

A

STATE OF U.P. AND ANR.

v.

LALLOO SINGH

JULY 20, 2007

B

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

Wild Life (Protection) Act, 1972:

C

ss.50(4), 39(1)(d)—Seizure by forest authorities of tractor trolley carrying sand dug from the bed of Yamuna river—Power of Magistrate to release the tractor—Held: Magistrate can pass appropriate orders in respect of seized property—He is required to take into account the statutory mandate that seized property becomes property of Government when the same was used for commission of an offence under the Act—While dealing with application for release of seized property, there cannot be complete adjudication of issues involved as the same is matter for trial.

D

Code of Criminal Procedure, 1973:

E

s.457—Seizure of tractor trolley by Forest Officer under 1972 Act—Magistrate releasing tractor by exercising power conferred under s.457—applicability of s.457 challenged—Held: s.457 not applicable, as officials under the Act are not police officials—s.457 applicable only when a police officer produces the said property before Magistrate—Wild Life (Protection) Act, 1972—ss.39(1)(d), 50(4).

F

The brother of the revisionist was allegedly found carrying sand on a tractor trolley being dug and loaded from the bed of Yamuna River within the sanctuary declared under s.18 of the Wild Life Protection Act, 1972. The forest authorities seized the tractor trolley. Revisionist moved an application for release of the tractor trolley. The Magistrate in exercise of powers conferred under s. 457 Cr.P.C. released a tractor trolley in favour of the revisionist on his furnishing personal bond of Rs.2 lacs. Against that order, the State filed revision before the Sessions Judge. The revisional Court allowed the revision holding that the tractor trolley seized under the Act, has become the property of the Government and hence could not be released by

G

H

the Magistrate. The High Court by the impugned order held that the Magistrate had the jurisdiction. A

In appeal to this Court, State contended that the effect of deletion of sub-section (2) of s.50 of the Act has not been considered by the High Court; that High Court also lost sight of the fact that the moment there is seizure of the seized property it becomes the property of the Government in terms of s.39 of the Act; and that s. 457 Cr.P.C. has no application because it is applicable only when a police officer produces the said property before the Magistrate and the officials under the Act are not police officials. B

Disposing of the appeal, the Court C

HELD: 1. S.457 Cr.P.C. applies when the seizure of property by a police officer is reported to a Magistrate under the provisions of the Code. There is a marked distinction between police officers and the officials under the Wild Life (Protection) Act as is evident from sub-section (1) of s.50. Thus, in view of the clear language of sub-section (1) of s.50, s.457 Cr.P.C. has no application. But there is another provision which also is relevant i.e. s.451 Cr.P.C. that relates to the order for custody and disposal of the property pending trial in certain cases. It provides that when any property is produced before any criminal Court, during any enquiry or trial, the Court may make such order as it thinks fit for proper custody of such property pending the conclusion of the enquiry or the trial. It also provides for action to be taken when the property is subject to speedy and natural decay. If the Court otherwise thinks it expedient to do so, the Court may after recording such evidence as it thinks fit may pass orders for sale of the property or disposal thereof. D E

[Paras 8 and 10] [424-C, D; 427-B-C]

2. Clause (d) of sub-section (1) of s.39 deals with a situation when any vehicle, vessel, weapon, trap or tool has been used for committing an offence and has been seized under the provisions of the Act. The twin conditions are that the vehicle etc. must have been used for committing an offence and has been seized. Mere seizure of the property without any material to show that the same has been used for committing an offence does not make the seized property, the property of the Government. Under sub-section (1) of s. 50 action can be taken if the concerned official has reasonable grounds for believing that any person has committed an offence under the Act. When any person is detained, or things seized are taken before the Magistrate, he has the power to deal with the same "in accordance with law". There is a significant addition in sub-section (4) by Act 16 of 2003 i.e. requirement of intimation to the Chief F G H

A Wild Life Warden or the officer authorized in this regard as to the action to be taken by the Magistrate when the seized property is taken before a Magistrate. A combined reading of the omitted sub-section (2) and the substituted sub-section (3A) of s.50 makes the position clear that prior to the omission, the officials under the Act had the power to direct release of the seized article. Under sub-section (1), the power for giving temporary custody subject to the condition that the same shall be produced if and when required by the Magistrate is indicative of the fact that the Magistrate can pass appropriate orders in respect of the purported seized property which is taken before him. While dealing with an application for temporary release of custody, there cannot be a complete adjudication of the issues involved as the same is

C a matter for trial. While dealing with the application the Magistrate has to take into account the statutory mandate that the seized property becomes the property of the State Government when the same has been used for commission of an offence under the Act and has been seized. It appears that insertion in sub-section (4) relating to the intimation to the Chief Wild Life officer or the officer authorized by him is intended to give concerned official an opportunity

D of placing relevant materials on record, before the Magistrate passes any order, relating to release or custody. In appropriate cases on consideration of materials placed before him, prayer for such release or custody can be rejected. [Para 13] [427-E-H; 428-A-D]

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 963 of 2001.

