

(i) VEHICLES USED FOR COMMITTING AN OFFENCE UNDER SECTION (39) OF WILDLIFE (PROTECTION) ACT, 1972 SHOULD NOT BE RETURNED TO THE OFFENDERS. - JUDGEMENT OF MADHYA PRADESH HON' HIGH COURT

1995 M.P.L.J.

WILD LIFE (PROTECTION) ACT, 1972, SECTION 39

(I. P. Rao, J.)

STATE OF M.P.

Applicant

Vs

SAYED YAHYAALI

Non-Applicant

Wild Life (Protection) Act (53 of 1973 as amended by Act 44 of 1991), S. 39 - *Vehicle used for committing an offence under the provisions of the Act - Confiscation of such vehicle - Vehicle cannot be returned to the accused - It vests in the State Government under section 39.*

Section 30 of the Wild Life Protection (Amendment) Act, 1991, which came into effect from 2-10-1991 clearly lays down that the vehicle which is involved in the offence and has been seized under the provisions of the Act, shall be the property of the State Government. As a consequence of amending section 39, section 50 of the original Act has also been amended taking away the power to return the vehicle which has been involved in the offence and seized by the officials. By virtue of the Amending Act, sub-section (2) of section 50 has been omitted. The very purpose of carrying out the amendment making the seized vehicle as the property of the Government, would be defeated by directing return of the vehicle on furnishing security to the accused. The power of releasing the vehicle has been expressly removed by omitting sub-section (2) of section 50 to ensure that the vehicle which has been seized should not be returned to the accused M.P. No. 836 of 1994, Dist (Paras 2, 3 and 4).

For State : *R.K. Khare, Government Advocate*

For non-applicant : *Manish Dair*

ORDER :- This is a revision filed by the State aggrieved by the order of the learned Session Judge, Bhopal, dated 10-2-1992 in Cri. Revision No. 17/92 directing the release of the jeep to the respondent on furnishing security.

2. Shri. R.K. Khare, learned Govt. Advocate, submitted that the order of the learned Sessions Judge, Bhopal, is illegal by virtue of the amendment brought out to section 30 of the Wild Life Protection (Amendment) Act, 1991 (hereinafter referred to as the Act) which has come into effect from 2-10-1991. That amendment lays down that any vehicle that has been used for committing an offence and has been seized under the provisions of the Act shall be the property of the Government. This amendment referred to above clearly lays down that the vehicle that has been used for committing an offence and has been seized under the provisions of the Act shall be the property of the Government. This amendment referred to above clearly lays down that the vehicle which is involved in the offence and has been seized under the provisions of the Act, shall be the property of the State Government.

3. As a consequence of amending section 39, section 50 of the original Act has also been amended taking away the power to return the vehicle which has been involved in the offence and seized by the officials. By virtue of the amending Act, sub-section (2) of section 50 has been omitted.

4. The learned counsel for the respondent relying upon a decision of the Division Bench in M.P. 636/94 argued that the power under section 39 or 50 can be exercised only when an order of confiscation is passed while convicting the respondent but not otherwise. The learned Judges of the Division Bench in the aforesaid matter dealt with the provisions of the Indian Forest Act but not under the Wild Life (Protection) Act. The very purpose of carrying out the amendment making the seized vehicle as the property of the Government, would be defeated by directing return of the vehicle on furnishing security to the accused. The power of releasing the vehicle has been expressly removed by omitting sub-section (2) of section 50 to ensure that the vehicle which has been seized should not be returned to the accused. In contrast with the provisions of Wild Life (Protection) Act, the Forest Act does not contain a similar provision that the vehicle involved in the offence should be treated as the property of the Government. The only power reserved under the Forest Act is to confiscate the vehicle. As submitted by the learned counsel for the respondent, the question of confiscation arises only after trial. The provisions of the Wild Life (Protection) Act being different from the provisions of the Indian Forest Act, the observation of the learned Judges of the Division Bench will not have application to the facts of this case.

The revision is accordingly allowed and the learned District Judge, Bhopal is directed to take steps to cause the jeep to be returned by the respondent and deliver the same to the Additional Inspector General, Wild Life, Bhopal.

Revision allowed

**CONSTITUTION OF INDIA, ARTICLE 12 AND INSTITUTE OF
INDIAN BANKING PERSONNEL SERVICES**

(T.S. Doabia, J.)

ASHOK KUMAR BHOMIA

Petitioner

vs

CENTRAL BANK OF INDIA, BOMBAY and others

Respondents

(a) Constitution of India, Art. 12 - *Institute of Indian Banking Personnel Services is an authority within meaning of Article 12.* AIF 1981 SC 487, Rel., AIR 1992 P & H 1, Dist. (Paras 4 to 7)

Misc. Petition No. 557 of 1990, decided on 3-7-1995 (Gwalior)
