

(1987) 03 MP CK 0016  
Madhya Pradesh High Court  
Case No: None

Jahangir Guli Khan

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

**Date of Decision:** March 5, 1987

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 45
- Wild Life (Protection) Act, 1972 - Section 50, 55

**Citation:** (1988) CriLJ 1889

**Hon'ble Judges:** Ram Pal Singh, J

**Bench:** Single Bench

**Judgement**

@JUDGMENTTAG-ORDER

Ram Pal Singh, J.

By this petition, the applicant challenges the order of the Sessions Judge, Vidisha, passed in Criminal Revision No. 82/1986 dated 25-8-1986.

2. Facts. On 4-10-1985 Range Forest Officer Gyaraspur seized Jeep No. CIC 8073 and 3 licensed rifles from the possession of the applicant exercising his powers u/s 50(1) of the Wild Life (Protection) Act, 1972, (for short, hereinafter referred to as "the Act"). The petitioner is the registered owner of the jeep and also holds licence of these fire arms, issued to him by District Magistrate. These facts are not disputed by the State. The petitioner, when his jeep and fire arms were seized by the Forest Range Officer, filed an application before him on that very day for the return of the seized articles as interim receiver till final adjudication of the matter by the Court of law. The Range Forest Officer Gyaraspur sat over that prayer and did not pass any order. So the petitioner filed an application before judicial Magistrate, First Class, Vidisha, on 8-10-1985 for the return of these seized articles on supurdgi. The Judicial Magistrate, First Class, Vidisha, issued notice to the Range Forest Officer Gyaraspur and, after hearing the parties, directed the articles to be returned, on interim custody,

to the petitioner on his furnishing solvent surety of Rs. 1 lac. The Forest Department, through Divisional Forest Officer, Vidisha, challenged this order of the Judicial Magistrate, First Class, by a criminal revision, and the Sessions Judge, Vidisha, by his order dated 25-8-1986 reversed the order passed by the Magistrate and allowed the criminal revision. Aggrieved by that order of the Sessions Judge, the petitioner invoked the inherent powers of this Court.

3. Shri N.P. Mittal, learned Counsel for the petitioner, contends that the Sessions Judge has misdirected himself and has wrongly followed the principles enunciated in the order passed in Misc. Criminal Case No. 2024 of 1982, Dt- 13-12-1982, upon which the learned Sessions Judge placed entire reliance. On perusal of the impugned order, it is apparent that the learned Sessions Judge has misinterpreted the principles and facts decided in Miscellaneous Criminal Case No. 2024 of 1982. The facts and law decided in that case are completely different from that of the case in hand. In Misc. Criminal Case No. 2024 of 1982, the facts disclosed are that an abandoned jeep was seized. It was not seized from the possession of any particular person. It is further evident that the applicant in that case was not the registered owner of the vehicle. It is also evident that the seized jeep was an article stolen, number plate forged and chassis number erased. Thus, the person was prosecuted for forgery, cheating and making fictitious changes. The ratio decided by this Court in Misc. Cr. Case No. 2024/1982 is absolutely different from the case in hand and on this very ground, the impugned order deserves to be quashed, but I hold my pen and proceed further to consider the rival contentions.

4. Shri Govind Singh, learned Counsel for the State, contends that the Magistrate was not competent to release the property till a complaint was filed before him u/s 55 of the Act. He further contends that unless cognizance is taken by the Magistrate on a complaint, he cannot proceed to pass the order u/s 50(4) of the Act. Both these contentions of the State deserve outright rejection. Section 50 of the Act provides for search, seizure and detention by the forest department which is in charge of the wild life protection of the forest. For convenience, Sub-section (2) of Section 50 of the Act is reproduced below:

(1)

xx                      xx                      xx                      xx

(2) Any officer of a 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 a 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.

(3) to (7)

From this provision, it is apparent that the Ranger, forest department, may release the seized property on execution, by the owner, of a bond for the production of the property so released whenever required before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made. A bare reading of the above-quoted provision indicates that interim custody of the property seized can even before the complaint is filed before the Magistrate, then the person in whose favour release order has been passed on bond, is bound to produce the said property before the Magistrate, and the ultimate person to decide the matter is the Magistrate and not the forest officer. For convenience, subsection (4) of Section 50 of the Act is also quoted below:

(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.

From this it appears that a duty is enjoined upon the Forest Officer to produce the seized articles before a Magistrate so that the Magistrate may deal with the seized property in accordance with law. Similar provisions are also enshrined in Section 45 of the Code of Criminal Procedure. Thus, when any property regarding which any offence appears to have been committed or which appears to have been used for commission of any offence, is produced before the Court, the Court may either before or during the inquiry or trial make such interim or final order as is expedient to do and as in accordance with law.

5. Admittedly, a vehicle is required to be registered under the provisions of the Motor Vehicles Act, 1939, and the owner thereof is the proper person in whose custody the vehicle can be given. Similarly, fire-arms, if seized, are to be given for interim custody only to the person in whose favour the licence has been issued under the provisions of the Arms Act and the Rules, because he alone is entitled to have the custody of the fire arms and none else.

6. When the Judicial Magistrate First Class, Vidisha, passed the order directing the seized articles to be given to the petitioner for interim custody on bond of Rs. 1 lac, he had the jurisdiction to pass the order, as has been done in this case. My views are further strengthened by two judgments of this Court Bhagwanbhai 1985 MPWN 44, and Parmanand 1979 MPWN 165.

7. Consequently, this petition deserves to be allowed and is, accordingly, allowed. The impugned order, which suffers from misinterpretation of the judgment of this Court passed in Misc. Criminal Case No. 2024 of 1982 and is bereft of any merit, is quashed, and the order passed by the Judicial Magistrate, First Class, Vidisha, dated 17-10-1985 is restored. As directed by the Judicial Magistrate, First Class, Vidisha, interim custody of the jeep (No. CIC 8073) and the three licensed fire arms be given to the petitioner on execution of a bond of Rs. 1 lac.