

Madhya Pradesh High Court

Mohd. Furkan vs The State Of Madhya Pradesh on 5 May, 2022

Author: Vishal Dhagat

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MCRC 40889/2021

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL DHAGAT

ON THE 5th OF MAY, 2022

MISC. CRIMINAL CASE No. 40889 of 2021

Between: -

MOHD. FURKAN S/O SHRI EZAZ , AGED ABOUT 33 YEARS,

OCCUPATION: BUSINESS. R/O 38/79 MOTIKUNJ LOHMANDI

AGRA UP. (UTTAR PRADESH)

.....PETITIONER

(BY SHRI QUAZI FAKHRUDDIN, ADVOCATE)

AND

THE STATE OF MADHYA PRADESH THROUGH

P.S. BADRI DISTT. SAGAR MP DISTRICT

SAGAR MP (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI YASH SONI, GOVERNMENT ADVOCATE)

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This application coming on for hearing this day, the court passed

the following:

ORDER

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 challenging order dated 6.7.2021 contained in Annexure P/1 passed in Criminal Revision No. 12/2021.

2. Brief facts of the case are that Police Station Badri District Sagar has seized vehicle bearing registration no.

RJ-11-GB-6535 and Cow Progeny for commission of offences under sections 4, 6, 9 of Gow Vansh Vadh Pratishedh Adhiniyam, Section 11(1) (1) (gha) Cruelty of Animals Act and under Section 125-E of the Motor Vehicle Act. After seizure of vehicle, petitioner has filed an application under Section 457 of the Code of Criminal Procedure for interim custody of vehicle. Trial Court by 3 MCRC 40889/2021 impugned order dated 22.3.2021 dismissed the application. Aggrieved by said order petitioner filed Criminal Revision no. 12/2021 before II Additional Sessions Judge Khurai District Sagar. Revisional Court held that proceeding for confiscation has started in criminal case. Charge sheet has been filed by police in absence of accused and he is absconding and did not appear before the Court of Magistrate in trial neither petitioner appeared before District Magistrate and has filed an objection regarding confiscation. In view of same, trial Court has dismissed the application for interim custody of vehicle and same has been affirmed in criminal revision.

3. Petitioner has challenged the impugned order on ground that he has filed documents of ownership of 4 MCRC 40889/2021 seized vehicle and no other person has claimed vehicle, therefore, as per settled law, vehicle ought to have released on supurdginama. Learned trial Court as well as Revisional Court had committed an error of law in rejecting the application for release of vehicle on superdginama. In view of order passed by Apex Court reported in AIR 2003 SC 638-Sunderbhai Ambalal Desai Vs. State of Gujarat and in case of Madhukar Rao S/o Malik Rao Vs. State of MP. and others reported in 2000(1) MPLJ 289.

4. Government Advocate for the State opposed the petition for release of vehicle on supurdginama. It is submitted by him that a well reasoned order has been passed by the Judicial Magistrate First Class and Revisional Court. Petitioner is absconding from law, 5 MCRC 40889/2021 therefore, he could not derive any benefit of releasing vehicle on supurdginama. There are chances that vehicle may be used again in crime. In view of same, prayer is made for dismissal of petition.

5. Heard learned counsel for the parties.

6. Relevant provisions of law for adjudicating the petition is quoted below:-

Sections 4, 5, 6, 6A, 11, 11A of Gow Vansh Pratishedh Adhiniyam and Sections 452 and 457 of the Code of Criminal Procedure are as under:-

4.Prohibition of slaughter of cow progeny. No person shall slaughter or cause to be slaughtered or offer or cause to be offered for slaughter of any cow progeny by any means.

5. Prohibition on possession and transport of beef. No. person shall have in his possession or shall transport beef of any cow progeny slaughtered in contravention of the provisions of this Act.

6. Prohibition on transport of cow for progeny slaughter.

No person including transporter shall transport or offer for transport or cause to be transported any cow progeny himself or 6 MCRC 40889/2021 by his agent, servant or by any other person acting in his behalf within the State or outside the State for the purpose of its slaughter in contravention of the provisions of this Act or with the knowledge that it will be or is likely to be so slaughtered. Prohibition of export of cow progeny and grant of permit. 6A. (1) No person including transporter shall export or cause to be exported any cow progeny himself or by his agent, servant or by any other person acting in his behalf from any place of the State to any place out side the State without permit as provided in sub-section(2).

