Lalloo Singh Vs State of U.P. and Another

Court: Allahabad High Court

Date of Decision: Oct. 13, 1999

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 457
Wild Life (Protection) Act, 1972 â€" Section 18, 39, 5(1), 50, 50(1)

Citation: (1999) 3 ACR 2272

Hon'ble Judges: Bhagwan Din, J

Bench: Single Bench

Advocate: V.P. Srivastava and Rakesh Kumar Srivastava, for the Appellant; A.G.A., for the Respondent

Judgement

Bhagwan Din, J.
This criminal revision has been directed against the judgment and order dated 22.4.1999 passed by the Special Judge

(E.C. Act), Agra in Criminal Revision No. 85 of 1999 allowing the revision and quashing the order dated 17.3.1999 passed by the VIIth

Additional Chief Judicial Magistrate, Agra.

2. The facts, giving rise to the revision, briefly stated are that one Hoshiyar Singh, the brother of the revisionist, Lalloo Singh was allegedly found

carrying sand on tractor trolley being dug and loaded from the bed of Jamuna river, within the "sanctuary" declared u/s 18 of the Wild Life

(Protection) Act (hereinafter referred to as the Act). The Forest Authorities intercepted the tractor trolley, arrested Hoshiyar Singh and seized the

tractor trolley in exercise of the powers conferred under the provisions of the Act. The revisionist is the owner of the tractor trolley. He, therefore,

moved an application for release of the same. The A.C.J.M. VII in exercise of the powers conferred u/s 457, Code of Criminal Procedure

released the tractor trolley in favour of the present revisionist on his furnishing personal bond of Rs. 2 lacs and two sureties in the like amount.

Against that order, the State of U.P. through District Forest Officer, Agra, filed a Criminal Revision No. 85 of 1999 before the Sessions Judge,

Agra, which has been heard and disposed of by Special Judge (E.C. Act). The revisional court on the view that the tractor trolley seized under the

Act, which has become the property of the Government, could not be released by the Magistrate, allowed the revision and set aside the order of

the Magistrate. Hence, the revision by the revisionist, Lalloo Singh.

3. The vexed question involved in this case is whether the Magistrate is empowered to release the property seized under the Act in exercise of the

powers conferred u/s 50(4) of the Wild Life (Protection) Act or u/s 457, Code of Criminal Procedure?

4. Learned Counsel appearing for the revisionist has submitted that the revisional court was wrong in holding that the Magistrate has no jurisdiction

to entertain the application for the release of the property seized u/s 50(1)(c) of the Act. He relied on the decision of Calcutta High Court rendered

in Ashok Kumar Rana v. State of West Bengal 1997 (1) Crimes 359, Calcutta High Court (DB). wherein it is held that ""In the present case the

vehicle was not at all confiscated. It was only seized in terms of Section 50(c) of the Wild Life (Protection) Act, 1972. The Magistrate, therefore,

had jurisdiction to deal with the question relating to the release of the vehicle allegedly involved in the commission of the offence.

5. On the other hand, the learned A.G.A. urged that the revisional court was justified in holding that the Magistrate has no power to release the

vehicle involved in the commission of the offence under this Act in terms of Section 39(d), the vehicle has become the property of the State. He

relied on the decisions of Madhya Pradesh High Court in:

(1) Babulal Lodhi Vs. State of Madhya Pradesh and Another, .

(2) State of Madhya Pradesh through Director, Madhav National Park Shivpuri v. Asad Amin L.P.A. No. 152 of 1996 decided on 8.5.1996.

(3) State of M.P. v. Sayed Yahya Ali (1996) CriLJ 366.

6. In case of Babu Lai Lodhi (supra), the Madhya Pradesh High Court held that ""The Range Officer who seized the tractor and the trolley, did not

have any power to initiate prosecution by filing a charge-sheet before the Magistrate. As pointed out by the Hon"ble Supreme Court in Balkishan

A. Devidayal Vs. State of Maharashtra, , the clinching attribute of an Investigating Officer being lacking in the instant case, it cannot be said that the

seizure by the Range Officer was seizure by a Police Officer within the meaning of Section 457, Code of Criminal Procedure, hence the seizure by

the Forest Officer could not be said to be a seizure by a Police Officer, consequently Section 457, Code of Criminal Procedure was not

attracted.

