is not dependant upon launching of criminal prosecution. In the said case, the Court observed thus:

"The conferral of power of confiscation of seized timber or forest produce and the implements etc. on the Authorized Officer under sub-section (2-A) 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 (2-A) of Section 44 of the Act, where a Forest Officer makes a report of seizure of any timber or forest produce and produces the seized 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."

11. In the case of *State of W.B. vs. Gopal Sarkar*, (2002) 1 SCC 495, while noticing the view taken in the case of *G.V. Sudhakar Rao* (supra), this Court has reiterated that the power of confiscation is independent of any criminal prosecution for the forest offence committed. This being the position, in our view, the High Court has committed an error in holding that initiation of confiscation proceeding relating to kattha was unwarranted as no criminal prosecution was launched."

On behalf of the State/petitioner's reference is also made in *Chief Engineer Hydel Project and Others v. Ravinder Nath and others* reported in (2008) 2 Supreme Court Cases 350 to the observation in paragraph 28 of the cited decision to argue in respect of the doctrine of coram-non-judice and fortified his argument strenuously that the learned revisional Court below jurisdiction is hit by the doctrine of coram-non-judice.

On this count, learned counsel further relied on another decision in case of *Hasham Abbas Sayyad v. Usman Abbas Sayyad and others* reported in (2007) 2 Supreme Court Cases 355 wherein the observation made in paragraph 22 are-

"22. The core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so. The principles of estoppel, waiver and acquiescence or even *res judicata* which are procedural in nature would have no application in a case where an order has been passed by the Tribunal/Court which has no authority in that behalf. Any order passed by a court without jurisdiction would be coram-non-judice being a nullity, the same ordinarily should not be given effect to."

Learned counsel for the State/petitioner also relied on a decision in case of *Jeewan Kumar Raut and another v. Central Bureau of Investigation* reported in (2009) 7 Supreme Court Cases 526, only to argue that the Special Act and the matter relating to dealing with the offence thereunder are regulated by the provision embodied in the special statute and there cannot be any manner of doubt whatsoever that the self same shall prevail over the provisions of the Code.

The cited decision is in respect of the offence committed under *Implantation of Human Organ Act, 1994* which is undoubtedly a special statute. Though the facts and circumstances of the case cited in the decision is distinguishable from the facts of the instant case but the learned counsel submitted that since under the *Indian Forest Act* there is a special provision for the jurisdiction of the authority under Section 59-A of the Act, the opposite party has only forum before the conservator of forest to challenge the order of confiscation of the vehicle. It is submitted that the learned ACJM rightly passed the order refusing to return the vehicle which ought have been sustained by the revisional Court below.

On the same analysis the learned counsel for the petitioner also referred to a decision in case of *Gautam Kundu v. Directorate of Enforcement (Prevention of Money-Laundering Act)*, Government of India through Manoj Kumar, Assistant Director, Eastern Region reported in (2015) 16 Supreme Court Cases 1. In my view the cited decision is also distinguishable from the facts of the case wherein the question to be decided was with regard to the provision embodied under Section 45 of PMLA Act wherein it has been held that- PMLA is a special statute enacted by Parliament for dealing with money-laundering. Section 5 Cr.P.C. clearly lays down that the provisions of Cr.P.C. will not affect any special statute or any local law. In other words, the provisions of any special statute will prevail over the general provisions of Cr.P.C. in case of any conflict. Section 45 of PMLA starts with a non-obstante clause which indicates that the provisions laid down in Section 45 of PMLA will have overriding effect on the general provisions of Cr.P.C. in case of conflict between them. Section 45 of PMLA imposes the following two conditions for grant of bail to any person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule to PMLA:

- (i) That the prosecution must be given an opportunity to oppose the application for bail; and
- (ii) That the court must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not likely to commit any offence while on bail.

In conclusion the learned counsel for the State/petitioner submitted that in no way by taking cue from the above cited decisions, the revisional Judge had any jurisdiction to entertain revision against the order of the learned ACJM and to pass an order for return of the vehicle.

Per contra, learned counsel for the opposite party herein has referred to the decision which was referred to before the learned Magistrate and so also before the revisional Court below being the decision in case of *Enquiry Officer-Forest Range Officer, Wild Wing, Vigilance Section, Wild Life Headquarters, Directorate of Forest, Bikash Bhawan, Kolkata Vs. md. saheb* reported in (2016) 2 C Cr.LR (Cal.) 585 and to argue that the learned Additional Chief Judicial Magistrate, Ghatal while refusing to grant the prayer of opposite for return of the vehicle has committed an error in law without properly understanding the factual aspect of the case on the wrong notion that the case made out instantly was under Indian Forest Act.

