

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on :- 12.01.2024

Pronounced on:- 23.02.2024

WP(Crl) No. 1/2024

Qadeer Hussain Age 35 years S/o
Abdul Rehman
R/o Chhoungam Tehsil Mendhar
District Poonch 185101

.....Petitioner(s)/Appellant(s)

Through: Mr. Lawanya Sharma, Advocate.

Vs

1. UT of J&K Through SHO Police Station, Poonch, 185101.
2. SPCA (SOCIETY FOR PREVENTION OF CRUELTY AGAINST ANIMALS) Poonch, 185101

..... Respondent(s)

Through: Ms. Priyanka Bhat, Advocate vice
Mrs. Monika Kohli, Sr. AAG.

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGEMENT

23.02.2024

PRAYER:

1. The petitioner through the medium of the present petition is seeking following reliefs:-

- a) ***Certiorari, seeking quashment of the order dated 20.07.2023 passed by the Court of Learned Chief Judicial Magistrate in the case titled "UT of J&K through SHO Police Station Loran Vs Qadeer Hussain and Anr," File No. 60/Challan having CNR No. JKPN030008182023 to the extent that the vehicle of the petitioner bearing Registration No. JK12 5099 (Tata Goods Carrier) has been***

ordered to be forfeited to SPCA (Society for Prevention of Cruelty against Animals), Poonch in complete violation of principle of Natural Justice and Code of Criminal Procedure;

- b) *Certiorari, seeking quashment of the order dated 02.11.2023 passed by the Court of Learned Principal Session Judge, Poonch in the case titled "Qadeer Hussain Vs UT of J&K through SHO Police Station Poonch," bearing File No. 10/Criminal appeal having CNR No. JKPN010003092023 to the extent whereby the appeal against the impugned order dated 20.07.2023 passed by the Court of Learned Chief Judicial Magistrate, Poonch in the case titled "UT of J&K through SHO Police Station Loran Vs Qadeer Hussain and Anr," under File No. 60/Challan having CNR No. JKPN030008182023 was dismissed being illegal arbitrary and against the statutory provisions of law;*
- c) *Mandamus, seeking directions to the respondents to release the vehicle bearing Registration No. JK12 5099 (Tata Goods Carrier) seized in case titled "UT of J&K through SHO Police Station Loran Vs Qadeer Hussain and Anr," pending before the Court of Learned Chief Judicial Magistrate arising out of F.I.R bearing No. 0013/2023 registered with Police Station Loran which was ordered to be forfeited to SPCA (Society for Prevention of Cruelty against Animals), Poonch vide impugned orders dated 20.07.2023 and 02.11.2023 (Supra);*

BRIEF FACTS OF THE CASE:

2. The petitioner is claiming to be the lawful and absolute owner of the vehicle bearing Registration No. **JK12 5099 (Tata Goods Carrier)** and possesses all legal documents and titles establishing unchallenged ownership rights over the aforementioned vehicle as alleged by him.

3. The petitioner challenges the order dated **20.07.2023** passed by the Court of Chief Judicial Magistrate, Poonch in the case titled **UT of J&K through SHO Police Station, Loran Vs. Qadeer Hussain and Another** by virtue of which the vehicle bearing Registration **No. JK12 5099** has been ordered to be forfeited to SPCA (Care and Maintenance of Case Property Animals) under **Rule 8 of Notification Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules 2017**. The petitioner is also seeking quashment of the order dated **02.11.2023** passed by the Court of Principal Sessions Judge, Poonch in case titled **Qadeer Hussain Vs. UT of J&K through Police Station, Poonch** in file No. 10/Criminal Appeal, whereby, Court of Principal Sessions Judge, Poonch has dismissed the appeal.

4. The case of the petitioner is that an **FIR bearing No. 0013/2023** dated **07.07.2023** was lodged against the petitioner and subsequently, a challan was presented before the Court of Chief Judicial Magistrate, Poonch, wherein the petitioner pleaded guilty to allegations constituting offences under **Section 188 of Indian Penal Code, 1860** and **Section 11 of the Prevention of Cruelty to Animals Act, 1960**.