From the Judgment & Order dated 13.10.1999 of the High Court of Judicature at Allahabad in CrI. Revision No. 1144 of 1999.

F Ashok Bhan, (A.C.) Rama Devi, M.C. Dhingra, Sanjay Kumar Singh, Fuzail Khan and Anuvrat Sharma for the Appellants.

Shakeel Ahmed and Arna Das for the Respondent.

The Judgment of the Court was delivered by

G DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a learned Single Judge of the Allahabad High Court allowing the revision petition filed by the respondent. The question of importance involved in this appeal relates to the ambit of Section 50(4) of the Wild Life (Protection) Act, 1972 (in short the 'Act'). Connected issues relate to the scope for exercise of

H jurisdiction under Section 457 of the Code of Criminal Procedure, 1973 (in

short the 'Code').

2. Background facts in a nutshell are as follows:

One Hoshiyar Singh, the brother of the revisionist, Laloo Singh was allegedly found carrying sand on a tractor trolley being dug and loaded from the bed of Jamuna river, within the sanctuary declared under Section 18 of 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. A revision was filed by Laloo Singh claiming to be the owner of the tractor trolley. He, therefore, moved an application for release of the same. The VIIth Addl. Chief Judicial Magistrate in exercise of the powers conferred under Section 457 of the Code released the tractor trolley in favour of the revisionist on his furnishing personal bond of Rs.2 lacs and two sureties in the like amount. Against that order, the State of UP. through District Forest Officer, Agra filed a Criminal Revision No.85 of 1999 before the Sessions Judge, Agra which was heard and disposed of by Special Judge (E.C. Act). The revisional court being of the view that the tractor trolley seized under the Act, which has become the property of the Government, held that same could not be released by the Magistrate, allowed the revision and set aside the order of the Magistrate. Hence, the revision by the revisionist, Laloo Singh was filed as noted above.

3. The High Court by the impugned order held that the Magistrate had the jurisdiction.

4. In support of the appeal, learned counsel for the appellant submitted that the effect of deletion of sub-section (2) of Section 50 of the Act has not been considered by the High Court. It also lost sight of the fact that the moment there is seizure of the seized property it becomes the property of the Government in terms of Section 39 of the Act. Section 457 of the Code has no application because it relates to only when a police officer produces the said property before the magistrate. The officials under the Act are not police officials.

5. Learned counsel for the respondent on the other hand submitted that the interpretation given by the High Court to Section 50 of the Act is correct. Sub section (2) of Section 50 has no effect on the power of the Magistrate to release the seized articles. For application of Section 39 of the Act there has to be first determination that the seized property in question was used for the purpose of commission of an offence.

A 6. Considering the fact that there is diversion of views of various High Courts, we requested Mr. Ashok Bhan to act as Amicus Curiae.

B 7. We have heard at length learned counsel for the parties. It is to be noted that substantial changes have been made in the Act by the Act 44 of 1991 operating with effect from 2.10.1991. The major changes so far as the present case is concerned relate to deletion of sub-section (2) of Section 50, insertion of clauses (c) & (d) in sub-section (1) of Section 39, insertion of sub-section 3(a) in Section 50.

C 8. While dealing with the first question, what needs consideration is whether Section 457 of the Code has any application to the present case. Undisputedly, Section 457 of the Code applies when the seizure of property by a police officer is reported to a Magistrate under the provisions of the Code. There is a marked distinction between police officers and the officials under the Act as is evident from sub-section (1) of Section 50. The said Section so far as relevant reads as follows:-

D "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 this 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,-

E (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;

F (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 his possession;

G (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,

H

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: A

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." B

9. Sub-section (2) of Section 50 was omitted by Act 44 of 1991. The amendment read as follows: C

"36. Amendment of Section 50.- In Section 50 of the principal Act,-

(a) in sub-section (1),-

(i) in clause (a), for the words "trophy or uncured trophy", the words "trophy, uncured trophy, specified plant or part or derivative thereof" shall be substituted; D

(ii) for clause (c), the following clause shall be substituted, namely:-

"(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: E F

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."; G

(b) sub-section (2) shall be omitted;

(c) after sub-section (3), the following sub-section shall be inserted, namely:- H

A "(3-A) 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 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.";

B

(d) in sub-section (6), for the words "meat or uncured trophy", wherever they occur, the words "meat, uncured trophy, specified plant, or part or derivative thereto" shall be substituted;

C (e) after sub-section (7), the following sub-sections shall be inserted, namely:-

"(8) Notwithstanding anything contained in any other law for the time being in force, any officer not below the rank of an Assistant Director of Wild Life Preservation or Wild Life Warden shall have the powers, for purposes of making investigation into any offence against any provision of this Act,-

D

(a) to issue a search warrant;

(b) to enforce the attendance of witnesses;

E (c) to compel the discovery and production of documents and material objects; and

(d) to receive and record evidence.

