[REPORTABLE]

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.340 OF 2022
(@ SLP (Crl.) No. 8964 OF 2019)

ABDUL VAHAB APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH RESPONDENT(S)

J U D G M E N T

Hrishikesh Roy, J.

1 Heard Mr. Pulkit Tare, learned counsel appearing for the appellant. Also heard Mr. Abhinav Shrivastava learned counsel appearing for the State of Madhya Pradesh.

2 Leave granted.

3. Theprimary challenge in this appeal is to the confiscation Order dated 09.08.2017 for the appellant's truck (bearing No.MP/09/GF/2159), passed by the

District Magistrate, Agar Malwa, purporting to exercise powers under Section 11(5) of the *M.P. Prohibition of Cow Slaughter Act, 2004* (hereinafter referred to as, 'the 2004 Act') and Rule 5 of the *M.P Govansh Vadh Pratishedh Rules, 2012*. The Confiscation order was affirmed on 22.9.2018 by the Court of Additional Commissioner, Ujjain. The Revision Petition challenging the confiscation order was dismissed by the 3rd Additional Sessions Judge, Ujjain in the Criminal Revision No.211/2018. The Truck owner preferred a Petition under section 482 CrPC before the High Court of Madhya Pradesh, wherein, the High Court affirmed the orders passed by the forums below, while holding that no error has been committed by the District Magistrate in ordering the truck's confiscation, even after acquittal of the accused persons from the criminal case.

4. The necessary facts for the present appeal are that the appellant's truck, loaded with 17 cow progeny, was intercepted and the driver of the vehicle, Surendra and one other person, Nazir, sitting in the truck were

arrested. Thereafter, Crime No.102/2013 was registered at Police Station Kannad, District Agar Malwa for offences under Sections 4 and 9 of the 2004 Act read with Section 11 (d) of the *Prevention of Cruelty to Animals Act, 1960* (for short 'the 1960 Act'). The vehicle was seized and the accused persons, including the truck owner, were charge sheeted for the aforementioned offences.

5. The Judicial Magistrate, First Class, Agar Malwa, formulated, *inter alia*, the following question for consideration as the trial Court:

> "1.Whether on the above date, time and place of occurrence accused with motive of slaughter of 17 bulls or with knowledge that the bulls will be slaughtered, transported or aided in transportation or surrendered of the same for slaughter of the aforesaid bulls outside the territory of M.P. to Nasik?"

6. Under the judgment dated 28.11.2016 (Annexure P-1), on evaluation of evidence, the learned Judge concluded that the prosecution had failed to establish the primary ingredient of the charge, that the cow progeny

was being transported "*for the purpose of its slaughter*" and as such no offence was made out under the 2004 Act. Thus, the aforequoted question no.1, as formulated by the Court, was specifically held to be not proved. All four accused were accordingly acquitted of charges under the 1960 Act and also the charges under Section 4 read with Section 9 of the 2004 Act. The appellant, who was additionally charged under different sections of the Motor Vehicles Act, was also acquitted of those charges.

7. Subsequently, however, the District Magistrate on 09.08.2017 ordered confiscation of the appellant's truck, for violation of section 6 of the 2004 Act despite being apprised of the acquittal of the accused persons by the Trial Court. In the acquittal order, it was pertinently recorded that the prosecution witnesses including the Investigating Officer (IO) and the main witnesses PW1 and PW2 had not testified on involvement of the accused with the act of intended slaughtering of cattle. The veterinary doctor (PW4) commented tellingly

that the animals were healthy and fit for agricultural

purpose. The Trial Court also observed that the prosecution's case of proposed slaughter was not at all supported by the medical evidence on record.