(2)The Competent Authority may grant a permit within seven days on presenting application in this behalf, in such manner as may be prescribed for export of cow progeny from Madhya Pradesh for agricultural of dairy farming purposes or for participation in a cattle fair and like purposes except for the purpose of slaughter.

(3) Any person seeking permit under sub-section (2) aggrieved by an order of the Competent Authority may make an application within thirty days from the date of receipt of the order to the Divisional Commissioner, and the Divisional Commissioner may upon such application call for the examine the record of the case for the purpose of satisfying himself as to the correctness, legality or propriety of any order and may pass such order as it may deem just and proper and the order passed by the Divisional Commissioner shall be final and shall not be called in question in any civil court.

11. Power of entry, inspection, search and seizure. (1) For the purpose of enforcing the provisions of this Act, the Competent Authority of any person authorized by the Competent Authority in writing in this behalf shall have power to enter and inspect any premises within the local limits of his jurisdiction, where he has reason to believe that an offence under this Act has been, is being or is likely to be committed and shall take necessary action.

7 MCRC 40889/2021 (2) Every person in occupation of any such premises as is specified in sub-section (1) shall allow the Competent Authority or any person authorized by the Competent Authority in writing, such access to the premises as he may require for the aforesaid purpose, and shall answer any question put to him by the Competent Authority or the person authorized, as the case may be, to the best of his knowledge and belief. (3) Any police officer not below the rank of Head constable or any person authorized in this behalf by Competent Authority may, with a view to securing compliance of the provisions of Section 4, 5,6 A, and 6B or for satisfying himself that the provisions of the said sections have been complied with:

(a) stop, enter and search any vehicle used or intended to be used for the export of cow progeny or beef,

(b)seize or authorize the seizure of cow Progeny, in respect of which he suspects that any provision of Section 4,5,6, 6A and 6B has been, is being or is about to be contravened, along with the vehicle in which such cow progeny or beef are found and thereafter take or authorize the taking of all measures necessary for securing the production of the cow progeny and vehicle so seized, in a court and for their safe custody pending the trial. (4) The provision of Section 100 of the Code of Criminal

Procedure, 1973 (No. 2 of 1974) relating to search and seizure shall, so far as may be, apply to searches and seizures under this Section.

(5) In case of any violation of Section 4, 5, 6, 6A and 6B, the police shall be empowered to seize the vehicle, cow progeny and beef, and the District Magistrate shall confiscate such vehicles, cow progeny and beef in such manner as may be prescribed.

11A. Appeal against of order confiscation. 11A.(1) Any person aggrieved by an order of confiscation under sub-section (5) of Section 11 may, within thirty days of the order, or if fact of such order has not been communicated to 8 MCRC 40889/2021 him, within thirty days of date of knowledge of such order, prefer an appeal in writing with certified copy of order of confiscation, accompanied by such fee and payable in such manner as may be prescribed, to the Divisional Commissioner (hereinafter referred to as the Appellate Authority).

Explanation: The time requisite for obtaining certified copy or order of confiscation shall be excluded while computing period of thirty days referred to in this sub-section. (2) The Appellate Authority referred to in sub section (1) shall, on presentation of memorandum of appeal, issue a notice for hearing of appeal to the officer effecting seizure and to any other person who in the opinion of the Appellate Authority, is likely to be adversely affected by the order of confiscation, and call for the record of the case:

Provided that no formal notice of appeal need be issued to the appellant, officer effecting seizure and any other person likely to be adversely affected as aforesaid, who may be informed in any other manner of date of hearing of appeal by the Appellate Authority.

(3) The appellate Authority shall send intimation in writing of lodging of appeal to the District Collector. (4) The Appellate Authority may pass such orders of" nature for custody or disposal (if necessary) of the subject matter of confiscation as may appear to be just or proper in the circumstances of the case.

(5) The Appellate Authority, having regard to the nature of the case or the complexities involved, may permit parties to the appeal to be represented by their respective legal practitioners (6) On the date fixed for hearing of the appeal or on such date to which the hearing may be adjourned, the Appellate Authority shall pursue the record and hear the parties to the appeal if present in person, or through any agent duly authorized in writing or through a legal practitioner, and shall thereafter 9 MCRC 40889/2021 proceed to pass an order of confirmation, reversal or modification of order of confiscation:

Provided that before passing any final order the Appellate Authority may if it is considered necessary for proper decision of appeal make further enquiry itself or cause it to be made by the District Collector and may also allow parties to file affidavits for asserting or refuting any fact that may arise for consideration and may allow proof of facts by affidavits. (7) The Appellate Authority may also pass such orders of consequential nature, as it may deem necessary. (8) Copy of final order or of order of consequential nature shall be sent to District Collector for compliance or for passing

any appropriate order in conformity with the order of Appellate Authority.

