Supreme Court of India
State Of M.P. & Ors vs Madhukar Rao on 9 January, 2008
Author: A Alam
Bench: H.K.Sema, Aftab Alam

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                CASE NO.:
Appeal (civil)  5196 of 2001

PETITIONER:
State of M.P. & Ors.

RESPONDENT:
Madhukar Rao

DATE OF JUDGMENT: 09/01/2008

BENCH:
H.K.Sema & Aftab Alam

JUDGMENT:
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J U D G M E N T W I T H C.A.Nos.5197, 5198, 5199, 5200 of 2001, SLP) Nos.2095 and 8024 of 2002 and Criminal Appeal No.487 of 2006 AFTAB ALAM,J.

This judgment will dispose of the four appeals in all of which the same question arises for consideration. The question is whether a vehicle or vessel etc. seized under Section 50(1)(c) of the Wild Life (Protection) Act, 1972 (hereinafter referred to as the Act ) is put beyond the power of the Magistrate to direct its release during the pendency of trial in exercise of powers under Section 451 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code ). On behalf of the appellant, the State of Madhya Pradesh, it is strongly contended that the answer to the question would be only in the affirmative. The contention appears to us to be ex facie untenable but in order to examine the stand of the State Government it would be necessary to state the facts and circumstances in which the question arises and to take note of the relevant provisions of law in light of which it is to be answered.

The facts of the case are taken from Civil Appeal No.5199 of 2001, the State of Madhya Pradesh vs. Madhukar Rao, which was the leading case before the High Court. On March 12, 1997 at about 3.30 a.m., in course of checking a Sub-Inspector of Excise found a Tata Sumo vehicle, bearing Registration No.MH.31-H/6919, carrying 206 kgs. of antlers. The vehicle was owned by Madhukar Rao, the respondent, but he was not in it at the time of checking. The Excise Sub- Inspector informed the officers of the Forest Department who registered a case being Offence No.6527/97 under Sections 39, 42, 43, 44, 49(Kha) and 51(Kha) of the Act. The four persons occupying the vehicle were arrested and the vehicle and the antlers were seized under Section 50(1)(c) of the Act. The Judicial Magistrate, Raipur, was duly informed about the institution of the case on March 13, 1997.

The respondent, being the owner of the vehicle, moved the Judicial Magistrate, First Class, Raipur on May 12, 1997 for its release on Supurdnama. On behalf of the respondent it was stated that he

was not an accused in the case and he had no concern with the commission of any offences. It was further stated that his neighbour Shri Lohiya, one of the accused in the case, had borrowed the vehicle on the pretext of going to see his ailing father. The Magistrate allowed the petition and directed for release of the vehicle on Supurdnama by order, dated May 12, 1997.

Against the order of the Magistrate, the State Government filed a revision before the Sessions Judge, Raipur. In the revision, it was stated that the Magistrate had erred in allowing the release of the vehicle in disregard of Section 39(d) of the Act in terms of which the seized vehicle became the property of the Government and hence, the court had no power to release it on Supurdnama. It was further contended that the power of release under Section 451 of the Code could be exercised only in respect of vehicles seized by a police officer. The Sessions Judge by order, dated June 5, 1997 allowed the revision, relying upon a Bench decision of the Gwalior Bench of Madhya Pradesh High Court in L.P.A.No.152 of 1996. (Here it is stated on behalf of the State that the S.L.P. filed against the order in the L.P.A. was dismissed by this Court in limine).

After the revision was allowed and the order of release passed by the Magistrate was set aside, the Wild Life Warden and Divisional Forest Officer, Raipur passed an order on June 16, 1997 declaring the seized vehicle as Government property in terms of Section 39(d) of the Act.

The respondent then went to the High Court at Jabalpur, in Writ Petition No.4421 of 1997, challenging the decision of the Sessions Judge and seeking a direction for release of the vehicle on Supurdnama as ordered by the Magistrate. The case of the present respondent along with three other cases (giving rise to the three other appeals in this batch) was finally heard by a full bench. Dharmadhikari,J. (as His Lordship then was) who authored the full bench judgment held and found that the Magistrate s power to release a vehicle during the pendency of trial was not, in any way, affected by the legislative changes in the Act relied upon by the State and in appropriate cases it was fully open to the Magistrate to pass an order of interim release of a seized vehicle. The three other cases were also disposed of following the Full Bench decision in Madhukar s case.

The State is in appeal against the order passed by the High Court.

On behalf of the State, it is contended that after the amendments made in Section 50 and Section 39(1)(d) of the Act w.e.f. October 2, 1991 by Act 44 of 1991 there was no way a vehicle seized for violation of the Act could be released. The amendments in Section 50 took away the power from the Assistant Director of Wild Life Preservation or Wild Life Warden (or an officer superior to them) and the Magistrate under the Code, in any event, had no such power. Moreover, the amendment of Section 39(1)(d) of the Act made any interim release of the vehicle further impossible.

