



SCC No. 365/2020
State v/s Sharifkha+02
CNR No. MHWS080008312020

ORDER BELOW EXHIBIT-04
(Passed on 19.09.2020)

This is an application seeking interim custody of Hero Honda Passion Pro motorcycle bearing Registration No. MH-37/H-3330, Chesis no. MBLHA10EWBHE41025, Engine No. HA10EDBHE43998 which came to be seized in Crime No.726/04, registered at Forest Department, Washim for the offence punishable under section 41, 42 of the Indian Forest Act 1927 and under section 31, 47 and 82 of the Maharashtra Forest Rules 2014. According to the applicant he is the owner and possessor of said motorcycle. He also filed all relevant documents of ownership. The said vehicle was wrongfully seized in said crime POR No. 726/04. The applicant and the vehicle have no any concerned with said crime.

02 According to applicant previously also they filed Cri.M.A. No. 202/2020, in Court no. 02 at Risod but meanwhile when the application was pending for say of non-applicant, non-applicant filed charge-sheet in court. Then upon oral say of the then presiding officer, Cri.M.A. No. 202/2020 was withdrawn and this new application is filed in charge-sheet i.e. SCC No. 365/2020. The claimed vehicle is kept in open Court-yard of the office of Forest Department and the possibility of damage to the vehicle cannot be ruled out, if it is kept idle for a long time. Though vehicle is the only earning source of applicant. So they prayed for releasing of said vehicle on supurtnama during trial. They relied upon *Kamlesh Jaduramhi Yadao vs State of Maharashtra, 1997(1) Mh.L.J. 1998.*

03 On the other hand ld. APP has submitted through his say dated 10.09.2020 that the seized vehicle was used for transportation of prohibited **Khair Wood**. If the said vehicle will handover to the applicant he will used said vehicle again for committing such crime. Moreover, the forest officer is empowered for confiscation of vehicle and deposit it to the government. They also expressed possibility of selling vehicle and changing its physical nature. So they prayed for rejection of this application. At the time of filing say by ld. APP the say of Forest Officer was received for this application wherein it was not mentioned whether the confiscation proceeding was going or not. So the court directed ld. APP to clear the situation. Upon inquiry by ld. APP by telephonic call to the concerned forest officer, they stated that there is no any confiscation proceeding started till that day.

04 Concerned forest officer filed say vide Exh-08 stating that the said vehicle is seized from applicant. On dated 16.02.2020, at the time of patrolling on Risod to Washim Road, they found Truck No. MH-20/ AT-4629 carrying out some woods. The said produce does not bear any permission mark nor any permit for transport. So they seized said vehicle, truck and woods in the truck. The statement of all the three accused are recorded. The investigation in this case is already completed and charge-sheet is also filed in court as RCC No. 365/2020. The forest officer is empowered for initiation of confiscation proceeding and he could initiate such proceeding. The seized produced is used for making **Gutkha Pouch** illegally. Moreover, such produce is used for making **Kath** (काथ). So they prayed for rejection of supurtnama application.

05 Though the concerned forest officer did not specifically

mentioned about initiation of confiscation proceeding, considering additional say upon telephonic call by APP and say below Exh-25 it is clear that there is no initiation of confiscation proceeding. Concerned forest officer vide Exh-25 stated that the said vehicle is not produced or sent before Authorized Officer or Assistant Forest Conservator (Tendu) Washim for confiscation purpose.

06 Read application, say filed by learned A.P.P. on overleaf of this application and say of Forest officer filed at Exh.08 and 25. Heard Adv. Shri T.K. Shaikh for applicant and Ld. A.P.P. Shri. G.B. Khillare for the prosecution. Also perused record of MCA No. 202/2020 and MCA No. 206/2020. It is contended by the applicant that he is the owner of the said vehicle. He is ready to abide by all the terms and conditions which would be imposed by this court. In support of present application, the applicant has produced copy of Registration Certificate of claimed vehicle and copy of his Adhar Card. The contents of documents prima facie reveals that the applicant is the owner of above claimed vehicle.

07 In exercise of the powers conferred by section 67 of the Indian Forest Act, 1927 (MIS 1095/CR-57/F-6 dated 03-04-1997), the Government of Maharashtra empowers the First Class Magistrates to try the offence cases summarily. In this case though charge-sheet is filed on dated 28.07.2020, but in case of *Virendra Kumar -Vs - Dilaarkha, 1991 Mh.L.J. 1371* it was held that order under section 457 CrPC may be passed during the investigation or even after filing charge-sheet but before the trial.