Rules 5 and 6 of M.P. Govansh Vadh Pratishedh Rules, 2012 are as under:-

5. Confiscation by District Magistrate:-

In case of any violation of section 4, 6, 6A, and 6B, the police shall be empowered to seize the vehicle, COW progeny and beef, and the District Magistrate shall confiscate such vehicles, cow progeny and beef as per the provisions of section 100 of criminal procedure code, 1973 (No.2 of 1974) in following manner:-

(i) He shall take possession of the vehicle;

(ii) He shall intimate the Veterinary Department to cow- progeny and beef.

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(iii) The beef of cow-progeny shall be disposed of by the department by such procedure as he deems fit.

6. Manner of Appeal.-

Any person aggrieved by an order of confiscation under sub section (5) of section 11 of the Act, may prefer an appeal in writing to the Divisional Commissioner within thirty days of the date of knowledge of such order. Every appeal shall be made under sub-section (1) of Section 11-A of the Act.

Sections 452, 457 of the Code of Criminal Procedure are as under:-

Section 452: Order for disposal of property at conclusion of trial.

(1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub- section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub- section (1) is modified or set aside on appeal or revision.

11 MCRC 40889/2021 (3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459. (4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of subsection (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

457. Procedure by police upon seizure of property.

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may 12 MCRC 40889/2021 have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

7. Criminal Courts have power to order for custody and disposal of property pending trial when property is produced before the Criminal Court during enquiry or trial under Section 451 of the Cr.P.C. Under the said section, when property is produced before Criminal Court then interim custody is granted. Criminal Court during conclusion of trial under Section 450 of the Cr.P.C. has power to pass order for final disposal of property. Final disposal of property includes destruction of property, confiscation of property or delivery of property to any person entitled possession thereof.

Magistrate has power to grant interim custody of property under Section 457 of the Cr.P.C. when property is not produced before Criminal Court during enquiry or trial and Magistrate can pass order for delivery of such property to 13 MCRC 40889/2021 person entitled to be in possession thereof. Power of Magistrate for granting custody of property under Sections 452 and 457 of the Cr.P.C touches upon the right of person to have possession of the property. However, order of interim custody of property under Section 451 does not touches upon the right of person to be in possession of property. However, Magistrate passes an order of interim custody of vehicle during trial then he has to pass final order for disposal of property at the time of conclusion of trial.

Criminal Courts, which do not have power to pass order for final disposal of property and also cannot have power to pass order for interim custody of property. Under Gow Vansh Pratishedh Adhiniyam and Rules power to pass order for confiscation of property is vested with District Magistrate.

Since power to pass order regarding confiscation of property is with District Magistrate, therefore, Magistrate cannot have power to release vehicle on interim custody as he will have 14 MCRC 40889/2021 no power for final disposal of that property at the conclusion of trial. In Gow Vansh Pratishedh Adhiniyam, aggrieved party can file objection before District Magistrate at the time of confiscation of property and he shall be given right of hearing if order of confiscation is passed. Section 11-A gives statutory right of appeal to aggrieved person against order of confiscation. Further Section 11-A sub section 4 gives power to appellate authority to pass order for interim custody or disposal of property under confiscation.

Legislature has intentionally not given any right to District Magistrate for passing an order of interim custody of vehicle and said right has been given to appellate authority after final order of confiscation has been passed.

8. In view of same, Magistrate do not have any power under Sections 451, 452 and 457 of Cr. P. C. to order interim custody or final disposal of property in question. Reliance 15 MCRC 40889/2021 cannot be placed on order passed by the Apex Court in case of Madhukar Rao Vs. State of M.P. and others (supra) as said order is in respect of forest offences.

9. In view of the aforesaid, MCr.C. filed by the petitioner is dismissed.

(VISHAL DHAGAT) JUDGE DUBEY/ Digitally signed by ARVIND KUMAR DUBEY Date: 2022.05.06 11:53:25 +05'30'