

Mathew Vs. Range Officer

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Court : Kerala

Decided On : Jun-11-2004

Reported in : 2004CriLJ3961; 2004(2)KLT865

Judge : G. Sasidharan, J.

Acts : Wild Life (Protection) Act, 1972 - Sections 39(1)

Appeal No. : Crl. M.C. No. 1445 of 2004

Appellant : Mathew

Respondent : Range Officer

Advocate for Def. : Noorji Noushad, Public Prosecutor

Advocate for Pet/Ap. : Sunny Mathew, Adv.

Judgement :

ORDER

G. Sasidharan, J.

1. Petitioner is the registered owner of Maruthi 1000 car which was taken into custody by the Forest Officers in connection with O.R. 12/2002 of Chedelath Forest Range. An application filed by the petitioner for getting interim custody of the vehicle was dismissed by the Judicial Magistrate of the First Class II, Sulthan

Bathery. This petition is filed challenging the order by which the application filed by the petitioner was dismissed.

2. In the order, it is said that the Forest Range Officer objected giving vehicle to the petitioner on interim custody. The objection which was raised before the Magistrate was that the vehicle seized by the Forest Officers had become property of the Government and hence it should not be released to the petitioner. Learned Magistrate accepted the above objection raised by the Forest Range Officer.

3. Objection raised by the Forest Range Officer was on the basis of what is said in Section 39(1)(d) of the said Wild Life (Protection) Act. The above provision says that vehicle vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of the Act shall be the property of the Central Government. Provision does not say that any property seized alleging commission of the offence will become the property of the Central Government. On the other hand, it is clear on a reading of the Section that a vehicle that has been used for committing an offence will become the property of the Central Government. That means only if it is established that an offence had been committed under the provisions of the Act, the vehicle will become that of the Central Government.

4. Case is pending before the Judicial Magistrate of the First Class II, Sulthan Bathery and the trial has not commenced. If the above provision is given the meaning that as and when the vehicle is seized alleging commission of the offence under the Act, it would become the property of the Central Government, the position will be that even if the accused is acquitted after trial the vehicle cannot be given to him for thereason that it became the property of the Government when it was seized alleging commission of offence. It is not at the time when the vehicle is seized that it becomes the property of the Government, but it is when it is found by a competent court that the offence is committed that it becomes the property of the Government. So the provision can be understood as one which says that as and when it is found by a Court that a person committed the offence under the Act, the vehicle which he used for the commission of the offence will become the property of the Central Government. It is not correct to say that the interim custody of the

vehicle cannot be given to the owner of the vehicle by virtue of what is said in Section 39(1)(d) of the Wild Life (Protection) Act. If the petitioner is the owner of the vehicle, interim custody of the vehicle can be given to the petitioner. It is necessary to give interim custody of the vehicle to the owner since the vehicle is kept in Forest Range Office from 9.6.2002. According to the petitioner, the vehicle is being damaged.

5. This petition is disposed of directing that if the petitioner produces documents that he is the owner of the car, interim custody of the car has to be given to him on furnishing security of immovable property for the value of the vehicle fixed by the Magistrate.

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