5. Further case of the petitioner is that the Chief Judicial Magistrate, Poonch while awarding punishment to the petitioners and concluding the trial, directed the forfeiture of the aforesaid vehicle owned by the petitioner to the SPCA, Poonch under **Rule 8 of Notification Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules 2017** and as per **Rule 8**, *if the accused person is convicted, or pleads guilty, the Magistrate shall deprive him of the ownership of animals and forfeit the seized animals to the infirmary Pinjrapole, SPCA Animal Welfare Organization or Gaushala already having custody for proper adoption or other disposition.*

6. Learned counsel for the petitioner submits that the petitioner has filed an appeal against the order dated **20.07.2023** passed by the Chief Judicial Magistrate, Poonch, and the same was dismissed by the Principal Sessions Judge, Poonch vide order dated **02.11.2023**.

7. Feeling aggrieved of the orders passed supra, the petitioner has filed the instant petition.

8. Heard learned counsel for the petitioner and perused the record.

9. Admit. Issue notice which is waived by Ms. Priyanka Bhat, Advocate appearing vice Ms. Monika Kohli, learned Sr.AAG for Respondent No. 1.

10. With the consent of learned counsel for the parties, the instant petition is taken up for final disposal at this stage.

LEGAL ANALYSIS

11. From the bare perusal of the order passed by the Chief Judicial Magistrate, Poonch, it is apparently clear that the

accused/applicant was deprived of the ownership of the cattle and vehicle bearing registration No. **JK12-5099(TATA Mobile)** used in the commission of offence which was seized by the police and subsequently, forfeited to the Government and was ordered to be handed over to SPCA (SOCIETY FOR PREVENTION OF CRUELTY AGAINST ANIMALS), Poonch, which shall be the absolute owner thereof, for their custody and disposal under rules by relying upon **Rule 8** of the **Notification Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules 2017** . The said rule is reproduced as under:-

“8. Status of animal upon disposal of litigation –(1) if the accused is convicted, or pleads guilty, the Magistrate shall deprive him of the ownership of animal and forfeit the seized animal to the infirmary, Pinjrapole, SPCA, Animal Welfare Organization or Gaushala already having custody for proper adoption or other disposition”

12. From the record, it appears that the Chief Judicial Magistrate, Poonch has relied upon **Rule 8** of the **Notification Supra**, which pertains only to the status of the animal upon disposal of litigation and could not have been applied for forfeiture of the vehicle. The order passed by the Chief Judicial

Magistrate, Poonch accordingly, is flawed, however, the appellate Court with a view to rectify the mistake done by the Chief Judicial Magistrate, Poonch although has referred to **Section 452 of the Code of Criminal Procedure**, which is applicable to the disposal of the property (vehicle) at the conclusion of the trial yet there is no reference of the aforesaid statutory provision by the Chief Judicial Magistrate, Poonch. Pertinently, the Chief Judicial Magistrate, Poonch has not disposed of the property by applying the aforesaid statutory provisions rather, he has placed reliance on **Rule 8 of the Notification Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules 2017** which was applicable to the extent of animals only and not to the vehicle in question.

13. In terms of **sub-section (1) of Section 452**, when an inquiry or trial before a criminal court has been concluded, the court is empowered to pass an appropriate order for its disposal by destruction, confiscation or delivery to any person claiming to be entitled to the possession thereof or otherwise, entitlement postulates a right. The function which the Court exercises

under Section 452 is of a judicial nature. In making that order, the court must undoubtedly have due regard to the entitlement claimed by the person who seeks the possession of the property. For facility of reference, **Sub-sections(1) and (2) of Section 452** of Code of Criminal Procedure is reproduced as under:-

“452. Order for disposal of property at conclusion of trial.

(1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.”

14. The Hon'ble Apex Court has succinctly explained the object and scheme of the various provisions of the Code as to disposal of case property in the case titled **Sunderbhai Ambalal Desai Vs State Of Gujarat**, reported as **2002 Supp (3) SCR 39** Court has observed as follows:

“The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary.” In view of the ratio-laid down by the Hon’ble Apex Court, it is clear that unless the case property is necessary, court cannot retain the case property either in its custody or in the custody of police for any time longer. Therefore, it is the duty of court to pass appropriate property orders according to law without any delay.”