8. Assailing the order of confiscation of the truck and the consequential rejection of the challenge to the District Magistrate's order, the learned counsel for the appellant, Mr. Pulkit Tare makes his submissions. He contends that confiscation of the vehicle is wholly unjustified when all four accused were acquitted of the criminal charges in the related proceedings. The appellant's counsel refers to the decision of the Coordinate Bench of the Madhya Pradesh High Court in *Nitesh* s/o *Dhannalal* vs. *State of M.P.*[1] wherein, in circumstances of confiscation of a vehicle, under the relevant provisions of the 2004 Act, the Court interpreted various provisions of the Act to hold that, unless the criminal offence is committed, seizure of the vehicle which was involved in the incident, would be unwarranted.

1 (2016) SCC Online MP 7622

9. On the other hand, Mr. Abhinav Shrivastava, learned counsel appearing for the State of Madhya Pradesh refers to various judgments to contend that proceedings towards confiscation of the offending vehicle and also criminal prosecution against the accused are parallelly maintainable. The State's counsel then refers to Section 13A of the 2004 Act to point out that the burden of proof is on the accused when he is being prosecuted under the Act. He further refers to the evidence of the Veterinary Assistant Surgeon, Arvind Mahajan (PW-4) who examined the animals to contend that there is adequate justification for confiscation of the truck, on the basis of the evidence of PW-4.

10. The High Court upheld the order of confiscation by the District Magistrate with the observation that separate proceedings before two Forums, one for prosecution of the accused charged with the offence and the other for confiscation of the vehicles/equipment used for the commission of the offence, are legally maintainable. According to the High Court, the jurisdiction under Section 482 of the Code of Criminal

Procedure for quashing of the confiscation proceedings initiated under the 2004 Act, is not available to the Court.

The impugned judgment , relied on a line of cases under the *Indian Forest Act, 1927,* particularly, *State of MP. Vs Smt. KalloBai*[2] wherein, it was clarified that confiscatory proceedings are independent of main criminal proceedings and its main purpose is to provide a deterrent mechanism and to stop further misuse of the subject vehicle.

In the same case, in the context of the confiscation proceedings under the Indian Forest Act, 1927 and the local legislation *i.e. Madhya Pradesh Van Upaj (Vyaapar Viniyam) Adhiniyam, 1969,* this Court observed that under Section 15-C of the Adhiniyam, a jurisdictional bar on Courts and Tribunals are provided. Commenting on the power of the Authority to order confiscation under Section 15 of the 1969 Adhiniyam, it was found;

2(2017) 14 SCC 502

> "that Section 15 gives independent power to the authority concerned to confiscate the articles, as mentioned thereunder, even before the guilt is completely established. This power can be exercised by the officer concerned if he is satisfied that the said objects were utilized during the commission of a forest offence."

According to the scheme of the legislation, it was also observed in *Kallo Bai* (supra) *that* the jurisdiction of the criminal courts, regarding disposal of property, are made subject to the jurisdiction of the Authorized Officer under the Act.

12. The learned Judge in the impugned judgment, also placed reliance on *State of M.P Vs. Uday Singh*[3], wherein it was held that the High Court erred in directing the Magistrate to release the seized vehicle in exercise of its inherent jurisdiction under Section 482 CrPC. Since the confiscation proceedings were initiated under Section 52(3) of the Forest Act, 1927 (as substituted by the MP Act 25 of 1983), further procedure was governed by the relevant provisions of the said act (and the M.P amendments to the Forest Act) and the jurisdiction of the criminal courts stood excluded.

3 (2020) 12 SCC 733

Further, the non-obstante clause in Section 52-C(1) gave overriding effect to the legislation. Resultantly, the powers vested in the magistrate under the CrPC were taken away. The relevant passage in the relied upon judgment reads as under:-

> 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 Session (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 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 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 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 CrPC was not available to the Magistrate, once the authorized officer initiated confiscation proceedings.

13. The above would show that the powers of seizure, confiscation and forfeiture of produce illegally removed from forest is vested exclusively in Authorized Officers. As such, once the confiscation proceedings are initiated under the provisions of the aforenoted legislation, the jurisdiction of criminal courts is ousted, since it is the authorized officer who is vested with power to pass orders for interim custody of vehicles and the Magistrate is kept away.