Learned counsel for the opposite party has relied on the observation made in paragraph 11 which reads thus-

"11. In the instant case, the seizure of taxi bearing No. WB 04A-9977 was done under Section 50 of the Wild Life (Protection) Act, 1972. The allegation against the opposite party is that he was carrying 21 Parakeets and 151 Munias by he seized taxi along with two passengers. These birds are falling within the entry

Nos. 44 and 50 of Schedule (IV) of the Wild Life (Protection) Act, 1972 and as such those birds will come within the ambit of the "captive animal" as defined in Section 2(5) of the Wild Life (Protection) Act, 1972. These birds may also fall within the ambit of "Wild animal" defined in Section 2(8) of the Indian Forest Act, 1972 as amended by Section 3 of West Bengal Act 39 of 1981. However, learned Counsel for the petitioner has failed to show how the opposite party has committed an offence punishable under the Indian Forest Act, 1972. Nor can I persuade myself to hold that the opposite party has committed any offence punishable under the provisions of the Indian Forest Act, 1972 as amended by the State of West Bengal. The petitioner has also lodged specific complaint against the opposite party and other co-accused persons before the Court of learned Magistrate for violation the provisions of Sections 9/39/44/48 and 49 of the Wild Life (Protection) Act, 1972 which is punishable under Section 51 of the Wild Life (Protection) Act, 1972. Since the petitioner has lodged the complaint against the opposite party in order to prosecute him under Section 51 of the Wild Life (Protection) Act, 1972 and since the seizure of the taxi is done under Section 50 of the Wild Life (Protection) Act, 1972, I fail to understand how the Authorised Officer can initiate the proceeding for confiscation of the seized taxi under Section 59A of the Indian Forest Act, 1927 as amended by the State of West Bengal. In view of proposition of law laid down by the Supreme Court in "State of Madhya Pradesh Vs. Madhukar Rao" reported in (2008) 14 SCC 624. I am of the view that the seized taxi cannot be branded as the property of the Government under Section 39 of the Wild Life (Protection) Act, 1972 for denial of power of learned Magistrate to return the said seized taxi under Section 451 of the Code of Criminal Procedure on interim custody till conclusion of trial of the case pending before the competent Court of law. In view of my above findings, I do not find any illegality in the order passed by learned Additional Sessions Judge which is under challenge in this revision. As a result, the judgment and order dated December 9, 2013 passed by learned Additional Sessions Judge, Second Fast Track Court, Bichar Bhawan, Calcutta in Criminal Revision No. 183 of 2013 is hereby affirmed."

It is revealed from the above observation that criminal revision was affirmed finding no illegality in the order passed by learned Additional Sessions Judge as the seized taxi cannot be branded as the property of the Government under Section 39 of the Wild Life (Protection) Act, 1972 for denial of power of learned Magistrate to return the said seized taxi under Section 451 of the Code of Criminal Procedure on interim custody till conclusion of trial of the case.

In the present case, adverting my attention to the seizure list dated 15.02.2016 it is argued that one chameleon with iron cage and the Bolero steel colour vehicle in question were seized under Sections 39, 43, 44, 48, 49 and 50 of Wildlife Protection Act, 1972 and under Sections 2 and 5 of the said Act and so also under Sections 2, 7, 55 and 56 of Biological Diversity Act, 2002 (as amended). So, the seizure of the vehicle in question was in connection with offence under Wildlife Protection Act, 1972 and it cannot be said that it was the seizure under

the Indian Forest Act.

It is well understood from the definition clause under Section 2 (12B) of Wildlife Protection Act, 1972 that "forest produce" has the same meaning as in sub-clause (b) of clause (4) of section 2 of the Indian Forest Act, 1927 which is reproduced hereunder-

"Clause Section 2(4)

"forest-produce" includes -

(b) the following when found in, or brought from a forest, that is to say-

(i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,

(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

(iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and

(iv) peat, surface soil, rock and minerals (including lime-stone, laterite, mineral oils, and all products of mines or quarries); 4[(4A) "owner" includes a Court of Wards in respect of property under the superintendence or charge of such Court;]"

I do find that provision of Section 2(4)(b)(iii) of the Indian Forest Act, 1927 includes the wild animals.