In order to appreciate the submissions made on behalf of the State it would be necessary to examine the relevant provisions of law. Chapter VI of the Act contains provisions dealing with the prevention and detection of offences. The chapter begins with Section 50 that gives to the specificied officers the powers of entry, search, arrest and detention. It is a long section having as many as nine sub-sections. Sub-section (1) which is sub-divided into three clauses is as follows : 0. 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 authorized by him in this behalf or the Chief Wild 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) require any such person to produce for inspection any captive animal, wild animal, animal article, meat, [trophy, uncured trophy, specified plant or part or derivative thereof] in his control, custody or possession, or any licence, permit or other document granted to him or required to be kept by him under the provisions of this Act;

(b) stop any vehicle or vessel in order to conduct search or inquiry or enter upon and search any premises, land, vehicle or vessel, in the occupation of such person, and open and search any baggage or other things in the possession;

(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.

Provided that where a fisherman, residing within ten kilometers of a sanctuary or National Park, inadvertently enters on a boat, not used for commercial fishing, in the territorial waters in that sanctuary or National Park, a fishing tackle or net on such boat shall not be seized. Before the Act was subjected to a large number of amendments with effect from October 2, 1991, Section 50 had sub-section (2) which was as follows :

(2) Any officer of rank not inferior to that of an Assistant Director of Wild Life preservation or Wild Life Warden, who, or whose subordinate has seized any trap, tool, vehicle, vessel or weapon under clause (c) of sub-section (1), may release the same on the execution by the owner thereof of bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made. The Amendment Act 44 of 1991 deleted sub-section (2) and inserted in its place sub-section (3-A) which is as follows :
(3-A). Any officer of a rank not inferior to that of an Assistant Director of Wild Life Preservation of [as Assistant Conservator of Forests], who, or whose subordinate, has seized any captive animal or wild animal under clause (c) of sub-section (1) may give the same for custody on the execution by any person of a bond for the production of such animal if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made. At the same time, amendments were made in Section 39(1)(d) after which it reads as follows :

9. Wild animals, etc., to be Government property (1) Every

(a) xxx xxx xxx xxx

(b) xxx xxx xxx xxx

(c) xxx xxx xxx xxx

(d) vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act, shall be the property of the State Government, and, where such animal is hunted in a sanctuary or National Park declared by the Central Government, such animal or any animal article, trophy, uncured trophy or meat [derived from such animal, or any vehicle, vessel, weapon, trap or tool used in such hunting] shall be the property of the Central Government. Ms.Vibha Datta Makhija, learned counsel appearing for the State of Madhya Pradesh referred in detail to various sub- sections of Section 50. She also referred to Section 51 laying down the penalties for offences committed under the Act, Section 53 dealing with the punishment for wrongful seizure and Section 54 dealing with the power to compound offences. Learned counsel submitted that prior to October 2, 1991, while sub-section (2) of Section 50 was in existence, the specified officers were empowered to release any trap, tool, vehicle, vessel or weapon seized under clause (c) of sub-section (1) in connection with any offence under the Act. But the provision was deleted and was substituted by sub-section (3-A) that limited the power of release only in regard to any captive animal or wild animal. The legislative intent was thus clear that no release was permissible of any article other than a captive animal or wild animal that could be given in the custody of any person on execution of a bond.

Learned counsel submitted that Section 50 of the Act provided a complete and comprehensive scheme in matters of entry, search, arrest and detention for prevention and detection of offence under the Act and excluded the application of any other Act, including the Code, in the matter. She maintained that at no time it was open to the Magistrate to direct for interim release of a vehicle seized under Section 50(1)(c) of the Act. Previously officers of certain higher ranks had the power to release the seized vehicle but after deletion of sub-section (2) the power was taken away from the departmental officers as well and hence, a vehicle seized for commission of an offence under the Act could no longer be released on interim basis. In support of the submission that Section 50 provided a complete Code she also referred to Sections 51 and 53 of the Act. She submitted that the punishment for wrongful seizure too was provided under the Act itself and hence, the seizure would not attract the provisions of any other law, including the Code. In support of the submission she relied upon the decision of this Court in State of Karnataka vs. K.A.Kunchindammed [2002 (9) SCC 90]. She particularly relied upon paragraph 23 of the decision.

We are unable to accept the submissions. To contend that the use of a vehicle in the commission of an offence under the Act, without anything else would bar its interim release appears to us to be quite unreasonable. There may be a case where a vehicle was undeniably used for commission of an offence under the Act but the vehicle s owner is in a position to show that it was used for committing the offence only after it was stolen from his possession. In that situation, we are unable to see why the vehicle should not be released in the owner s favour during the pendency of the trial.

We are also unable to accept the submission that Section 50 and the other provisions in Chapter VI of the Act exclude the application of any provisions of the Code. It is indeed true that Section 50 of the Act has several provisions especially aimed at prevention and detection of offences under the Act. For example, it confers powers of entry, search, arrest and detention on Wild Life and Forest Officers besides police officers who are normally entrusted with the responsibility of investigation and detection of offences; further sub-section (4) of Section 51 expressly excludes application of Section 360 of the Code and the provisions of Probation of Offenders Act to persons eighteen years or above in age. But it does not mean that Section 50 in itself or taken along with the other provisions under Chapter VI constitutes a self-contained mechanism so as to exclude every other provision of the Code. This position becomes further clear from sub-section (4) of Section 50 that requires that any person detained, or things seized should forthwith be taken before a Magistrate. Sub-section (4) of Section 50 reads as follows :

o(4). Any person detained, or things seized under the foregoing power, shall forthwith be taken before a Magistrate to be dealt with according to law [under intimation to the Chief Wild Life Warden or the officer authorized by him in this regard]. It has to be noted here that the expression used in the sub- section is according to law and not according to the provisions of the Act . The expression according to law undoubtedly widens the scope and plainly indicates the application of the provisions of the Code.