F (9) Any evidence recorded under clause (d) of sub-section (8) shall be admissible in any subsequent trial before a Magistrate provided that it has been taken in the presence of the accused person."

Sub-section (2) of Section 50 before omission reads as follows:

G "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 a bond for the production of the property to be released, if and when required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has

H

been made.”

10. In view of the clear language of sub-section (1) of Section 50, Section 457 of the Code has no application. But there is another provision which also is relevant i.e. Section 451 of the Code that relates to the order for custody and disposal of the property pending trial in certain cases. It provides that when any property is produced before any criminal Court, during any enquiry or trial, the Court may make such order as it thinks fit for proper custody of such property pending the conclusion of the enquiry or the trial. It also provides for action to be taken when the property is subject to speedy and natural decay. If the Court otherwise thinks it expedient to do so, the Court may after recording such evidence as it thinks fit may pass orders for sale of the property or disposal thereof.

11. The real complexity of the issue arises as to what is the effect of the expression "to be dealt with according to law", as appearing in sub-section (4) of Section 50 of the Act.

12. Learned counsel for the appellant-State has submitted that when the property on seizure becomes the property of the Government, the Magistrate cannot pass any order for release thereof or interim custody thereof.

13. For appreciating this contention reference is necessary to Section 39 of the Act. Clause (d) of sub-section (1) of Section 39 deals with a situation when any vehicle, vessel, weapon, trap or tool has been used for committing an offence and has been seized under the provisions of the Act. The twin conditions are that the vehicle etc. must have been used for committing an offence and has been seized. Mere seizure of the property without any material to show that the same has been used for committing an offence does not make the seized property, the property of the Government. At this juncture, it is also to be noted that under sub-section (1) of Section 50 action can be taken if the concerned official has reasonable grounds for believing that any person has committed an offence under the Act. In other words, there has to be a reasonable ground for belief that an offence has been committed. When any person is detained, or things seized are taken before the magistrate, he has the power to deal with the same "in accordance with law". There is a significant addition in sub-section (4) by Act 16 of 2003 i.e. requirement of intimation to the Chief Wild Life Warden or the officer authorized in this regard as to the action to be taken by the Magistrate when the seized property is taken before a Magistrate. A combined reading of the omitted sub-section (2) and the substituted sub-section (3A) of the Section 50 makes

A the position clear that prior to the omission, the officials under the Act had the power to direct release of the seized article. Under sub-section (1), the power for giving temporary custody subject to the condition that the same shall be produced if and when required by the magistrate is indicative of the fact that the Magistrate can pass appropriate orders in respect of the purported seized property which is taken before him. While dealing with an application for temporary release of custody, there cannot be a complete adjudication of the issues involved as the same is a matter for trial. While dealing with the application the Magistrate has to take into account the statutory mandate that the seized property becomes the property of the State Government when the same has been used for commission of an offence under the Act and has been seized. It appears that insertion in sub-section (4) relating to the intimation to the Chief Wild Life officer or the officer authorized by him is intended to give concerned official an opportunity of placing relevant materials on record before the Magistrate passes any order relating to release or custody. In appropriate cases on consideration of materials placed before him, prayer for such release or custody can be rejected.

D 14. It is to be noted that under sub-section (1) of Section 50 for the purpose of entry, seizure, arrest and detention the official has to form the belief on reasonable grounds that the person has committed an offence under the Act. The Magistrate is, therefore, required to consider these aspects while dealing with the application as noted above. It cannot be a routine exercise. E As noted above, the High Court is not justified in holding that Section 457 of the Code has application.

15. It appears that by order dated 26.3.2001 respondent was required to indicate whether he is prepared to deposit a bond of Rs.2,00,000/-as security. F If the said security has been furnished, because of passage of time the impugned order shall remain in force, though in view of the analysis made above the conclusions are not sustainable.

16. Learned counsel for the parties could not tell us whether the trial in the matter has been completed. We dispose of the appeal on clarifying the legal issues involved. G

17. The appeal is accordingly disposed of.

DG.

Appeal disposed of.