14. The aforenoted cases were cited in the impugned judgment to hold that the Court did not have jurisdiction under Section 482, CrPC to grant relief to the appellant. This in our view is unacceptable since the applicable provisions in the aforementioned cases are not pari materia to the provisions of the 2004 Act. Most significantly, the 2004 Act with which we are concerned here, does not have any non obstante clause as in the Section 52-C(1) of the Forest Act,1927 (as amended in relation to the State of Madhya Pradesh by

M.P Act 25 of 1983) or Section 15-C of the *Madhya*

Pradesh Van Upaj (Vyaapar Viniyam) Adhiniyam, 1969

which create bar on jurisdiction of the criminal courts. Returning to the present matter and the law that was invoked, we may gainfully notice that Section 11(4) of the 2004 Act, specifically applies the provisions of CrPC, in relation to search and seizure and Section 11 A(4) empowers the Appellate Authority to release the vehicle at interim stage itself. The Rules
5 and 6 of the *MP Govansh Vadh Pratishedh Rules, 2012* empower the police to seize vehicle, the cow progeny and beef in case of violation of Sections 4, 5, 6,6A and 6B of the 2004 Act, as per Section 100 of the CrPC. As is discernible, the provisions of CrPC are specifically made applicable in the 2004 Act and the 2012 Rules. Therefore, an erroneous conclusion was drawn on absence of power, to entertain the petition of the vehicle owner. In the context of the proceedings initiated under the *M.P. Prohibition of Cow Slaughter Act, 2004* and there being no bar to exercise of jurisdiction of Criminal Courts including the High Court, under Section 482 CrPC, the High Court in our

opinion was competent to entertain the petition under Section 482 CrPC.

15. We find support for the above view, from the ratio in the *State of M.P Vs. Madhukar Rao*[4], wherein this Court while adverting to the provisions of another legislation i.e. the *Wild Life (Protection) Act, 1972* opined that the power of the Magistrate to order interim release of confiscated vehicle under Section 451 CrPC, is not affected. The Court reasoned that withdrawal of the power of interim release conferred on the Authorities under Section 50(2), cannot be construed to mean a bar on the powers of the Magistrate under Section 451 of the Code of Criminal Procedure. It was next noted that a clear intention to the contrary can be found in the Act in Section 50(4) under which, any person detained, or things seized shall be taken before a Magistrate to be dealt with *according to law* (and not *according to the provisions of the Act*) .

4 2008 (14) SCC 624

16. Pertinently, *State of M.P Vs. Madhukar Rao*[5] affirmed the decision of the High Court in *Madhukar Rao v. State of MP*[6], wherein Justice D.M Dharmadhikari, writing for the Full Bench, opined that the provision of Section 39(1)(d) of the Wildlife (Protection) Act, 1972, providing for absolute vesting of seized property with State Government, without a finding by the Competent Court that the property was being used for the commission of an offence, runs afoul of the Constitutional provisions. It is succinctly observed in *Para 18,*

> *"18…* If the argument on behalf of the State is accepted a property seized on accusation would become the property of the State and can never be released even on the compounding of the offence. The provisions of Clause
> (d) of section 39 have to be reasonably and harmoniously construed with other provisions of the Act and the Code which together provide a detailed procedure for the trial of the offences. If, as contended on behalf of the State, seizure of property merely on accusation would make the property to be of the Government, it would have the result of depriving an accused of his property without proof of his guilt. On such interpretation Clause (d) of section 39(1) of the Act would suffer from the vice of unconstitutionality. The interpretation placed by the State would mean that a specified officer under the Act merely by seizure of property of an accused would deprive him of his property which he might be using for his trade, profession or occupation. This would be serious encroachment on the fundamental right of a citizen under Article 19(1)(g) of the Constitution to carry on his trade, occupation or business."

5 2008 (14) SCC 624
6 (2000) 1 MP LJ 289 (FB)

17. By reason of an order of confiscation, a person is deprived of the enjoyment of his property. Article 300A of the Constitution provides that no person shall be deprived of his property save by authority of law. Therefore, to deprive any person of their property, it is necessary for the State, inter-alia, to establish that the property was illegally obtained or is part of the proceeds of crime or the deprivation is warranted for public purpose or public interest.