We find that the full bench of the High Court has correctly taken the view that the deletion of sub-section (2) and its replacement by sub-section (3-A) in Section 50 of the Act had no effect on the powers of the Magistrate to release the seized vehicle during the pendency of trial under the provisions of the Code. The effect of deletion of sub-section (2) and its replacement by sub-section (3-A) may be summed up thus: as long as, sub-section (2) of Section 50 was on the Statute Book the Magistrate would not entertain a prayer for interim release of a seized vehicle etc. until an application for release was made before the departmental authorities as provided in that sub-section. Further, in case the prayer for interim release was rejected by the departmental authority the findings or observations made in his order would receive due consideration and would carry a lot of weight before the Magistrate while considering the prayer for interim release of the vehicle. But now that sub-section (2) of Section 50 stands deleted, an aggrieved person has no option but to approach the Magistrate directly for interim release of the seized vehicle. We are also of the view that the decision in Kunchindammed is of no help to the State in the present appeals. Paragraph 23 of the decision apparently seems to support the appellant s contention but we find it difficult to apply it in the facts of the present case. The decision in Kunchindammed was rendered on the provisions of the Karnataka Forest Act, 1963. In that case, an order of confiscation of the vehicle was passed by the competent authority and the confiscation order had attained finality. The present case arises under the Wild Life Protection Act and the facts are materially different.

The decision of this Court closer to the issue under consideration may be found in Moti Lal vs. Central Bureau of Investigation & Anr. [2002 (4) SCC 713]. In that case an offence committed under the Act was handed over for investigation to the Central Bureau of Investigation and the action was assailed exactly on the plea that the Wild Life Act was a special law and it contained comprehensive provisions for investigation, inquiry, search, seizure, trial and imposition of punishment and,

therefore, the police force establishment under the Delhi Special Police Establishment Act was not empowered to investigate the case. This Court rejected the contention and after examining in detail the various provisions of the Act particularly the provisions of Section 50 came to find and hold as follows :

The scheme of Section 50 of the Wild Life Act makes it abundantly clear that a police officer is also empowered to investigate the offences and search and seize the offending articles. For trial of offences, the Code of Criminal Procedure is required to be followed and for that there is no other specific provision to the contrary. The special procedure prescribed is limited for taking cognizance of the offence as well as powers are given to other officers mentioned in Section 50 for inspection, arrest, search and seizure as well as of recording statement. The power to compound offences is also conferred under section 54. Section 51 provides for penalties which would indicate that certain offences are cognizable offences meaning thereby a police officer can arrest without warrant. Sub-section (5) of Section 51 provides that nothing contained in Section 360 of the Code of Criminal Procedure or in the Probation of Offenders Act, 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 5-A unless such person is under 18 years of age. The aforesaid specific provisions are contrary to the provisions contained in the Code of Criminal Procedure and that would prevail during the trial. However, from this, it cannot be said that operation of rest of the provisions of the Code of Criminal Procedure are excluded.

In this view of the matter, there is no substance in the contention raised by the learned counsel for the appellant that Section 50 of the Wild Life Act is a complete code and, therefore, CBI would have no jurisdiction to investigate the offences under the said Act. Hence, it cannot be said that the judgment and order passed by the High Court rejecting the petition filed by the appellant is in any way illegal or erroneous. We have, therefore, no doubt that the provisions of Section 50 of the Act and the amendments made thereunder do not in any way affect the Magistrate s power to make an order of interim release of the vehicle under Section 451 of the Code.

Learned counsel submitted that Section 39(1)(d) of the Act made the articles seized under Section 50(1)(c) of the Act as government property and, therefore, there was no question of their release. The submission was carefully considered by the Full Bench of the High Court and on an examination of the various provisions of the Act it was held that the provision of Section 39(1)(d) would come into play only after a court of competent jurisdiction found the accusation and the allegations made against the accused as true and recorded the finding that the seized article was, as a matter of fact, used in the commission of offence. Any attempt to operationalise Article 39(1)(d) of the Act merely on the basis of seizure and accusations/allegations leveled by the departmental authorities would bring it into conflict with the constitutional provisions and would render it unconstitutional and invalid. In our opinion, the High Court has taken a perfectly correct view and the provisions of Section 39(1)(d) cannot be used against exercise of the Magisterial power to release the vehicle during pendency of the trial.

We thus find no merit in any of the submission made on behalf of the appellants. The High Court has taken a correct view that warrants no interference by this Court. Accordingly, all the appeals and

special leave petitions are dismissed.