15. The Hon’ble Apex Court in ***Bharat Sanchar Nigam Limited Vs. Suryanarayanan & Anr*** reported as ***AIR online 2018 SC 1377*** has observed as follows:

“The above observations indicate that the authority which is entrusted to the Court under Section 452 of the CrPC (equivalent to Section 517 of the Code of 1898) is judicial in nature. As a judicial power, it has to be exercised for valid reasons keeping in view the class and nature of the property and the material before the Court. Normally the Court would, following the discharge or acquittal of the accused, restore the property to the person from whose custody it was taken. A departure from this rule of practice is not lightly made when there is no dispute or doubt that the property which was seized from the custody of the accused belongs to him. These observations in the decision of this Court in Madhavan (supra) clearly indicate that ordinarily the person from whom the property was seized would be entitled to an order under

Section 452, when there is no dispute or doubt that the property belongs to him. It is only when the property belongs to the person from whom it was seized that such an order can be passed. Where a claim is made before the court that the property does not belong to the person from whom it was seized, Section 452 does not mandate that its custody should be handed over to the person from whose possession it was seized, overriding the claim of genuine title which is asserted on behalf of a third party. It must be noted that in Madhavan case (supra), there was no dispute that the weapon of offence belonged to the accused from whom it had been seized.”

16. This Court is of the considered view that whatever be the situation, it would be a futile exercise to keep seized vehicles at the police stations for a long period. It is for the Courts vested with the power to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. Therefore, the court under section 452 of the Code of Criminal Procedure cannot decide any claim to manage any property or any title to the property, but shall dispose of the property on the basis of possession.

17. Thus, the order passed by the Court of Chief Judicial Magistrate, Poonch was legally flawed and the finding recorded

by the appellate authority to the extent that there is no illegality in the aforesaid order dated **20.07.2023** is also legally not sustainable being alive to the fact that Section 452 of the Code of Criminal Procedure was applicable to the case in hand and therefore the same is liable to be set aside.

18. From bare perusal of Section 452 of the Code Supra, it is apparently clear that the order for disposal of the property could be done at the conclusion of the trial and not otherwise. In the instant case, the accused/applicants have been deprived of the ownership of the cattle and the vehicle used in the commission of offence by the Chief Judicial Magistrate, Poonch by placing reliance upon Rule 8 which was applicable only insofar as the status of animal upon disposal of the litigation was concerned and not the vehicle. The forfeiture of the vehicle can only be done under Section 452 Cr.PC and that too after the conclusion of the trial and not otherwise, but in the present case, there is no reference of the aforesaid statutory provision in the order passed by the Chief Judicial Magistrate Poonch.

19. Thus, this Court is of the view that the order passed by

the Chief Judicial Magistrate, Poonch to the extent of forfeiture of the vehicle by placing reliance of **Rule 8 of Notification Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules 2017** is legally not sustainable and liable to be quashed.

20. Besides, the order passed by the appellate authority dated **02.11.2023** to the extent of recording the finding that there is no illegality in the order dated **20.07.2023** shall also stand quashed.

21. The appellate Authority although has referred to the aforesaid statutory provision dealing with the confiscation of the vehicle, yet it has escaped the eye of the appellate authority that the said provision has not been relied at the time of confiscation or forfeiture of the vehicle by the Chief Judicial Magistrate, Poonch and rather, the appellate authority instead of quashing the order of Chief Judicial Magistrate, Poonch to that extent, has instead upheld the said order by placing reliance on Section 452 Cr.PC in a way to undo the wrong done by the Learned Chief Judicial Magistrate, Poonch. Thus, the order passed by

the appellate authority is also flawed and cannot sustain the test of law and for the reasons discussed above, the order of the appellate authority also stands quashed.

22. In the aforesaid backdrop, this Court deems it proper to allow the petition by remanding the case back to the Chief Judicial Magistrate, Poonch to examine the issue afresh in conformity with the provisions of **Rule 8 of Notification Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules 2017** coupled with **Section 452** of the **Code of Criminal Procedure** within a period of six weeks from the date, copy of this order along with writ petition and its annexures are made available to the said Court.

23. Parties are directed to appear before the Court of Chief Judicial Magistrate, Poonch on **04.03.2024**.

(Wasim Sadiq Nargal)
Judge

JAMMU:
23.02.2024
“Tarun”

Whether the order is speaking?	Yes/No
Whether the order is reportable?	Yes/No