

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 956 of 2018

Md. Jahid Qureshi @ Md. Zahid Auraishi @ Bablu Quraishi, aged about 35 years, son of Md. Abbas Qureshi @ Abbash Qureshi, resident of Bazarkar, P.O.- & P.S.-Barachatti, District-Gaya, Bihar.

..... ... Petitioner

Versus

The State of Jharkhand

..... ... Opposite Party

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Lalan Kumar Singh, Advocate
For the State : Mr. Santosh Kumar Shukla, A.P.P.

09/ 30.09.2021 Heard Mr. Lalan Kumar Singh, learned counsel appearing for the petitioner and Mr. Santosh Kumar Shukla, learned A.P.P for the State.

2. This petition has been heard 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.

3. This criminal miscellaneous petition has been filed for quashing of the order dated 28.07.2017 passed by the learned Sessions Judge, Hazaribag, in Cr. Rev. No. 83 of 2017 and also the order dated 29.6.2017 passed by the learned Judicial Magistrate, 1st Class, Hazaribag, in Barhi P.S. Case No. 314 of 2016 and also for an appropriate order for release of the vehicle, i.e. Tata-407, Pick-Up Van having registration No. BR-02-AA-0866 in favour of the petitioner.

4. The prosecution case as alleged in the FIR is that on ASI of Barhi P.S. namely Sanjay Kumar, on night patrolling duty got a tip off at about 2.30 A.M. on 21.11.2016 to the effect that one Tata 407 vehicle bearing registration No. BR-02-AA-0866 loaded with beef coming from Chauparan side was heading towards Kolkata. On receipt of such information, the informant stationed himself with a police party on G.T. Road, keeping a vigilant eye on the vehicles coming from Chauparan side. At about 3.00 A.M. a Tata 407 was sighted coming from Chauparan side. It was intercepted by the police party. The driver and khalasi of the said vehicle tried to flee away but they were nabbed. On interrogation, the arrested driver and khalasi disclosed their names and addresses. On the vehicle being checked, about one and half tones of beef were recovered. On demand the arrested persons did not produce any document in respect of the meat found loaded on the vehicle.

It is said that the vehicle loaded with raw-meat was seized in presence of two witnesses who were none but members of the police Patrolling party. It is in this back drop that the instant case has been registered against the vehicle owner (the petitioner herein) and others for the offence under Section 429 of the Indian Penal Code and Sections 6, 7, 12(1) and 12(3) of the Jharkhand Bovine Animals (Prohibition of Slaughter) Act, 2005.

5. Mr. Lalan Kumar Singh, learned counsel appearing for the petitioner submits that there is no provision of confiscation under Jharkhand Bovine Animal Prohibition of Slaughtering 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 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 vehicles in questions are 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* reported in **2014 SCC OnLine Jhar 55**. He further relied the case of *Md. Reyazuddin Versus The State of Jharkhand* reported in **2014 SCC OnLine Jhar 985**. He further relied on **Cr. Rev. No.1407 of 2016** in the case of *Raju Prasad Keshri Versus The State of Jharkhand*.

6. Per contra, Santosh Kumar Shukla, learned A.P.P. appearing for the State submits that the vehicles in question were 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 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 2015** decided on 22.01.2016 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**. Para 5 and 17 of the judgment is 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.

"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."

10. So far the judgment relied by Mr. Santosh Kumar Shukla, learned counsel 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. Judgment relied by Mr. Santosh Kumar Shukla, learned counsel 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. BR-02-AA-0866 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 Hazaribag.*
- (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 direction, the impugned order dated 28.07.2017 passed by the learned Sessions Judge, Hazaribag, in Cr. Rev. No. 83 of 2017 and also the order dated 29.6.2017 passed by the learned Judicial Magistrate, 1st Class, Hazaribag, in Barhi P.S. Case No. 314 of 2016, are hereby, quashed.

16. With the aforesaid observations and directions, this criminal miscellaneous petition stands disposed of.

(Sanjay Kumar Dwivedi, J.)

Amitesh/-