18. At this stage, we may usefully refer to this Court's opinion in *State of W.B* vs. *Sujit Kumar* Rana[7]. Here it was emphasized on the need to maintain balance between statutes framed in public interest such as the Forest Act, 1927 (and the relevant insertions under W.B Act 22 of 1988) and the consequential proceedings, depriving a person of his property, arising therefrom. It was accordingly observed that *"commission of an offence"* is one of the requisite ingredients for passing an order of confiscation and an order of

7 (2004) 4 SCC 129

confiscation should not be passed automatically. The relevant passage is reproduced below:

> "26. An order of confiscation of forest produce in a proceeding under Section 59-A of the Act would not amount either to penalty or punishment. Such an order, however, can be passed only in the event a valid seizure is made and the authorized officer satisfies himself as regards ownership of the forest produce in the State as also commission of a forest offence. An order of confiscation is not to be passed automatically, and in terms of sub-section (3) of Section 59-A a discretionary power has been conferred upon the authorized officer in relation to a vehicle. Apart from the ingredients which are required to be proved in terms of sub- section (3) of Section 59-A by reason of the proviso appended to Section 59-B, a notice is also required to be issued to the owner of the vehicle and furthermore in terms of sub-section (2) thereof an opportunity has to be granted to the owner of the vehicle so as to enable him to show that the same has been used in carrying forest produce without his knowledge or connivance and by necessary implication precautions therefor have been taken."

19. Insofar as the submission of the State Counsel that the burden of proof is on the truck owner in the process of confiscation, we must observe that Section 13A of the 2004 Act, which shifts the burden of proof, is not applicable for the confiscation proceedings but for the process of prosecution. By virtue of Section 13A of the 2004 Act, the burden on the State authority to legally justify the confiscation order, cannot be shifted to the person facing the confiscation

proceeding. The contention to the contrary of the State's counsel, is accordingly rejected.

20. In the present case, the appellant's truck was confiscated on account of the criminal proceedings alone and therefore, under the applicable law, the vehicle cannot be withheld and then confiscated by the State, when the original proceedings have culminated into acquittal. It is also not the projected case that there is a likelihood that the appellant's truck will be used for committing similar offence.

21. It should be noted that the objective of the 2004 Act is punitive and deterrent in nature. Section 11 of the 2004 Act and Rule 5 of *M.P Govansh Vadh Pratishedh Rules, 2012,* allows for seizure and confiscation of vehicle, in case of violation of sections 4,5,6, 6A and 6B. The confiscation proceeding, before the District Magistrate, is different from criminal prosecution. However, both may run simultaneously, to facilitate speedy and effective adjudication with regard to

confiscation of the means used for committing the

offence. The District Magistrate has the power to independently adjudicate cases of violations under Sections 4, 5, 6, 6A and 6B of the 2004 Act and pass order of confiscation in case of violation. But in a case where the offender/accused are acquitted in the Criminal Prosecution, the judgment given in the Criminal Trial should be factored in by the District Magistrate while deciding the confiscation proceeding. In the present case, the order of acquittal was passed as evidence was missing to connect the accused with the charges. The confiscation of the appellant's truck when he is acquitted in the Criminal prosecution, amounts to arbitrary deprivation of his property and violates the right guaranteed to each person under Article 300A. Therefore, the circumstances here are compelling to conclude that the District Magistrate's order of Confiscation (ignoring the Trial Court's judgment of acquittal), is not only arbitrary but also inconsistent with the legal requirements.

22. In view of the foregoing, the confiscation order of the District Magistrate cannot be sustained and it is declared so accordingly. Consequently, the High Court's decision to the contrary is set aside. The appeal stands allowed with this order without any order on cost.

.....
.....J. [K.M. JOSEPH]

.....
.....J.
[HRISHIKESH ROY]

NEW DELHI MARCH
04, 2022