

## Section - 51 Penalties

**Wildlife – seizure – Section 51 of Wild Life (Protection) Act, 1972 and Section 451 of Criminal Procedure Code, 1973 - whether Judicial Magistrate before whom vehicle seized under Act of 1972 produced competent to give interim custody of same to registered owner – vehicle does not vest in Government on its seizure unless there is Order of Court under Section 51 (2) – Magistrate empowered under Section 451 to deal with vehicle produced before him – petitioner directed to move Magistrate by filing petition under Section 451.**

**Mohammed Ismail**

**Vs.**

**State of Kerala**

K. Balakrishnan Nair, J.

W.P. (C) No. 19669 of 2004

Decided On: 19.07.2004

### **JUDGMENT**

1. The point to be decided in this Writ Petition is whether the Judicial Magistrate, before whom a vehicle seized under the provisions of the Wild Life (Protection) Act, 1972, is produced, is competent to give interim custody of the same to the registered owner. The brief facts of the case, as stated by the petitioner, are the following:

2. The petitioner is the owner of a lorry bearing Registration No. KL5/F-7051. The driver of the said vehicle was taken into custody by the Forest Officials on 16.6.2004. His driver confessed that on 13.6.2004, the said lorry was used for transporting forest timber worth Rs. 75,000/-. On the basis of the said confession, the petitioner's vehicle was taken into custody under Ext.P2 mahazar. As per Ext.P2, the value of the logs transported is Rs. 2,50,000/- and the value of the lorry is Rs. 3 lakhs. The petitioner submits, the goods and the lorry were seized under Section 52(1) of the Forest Act, for action under Section 61A of the said Act. The petitioner further submits that his driver was specifically instructed not to transport any contraband goods. The petitioner was not aware of the seizure of the vehicle. On finding that the vehicle was missing, he filed a petition before the Sub Inspector of Police, Kanjirappally, which would be evident from Ext.P5. Later, on finding that the lorry was with the 2nd respondent, he filed Ext.P6 representation before the said respondent and also Ext.P7 representation before the 1st respondent for release of the lorry. Thereafter, this Writ Petition is filed, seeking appropriate reliefs.

3. The 2nd respondent has filed a counter affidavit, in which it is submitted that the vehicle has been seized under the provisions of the Wild Life (Protection) Act, 1972 and therefore, it has become the property of the Government. It is also submitted that neither the officers of the Forest Department nor the concerned Criminal Court, are competent to release the vehicle, in view of the deletion of Sub-section (2) of Section 50 of the Wild Life (Protection) Act, 1972, empowering the concerned Magistrate to release the goods or the vehicles seized. Therefore, it is submitted, once the vehicle is seized, it becomes the property of the Government and the same cannot be released. It is further submitted that the timber logs transported, using the petitioner's vehicle, were cut and removed from the Idukki Wild Life Sanctuary and therefore, the vehicle and the timber logs have to be dealt with under the provisions of the Wild Life (Protection) Act, 1972.

4. I heard the learned Counsel on both sides. Section 39(d) of the Wild Life (Protection) Act, 1972 provides, inter alia, that any vehicle used for committing an offence under the Act and seized, shall be the property of the Government. The said provision is extracted below for convenient reference:-

“39. Wild animals etc., to be Government property

(1) Every—

(a) .....

(b) .....

(c) .....

(d) vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of the Act, shall be the property of the Government.....”.

The provision for seizure is contained in Section 50(1)(c) of the Act, which reads as follows:

50. Power of entry, search, arrest and detention (1). — Notwithstanding anything contained in any other law for the time being in force, the Director or any other officer authorised by him in that behalf or the Chief Wild Life Warden or the authorised 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 -

(a) .....

(b) .....