Learned counsel for the opposite party also relied on a decision in case of Onkar Prasad Loni and another v. State of M.P. reported in 2010(3) M.P.W.N. 17: 2010(20) R.C.R. (Criminal) 226 wherein a reference to a decision in case of Madhukar Rao v. State of M.P. reported in 2000(1) M.P. MPLJ 289, (FB) has been made to argue that in the Full Bench decision it has been settled that any property including vehicle seized on accusation or suspicion of commission of an offence under the Act can, on relevant ground and circumstance be released by the Magistrate pending trial in accordance with Section 50 (4) of Wild Life (Protection) Act, 1972 read with Section 451 of Code of Criminal Procedure, 1973. The mere seizure of any property including vehicle on the charge of commission of an offence would not make the property to be of the State Government under Section 39(1) (d) of the Act. It has been conclusively held in the following words in paragraph 8 thus-

"8. Thus, it is settled position that Magistrate is empowered to release vehicle on supurndama in the interim custody during pendency of trial. In the present case, Magistrate has rightly exercised discretion in releasing the vehicle in favour of applicants because no useful purpose would be served in keeping the vehicle idle without using the same. It is common experience that trial takes a long time and possibility of vehicle being damaged during that period cannot be ruled out. The

Lower Revisional Court has erroneously set aside the order of the Trial Court without giving cogent reasons, which deserves to be set aside."

It is argued that the Divisional Forest Officer, Kharagpur Division in his reasoned order dated 17.10.2016 passed the order of confiscation of the vehicle of the opposite party under Section 50 of Wildlife Protection Act by starting proceeding under Section 59-A of the Indian Forest Act, 1972 whereas the seizure list in clear crystal term reveals that prosecution was started under the provision of Wildlife Protection Act, 1972 and not under the provision of Section 59(A) of the Indian Forest Act, 1927.

In the context of the submission so made and having regard to the provisions of Section 50 of Wildlife Protection Act, 1972 relating to power of entry search arrest detention concerning the prevention and detection of offence 50(c) Act Director or any other officer authorized by him or the Chief Wild Life Warden or the authorized officer or any forest officer or any police officer not below the rank of a sub-inspector, may, if he has reasonable grounds for believing that any person has committed an offence against this Act may seize any captive animal, wild animal, animal article, meat, trophy or uncured trophy, or any specified plant or part of derivative thereof, in respect of which an offence against this Act appears to have been committed, in the possession of any person together with any trap, tool, vehicle or weapon used for committing any such offence and, unless he is satisfied that such person will appear and answer any charge which may be preferred against him, arrest him without warrant, and detain him provided that where a fisherman residing within ten kilometers of a sanctuary or National Park, inadvertently enters on a boat, not used for commercial fishing, in the territorial waters in that sanctuary or National Park, a fishing tackle or net on such boat shall not be seized.

Ergo, the Wildlife Protection Act, 1972 itself being a Special Statute independent of that of the proceeding of the Indian Forest Act, 1927, the special provisions are made with regard to action to be taken against the person accused of and even the vehicle which has been used in the process of the commission of the alleged offence. The Act itself provides for penalties with regard to power of combining even punishment for wrongful seizure and the content relating to grant of bail and also the provisions relating to forfeiture of property used in the offence. The Wildlife Protection Act also provides for a competent authority under Section 58(D) of the Act re-prescribed that the State Government may, by an order published in the Official Gazette, authorize any officer not below the rank of Chief Conservator of Forests to perform the functions of the competent authority under this Chapter in respect of such persons or classes of persons as the State Government may, direct.

The Act also provides for forfeiture of the property under Section 58(H). Therefore, even agreeing with the contention of the learned counsel for the State/petitioner, it can be very well be held that the offence alleged for the prosecution was under Wildlife (Protection) Act, 1972 as reflected form the seizure list itself.

The Divisional Forest Officer may be a competent authority authorized to deal with the case including passing order of forfeiture of the articles seized and to confiscate the same but the learned ACJM appears to have committed an error by appreciation of the decision in case of Enquiry Officer-Forest Range Officer (supra) by holding that he had no power in case of prosecution under the Indian Forest Act, 1927. The observation of the learned ACJM leading to rejection of application of the opposite party, owner of the vehicle for return of his vehicle was absolutely misconstrued in view of the provision of Section 451 of the Cr.P.C.

I am of the considered view in the context of the above discussion that the learned ACJM had ample power to order return of the seized vehicle for interim custody till the conclusion of the trial of the case pending before competent Court.

Mr. Prabir Kumar Mitra, learned counsel for the opposite party has also relied on a decision in case of Mathew v. Range Officer, Chedelath Range Officer reported in 2004 Cri.L.J. 3961 (Kerala High Court) referring to the observation made in para 4 of the judgment to argue that interim custody of the vehicle ought to be given to the lawful owner of the vehicle seized under Wild Life (Protection) Act, 1972 during pendency of the case.