7. In case of State of M.P. v. Sayed Yahya Ali (supra) the Madhya Pradesh High Court has observed that ""Section 39 of the Act has been

amended. The very purpose of carrying out the amendment, making the seized article the property of the Government, would be defeated by

directing the return of the vehicle on furnishing security to the accused. The power of release has been expressly removed by omitting Sub-section

(2) of Section 50 of the Act to ensure that the vehicle, which has been seized, should not be returned to the accused.

8. In L.P.A. No. 152 of 1996 following the observations made in State of M.P. v. Sayed Yahya Ali the Madhya Pradesh High Court held that

Section 39 of the Act as amended in 1991 clearly lays down that any vehicle seized which involves any offence under the provisions of the Act

shall be the property of the State Government. So also as a consequence of the removal of Sub-section (2) of Section 50 of the Act whereby the

power of the release of the vehicle seized by the Forest Officer has been prohibited. In such circumstances, once the property has become the

property of the State, no order for delivery of the property could be passed. Similarly under the provisions of Section 50(4) of the Act where the

intimation of the seizure is sent to the Magistrate has no jurisdiction to dispose of the seized goods, therefore, the Magistrate has no jurisdiction to

release the property on supurdaginama.

9. The Madhya Pradesh High Court, on the analogy, that the property seized under the Act is a property of the State as contemplated u/s 39(d) of

the Act and that the provisions relating to the return of the seized property to the owner once contained in Sub-section (2) of Section 50 have been

withdrawn by Amendment Act, 1991, held that the Magistrate has no jurisdiction to release the same under this Act. I most respectfully disagree

with the proposition laid down by Lordships of Madhya Pradesh High Court, for the reason, that the Legislature by enacting the amended Section

39(d) never intended to render the provision of Section 50(4) and Section 51(2) of the Act redundant.

10. Section 39(d) of the Act provides that every vehicle, 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. The provisions of this Section construe to mean that the property

seized under this Act will become the State property only when it is proved that it was used for committing an offence. It is not that the seized

property will become the property of Government immediately after the seizure. Had the law maker intended so, Section 50(4) would have not

been enacted which lays down that any person detained or things seized under the foregoing powers shall forthwith be taken before a Magistrate

to be dealt with according to law. This goes to show that the property after its seizure does not become the property of the State prior to the

judicial pronouncement by a Court that the offence has been committed by a person and the property in question was used in the commission of

the offence under the Act. So also, Sub-section (2) of Section 51, providing that ""when any person is convicted of an offence against this Act, the

Court trying the offence, may order that any captive, animal, wild animal, animal article, trophy, uncurled trophy, meat, ivory imported into India or

an article made from such ivory, any'' specified plant, a part of derivative thereof in respect of which the offence has been committed, and any trap,

tool, vehicle, vessel or weapon used in the commission of the said offence be forfeited to the State Government"" would have not been enacted.

11. What postulates from above is that the seized property shall be taken to the Magistrate to be dealt with according to law, empowering the

Magistrate, either to release or not to release the things used in the commission of the offence on Supurdaginama. After the conclusion of the trial, if

the Magistrate decides that the offence has been committed by a person and the trap, tool, vehicle, vessel or weapon has been used for committing

the offence under this Act, shall proceed to forfeit the same under Sub-section (2) of Section 51 of the Act. Prior to that, the things seized u/s 5(1)

(c) shall not be declared State property.

12. On the above view, I am of the opinion that the Magistrate is empowered to deal with the things seized u/s 5(1)(c) according to law and in

exercise of such powers, the Magistrate may release the seized property in favour of the person prior to the initiation of the forfeiture proceedings.

The Calcutta High Court has, therefore, held in the case of Ashok Kumar Rana (supra) that the vehicle was not at all confiscated, it was only

seized in terms of Section 50(c) of the Wild Life (Protection) Act. The Magistrate, therefore, had jurisdiction to deal with the question relating to

the release of the vehicle allegedly involved in the commission of the offence.

13. In the result, the revision succeeds and is hereby allowed. The judgment and order passed by the revisional court in Criminal Revision No. 85

of 1999 is set aside and the order passed by the Magistrate is upheld.