(c) seize any captive animal, wild animal, animal article, meat, trophy or uncured trophy or any specified plant or part or 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, vessel 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:

The said clause enables seizure of the vehicle and also the arrest of the persons, provided, the competent Officer authorised under Section 50, has reasonable grounds for believing that such person has committed an offence under the provisions of the Act. Sub-section (4) of Section 50 provides that any person detained under Sub-section (1) shall, forthwith, be taken to a Magistrate to be dealt with in accordance with law under intimation to the Chief Wild Life Warden or the Officer authorised by him in this regard. The said provision reads as follows:—

“Any person detained, or things seized under the foregoing power, shall forthwith be taken before a Magistrate to be dealt with according to law”.

Section 51 (2) provides that upon conviction of a person under the Act, the Court, trying the offence, may order, inter alia, that the vehicle used for the commission of the offence shall be forfeited to the State Government. So, the vehicle will become the property of the Government, only on the order of the competent Magistrate under Section 51(2).

5. In this case, the vehicle was seized under Section 50(1)(c), as stated earlier, on the satisfaction of the concerned Officer that reasonable grounds existed for believing that a person has committed an offence under the Act, using the vehicle. If the property is to vest in the Government absolutely, on being seized, on the basis of the belief entertained by the concerned Officer, the said provision cannot stand scrutiny, in the light of Article 14 of the Constitution of India. Such a provision will run counter to the basic principles of Rule of law. The Apex Court in “Indian Handicrafts Emporium v. Union of India”, 2003 (10) SBR 360, which was a case under the Wild Life (Protection) Act, has held as follows:

“The question as to whether an offence under the Act has been committed or not, at that stage, cannot be determined. Such a determination further more cannot be left for adjudication at the hands of the executive authority. As and when a seizure is made and the trader is prosecuted for alleged commission of an offence having regard to Sub-section (7) of Section 49-C of the Act; adjudication therefore must be made by a competent Court of law having jurisdiction in this behalf. Before a person is convicted, a Court has to arrive at the finding that the accused has committed an offence wherefor a full-fledged criminal trial would be necessary. In the absence of such criminal trial and offence having been found committed, Section 39 may not have any application. In that view of the matter, it is evident that the properties do not stand vested in the Government in terms thereof”.

This decision also fully supports the view that the vehicle will not vest in the Government on its seizure, unless there is an order of the Court under Section 51(2).

6. Sub-section (5) of Section 51 provides, inter alia, that Section 360 of the Cr.P.C. will not apply to the trial of offences under the provisions of the Wild Life (Protection) Act, 1972. The said provision reads as follows:—

“Nothing contained in Section 360 of the Code of Criminal Procedure, 1973 (2 of 1974) or in the Probation of Offenders Act, 1958 (2 of 1958) shall apply to a person convicted of an offence with respect to hunting in a sanctuary or a National Park or of an offence against any provision of Chapter VA unless such person is under eighteen years of age”.

That means, by necessary implication, other provisions will apply. Section 4(2) of the Cr.P.C. also will support this view. Therefore, obviously, Section 451 will also be applicable to the trial of offences under the Act. But, the learned Special Government Pleader pointed out that Sub-section (2) of Section 50, which enabled the Magistrate to release the vehicle pending trial, has been deleted by Act 44 of 1991. Therefore, by necessary implication, it has to be held that the learned Magistrate is not competent to release the vehicle, it is submitted. Reliance is placed on Ext.R2(a) Judgment of the Madhya Pradesh High Court, to support this submission. But, by Act 44 of 1991, while Sub-section (2) of Section 50 was deleted, Sub-section (5) of Section 51 was added, providing, inter alia, that the provisions of the Cr.P.C., except Section 360, will apply. Apparently, Sub-section (2) of Section 50 was deleted in view of the introduction of Sub-section (5) to Section 51, Therefore, the contention of the learned Special Government Pleader that the Magistrate has no power under Section 451 of the Cr.P.C. to deal with the vehicle produced before him, cannot be accepted. The decision of the Madhya Pradesh High Court does not lay down the correct legal position.

7. In view of the above, the 2nd respondent is directed to produce the vehicle before the competent Magistrate, if so far, the same has not been produced. Thereafter, the petitioner may move the learned Magistrate by filing a petition under Section 451. In that event, the learned Magistrate will consider and dispose of the same expeditiously.

The Writ Petition is disposed of as above.