Thus, taking cue from the said observation and facts and circumstances of the case, I am of the clear view that seized property can be treated as the property of the State or the Central Government only when it is found by the competent Court that offence has been committed by the accused holding him guilty at the trial but the grant of interim custody of the property even to the alleged offender cannot be opposed by virtue of under Section 39(1)(d) Wild Life (Protection) Act which provides that vehicle, vessel, weapon, trap or tool that has been used for committing an offence has been seized under the provisions of the Act shall be the property of the State Government, and, where such animal is hunted in a sanctuary or National Park declared by the Central Government, such animal or any animal article, trophy, uncured trophy or meat [derived from such animal, or any vehicle, vessel, weapon, trap or tool used in such hunting] shall be the property of the Central Government.

In the given case the vehicle in question was allegedly used for transporting a chameleon which is undoubtedly a wild animal within the meaning of forest produce but that can only be confiscated on the finding of guilt of the accused under the said Act, 1972 on conclusion of the trial.

It would not be out of the context to take note of the observation in paragraph 4 of the decision in case of Dilip v. State of M.P. (2011(3) M.P.W.N. 121) wherein Hon'ble Supreme Court affirmed the view on the point in issue taken by the Full Bench of Madhya Pradesh High Court that Magistrate is fully competent to grant interim release of the offending vehicle to its owner during the pendency of criminal case in which the vehicle was seized against him and the reference may be made of the decision in case of State of M.P. and others v. Madhukar Rao reported in (2008) 14 Supreme Court Cases 624 wherein a question which arose

for decision is whether the Magistrate is fully competent to grant vehicle seized under the Wildlife Protection Act, 1972. It was dealt with by the Hon'ble Apex Court in case of State of U.P. & Anr. vs. Laloo Singh reported in 2007 SCC 334 wherein it has been held that the Magistrate is competent to grant interim relief of the offending vehicle to its true owner during the pendency of the Court in which the vehicle was seized.

It has been held by the Hon'ble Supreme Court that the provision under Section 39(1)(d) Wild Life (Protection) Act 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 under 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. The view taken by the High Court of Madhya Pradesh in Full Bench decision was accepted by the Hon'ble Apex Court holding that provision of Section 39(1)(d) cannot be used against exercise of the magisterial power to release the vehicle during pendency of the trial.

By filing an application being CRAN 1092/18 applicant/ opposite party has sought for vacated the interim order dated 01.02.2018 passed in Criminal Revision 12 of 2016 challenging the order of the learned Additional District & Sessions Judge, Ghatal, Paschim Medinipur arising out of the order dated 13th February, 2017 passed by learned ACJM, Ghatal, Paschim Medinipur for a period of eight weeks.

It would appear that the written application sought for by the petitioner/State was filed on 29.01.2018 long after the order passed by the ACJM on 15.12.2017 with direction to release the vehicle on furnishing bond of Rs. 1,00,000/- on condition to reproduce as and when called to do so as required by the Court and in terms of the order passed by the revisional Court accepting the Jimma bond of Rs. 1,00,000/- furnished by the owner opposite party for return of the vehicle and only to avoid coercive measure for non-compliance of the order of release passed by the learned ACJM.

It would also appear from the order dated 26.12.2017 that allegation in respect of the conduct of the Forest Officers was considered as amounting to contempt of Court, when the learned Magistrate directed the issuance of notice of Forest Range Officer, Ghatal, S.F. Range and Divisional Forest Officer, Kharagpur Division to appear on the alleged violation of the Courts order by them for non-compliance of the direction for return of the vehicle. So, the petitioners have preferred this revisional application to avoid order of the learned ACJM.

Having regard to the facts and circumstances of the case bearing in mind the principle as laid down by the Hon'ble Supreme Court and having perused the impugned order, I do not find any illegality in the Order No. 12 dated December 15, 2017 passed by the learned Additional District & Sessions Judge, Ghatal,

Paschim Medinipur in Criminal Revision No. 12 of 2016 of.

Since there is no extension of interim order as on the date the CRAN 1092 of 2018 seeking vacating of the interim order dated 01.02.2018 directing the stay of impugned Order No. 12 dated December 15, 2017 passed by learned Additional District & Sessions Judge, Ghatal, Paschim Medinipur stands disposed of.

In the result, the Revisional Application being CRR 299 of 2018 is dismissed.

Urgent certified photocopy of this Judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.