

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**Cr.M.P. No. 570 of 2021**

Raj Kumar Yadav, aged about 51 years, S/o Late Dashrath Yadav, resident of 97, G.C. Road, Titagarh, P.O. Titagarh, P.S. Titagarh, Distt. North 24 Parganas (West Bengal), A/P Resident of Village Suhiyari, P.O. Suhiyari, P.S. Bhojpur, Distt. Bhojpur (Bihar) **... Petitioner**

**-Versus-**

The State of Jharkhand

**... Opposite Party**

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**CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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For the Petitioner : Mr. Prabhat Kumar Sinha, Advocate  
 For the Opposite Party-State : Mr. Prabir Kumar Chatterjee, Spl.P.P.

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07/27.09.2021. Heard Mr. Prabhat Kumar Sinha, learned counsel for the petitioner and Mr. Prabir Kumar Chatterjee, learned Spl. P.P. for the opposite party-State.

2. This criminal miscellaneous petition has been taken through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard on merit.

3. The petitioner has filed this petition for quashing the order dated 18.01.2021 in Criminal Revision No.57 of 2020 passed by the learned Principal Sessions Judge, Giridih in connection with Dumri P.S. Case No.120 of 2019, whereby, the prayer for release of vehicle has been rejected by the revisional court and the order of the trial court has been affirmed.

4. The story of the prosecution is that the informant namely Ashok Prasad O/C Dumri Police Station has narrated in his written complaint that on 28.09.2019 at around 12:15 a.m. superior police officers got secret information that Truck No. WB-23C-8093 loaded with cattle is coming from

Bagodar side. The patrolling party of Dumri P.S. was ordered to come back to the police station at once. Further the information was entered into Station Diary Entry (S.D.E.) and then along with Gasti parties proceeded for verification of the information and after reaching village Kulgo, waited for the said vehicle. Further at around 03:05 a.m., the aforesaid vehicle was coming, which was stopped by the patrolling party but the driver fled away towards hilly area after seeing the police. Since it was night hence no independent persons were found therefore in presence of the raiding party, the vehicle was searched in which 16 cows and 4 calf were loaded and accordingly seized and seizure list was prepared.

5. Mr. Prabhat Kumar Sinha, learned counsel appearing for the petitioner submits that there is no provision of confiscation under Jharkhand Bovine Animal Prohibition of Slaughtering Act, 2005. He further 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 also submits that in view of Section 12(3) that will happen after once the trial comes to the conclusion of conviction of charged accused. He further submits that vehicle in question 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 upon the case of **Mirza Dildar Beg & Others** reported in **2014 SCC OnLine Jhar 55**. He further relied upon the case of **Md. Reyazuddin Versus The State of Jharkhand** reported in **2014 SCC OnLine Jhar 985**. He further relied upon Cr. Rev. No.1407 of 2016 in the case of **Raju Prasad Keshri Versus The State of Jharkhand**.

6. Per contra, Mr. Prabir Kumar Chatterjee, learned Spl.P.P. for the State submits that the vehicle in question was seized under Sections 4(A) and 4(B) and Sections 12(i) and 12(ii) of Jharkhand Bovine Animal Prohibition of Slaughtering Act, 2005. He further 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 the case of ***Nawab Sher Khan Versus State of Jharkhand***. He further submits that the Hon'ble Supreme Court has held in the case of ***State of Madhya Pradesh Versus Uday Singh with analogous cases*** reported in ***(2020) 12 SCC 733*** that High Court could not have directed the release of such property in exercise of power under Section 482 of Cr.P.C.

7. On perusal of provision of Jharkhand Bovine Animal Prohibition of Slaughtering 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."*

8. 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.

9. 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 the case of ***Sunderbhai Ambalal Desai Versus State of Gujarat*** reported in **(2002) 10 SCC 283**. Paragraphs 5 and 17 of the judgment are quoted herein below:-

*"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.*

*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." In view of the settled law the detention of the 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-pliance of the commercial vehicle.*

*In the surrounding facts and circumstances the trial Court is directed to grant interim custody of the pick-up van bearing Registration No. BR. 01 GC-4103 by ordering it to be released*

*in favour of the petitioner on his giving an undertaking on the following terms and conditions:-*

*(i) Petitioner Md. Reyazuddin shall furnish an indemnity bond of Rs. Three Lacs Fifty Thousand (Rs. 3.5. Lacs) with two sureties.*

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

*(iii) that 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 Trial Court.*

*The Trial Court is at liberty to impose any other terms and conditions which the trial Court deems fit and proper.*

*With the said direction the impugned order dated 16.01.2014, passed by learned Judicial Magistrate, 1st Class, Gumla in Raidih P.S. Case No. 67 of 2013, corresponding to G.R. No. 1021 of 2013, is, hereby, set aside.*

*Let a copy of this order be also sent to the Superintendent of Police of Gumla who shall verify the provision of Section 11(1) (v) of Animal Cruelty Act and direct the concerned Investigating Officer to bring on record the said provision in the Court below.*

*In the result the application hereby allowed."*

10. So far the judgment relied by Mr. Prabir Kumar Chatterjee, learned Spl.P.P. for the State in the case of State of Madhya Pradesh Versus Uday Singh (supra) is concerned, in that case Hon'ble Supreme Court was considering the Forest Act wherein confiscation provision is there and that is why Hon'ble Supreme Court held that High Court should not interfere under Section 482 Cr.P.C. That case is not helping the petitioner. The judgment relied by Mr. Prabir Kumar Chatterjee, learned Spl.P.P. for the State in the case of Nawab Sher Khan Versus State of Jharkhand (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 Slaughtering Act, 2005, it will be deemed that confiscation has been started.

11. 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.

12. 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.

13. The Trial Court is directed to grant interim custody of vehicle bearing Registration No. WB-23C-8093 by ordering it to be released in favour of the petitioner on his giving an undertaking on the following terms and conditions:-

(i) Petitioner shall furnish an indemnity bond of Rs. Three Lacs Fifty Thousand (Rs. 3.5. Lacs) with two sureties.

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

(iii) that 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 Trial Court.

14. The Trial Court is at liberty to impose any other terms and conditions which the trial Court deems fit and proper.

15. With the aforesaid directions, the impugned order dated 18.01.2021 passed by the learned Principal Sessions Judge, Giridih in connection with Dumri P.S. Case No.120 of 2019 is, hereby, quashed.

16. Accordingly, this criminal miscellaneous petition stands allowed and disposed of.

**(Sanjay Kumar Dwivedi, J.)**

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