08 It was stated by applicant that, he did not received any notice of confiscation of the vehicle. Concerned forest officer is also

admitted vide Exh-25 that no confiscation proceeding is initiated. In *Indrajit Singh vs State of Maharashtra 1990(3) Crimes 779 (Bombay)* it was held by Hon'ble Court that, the provisions of section 61-B of the Forest Act are mandatory, which require the authorize officer to give show cause notice to the delinquent person before any action taken against him u/s 61-A(3) of the Act. Show cause notice u/s 61B must contain all material allegations against delinquent person on the basis of which action is proposed to be taken so that he has proper opportunity to meet the same. In such case the order for confiscation of a vehicle passed would be vitiated for non compliance of principle of natural justice.

09 Where a vehicle was seized by forest officer not only for offences under the State Act but also in relation to offences u/s 26 and 42 of central Act, the vehicle is liable to be confiscated under the provision of Central Act namely section 52(1) and 55(1). When the magistrate was informed by forest officer u/s 52(4) about the initiation of proceeding for confiscation of the vehicle, Section 52 C of the central Act would become applicable to the case.

10 In *Kamlesh Jaduramhi Yadao vs State of Maharashtra, 1997(1) Mh.L.J. 1998* it was held by Hon'ble Court that, the forest officer reported the seizer to the judicial Magistrate First Class. Section 52(2) laid down that when the offence on account of which seizure has been made in respect of forest produced as maybe notified by state government from time to time, such officer shall make the report of such seizure to the concerned authorize officer u/s 61-A of the Act. Then the magistrate does not get jurisdiction to release the property on supurtnama **otherwise the trial court magistrate has jurisdiction.** In the present case no report of seizure was made under

section 61-A. Hence this court has jurisdiction to release the property on supurtnama.

11 The claimed vehicle is kept in open Court-yard of Forest office and the possibility of damage to the vehicle cannot be ruled out, if it is kept idle for a long time, except applicant no other person has claimed the seized vehicle. The apprehensions expressed by Id. A.P.P. and Forest officer can be preserved and protected by imposing proper terms and conditions. Keeping the above said vehicle lying in the Forest Office would not serve any purpose. In case of, *Sundarbhai Ambalal Desai & C.M.Mudaliar Vs. State of Gujrat AIR 2003 SC 638*, it is held that, it would be justifiable to hand over the seized vehicle to the applicant during the pendency of the trial.

12 On the contrary seized vehicle may be damaged, if it is kept open for a long period, till the conclusion of trial. Therefore considering all the circumstances and as the applicant is ready to abide all the conditions imposed on him, the interim custody of the said vehicle may be given to the applicant on certain conditions. Hence, I pass the following order.

ORDER

1. The application is allowed.
2. The Hero Honda Passion Pro Motorcycle bearing Registration No. MH-37/H-3330, Chesis no. MBLHA10EWBHE41025, Engine No. HA10EDBHE43998 be released in the name of applicant Shaikh Raja Shaikh Chand R/o. Amardas Nagar, Risod Tq. Risod Dist. Washim on execution of indemnity bond of Rs. 50,000/- (Rs. Fifty thousand only).
3. Applicant is directed not to create any sort of third party interest

or alienate the said vehicle in any manner till final disposal of the case.

4. Applicant is further directed not to make change in physical appearance of the Motorcycle till final disposal of case.
5. Applicant is further directed to produce the vehicle as and when required by the court during the course of trial.
6. Applicant to produce the photographs of the aforesaid vehicle, on record for identification purpose.
7. Issue letter to concern Forest officer and concerned department accordingly.
8. Hamdast is allowed.

Date : 19.09.2020

(Y.D. Koinkar)
Judicial Magistrate (F.C.),
Risod

CERTIFICATE

I affirm that the contents of this P.D.F. File Judgment/Order are same word to word, as per the original Judgment/Order.

Name of the Stenographer : P.D. Rudrakshawar
Name of court : C.J.J.D.& JMFC;Risod
Date : 19-09-2020
Judgment/Order signed by the
Presiding Officer : 19-09-2020
Judgment/Order uploaded on : 19-09-2020