

The High Court Of Madhya Pradesh

WP-19884-2018

(THE STATE OF MADHYA PRADESH IN THE FOREST DEPARTMENT Vs SANTOSH)

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Jabalpur, Dated : 14-10-2019

Shri Kaustubh Singh, Panel Lawyer for the petitioners/State.

Shri Sanjeev Kumar Singh, Advocate for the respondent.

State Government has filed the present writ petition challenging the order dated 30.08.2017 passed by the Third Additional Sessions Judge, Seoni (M.P.). By the said order, petitioners were directed to initiate the process of compounding of offence in respect of Tractor Trolley bearing registration No. MP-49-A-7716 and pass appropriate orders for release of the vehicle.

Brief facts of the case are as under :-

(1) Forest Officer has passed an order dated 02.11.2015 in case of Forest Offence No.3641/2011. Mahindra Tractor and Trolley bearing No. MP-49-A-7716, 1.5 cubic meters sand, spade, pan (tasla) and hoe (kudali) was seized on 15.02.2015. Said articles were ordered to be confiscated by the Forest Officer.

(2) Appellate Authority found that 1/5 cubic meter sand was valued arbitrarily at Rs.1575/-, therefore, the matter was remanded back to consider the value of the seized sand. D.F.O., Narsinghpur found that the sand seized was valued Rs. 900/-. Finding was given that due to mining of sand from the forest area, they had caused irreparable injury to the environment and therefore, he again passed the order for confiscation of the vehicle and the articles. An appeal was preferred against the said order. The order passed by D.F.O. was maintained and appeal was dismissed. The order passed by the Appellate Authority was challenged in Criminal Revision No.15/2017. The Revisional Court giving reference of Section 68(3) of Indian Forest Act, 1927 and Rule 22(3) of M.P. Transit (Forest Produce) Rules, 2000 passed orders for compounding of offence as the value of the property seized was less than

Rs. 1000/- and offence was committed for the first time by the respondents and to release the vehicle in question. The said order is challenged in this writ petition by the State Government.

Section 68 of Indian Forest Act, 1927 provides as under :

"68. Power to compound offences.- (1) The State Government may, by notification in the official Gazette, empower a Forest Officer,-

(a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in Section 62 or Section 63, a sum of money by way of compensation for the offence which such person is suspected to have committed, and

(b) when any property has been seized as liable to confiscation, to release the same at any time before an order of confiscation is passed by the appropriate authority, on payment of the value thereof as estimated by such officer.

(2) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(3). A Forest-officer shall not be empowered under this section unless he is a Forest-officer of a rank not inferior to that of a Ranger, and the sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case be less than two times the value of the forest produce:

Provided that in case the forest produce in respect of which an offence has been committed is not the property of the Government or in case the value of the forest produce is less than one thousand rupees and, if the offender has committed the offence for the first time, the suspected person may be discharged and the property (other than the

forest produce), if any, seized may be released on payment of the sum of ten thousand rupees or the value of the seized property, whichever is less; the seized forest produce may be released only if it is not the property of the Government or on the payment of the value thereof, as the case may be."

Rule 22 sub rule (3) of M.P. Transit (Forest Produce) Rules, 2000 reads as under :

"22(3). In such cases, where the forest produce in respect of which an offence has been committed, is not the property of the government or despite being the property of the government, the value of such forest produce is less than one thousand rupees and if the offender has committed the offence for the first time, then the case can be compounded on payment of the sum of ten thousand rupees or the value of the vehicle, whichever is less, by an officer not below the rank of sub divisional forest officer. After compounding the offence, no further action shall be taken against the offender. The seized forest produce may be released only if it is not the property of the Government or on payment of the value thereof, as the case may be."

As per Section 68 of Forest Act, 1927, power to compound the offence has been vested upon the empowered Forest Officer. As per Section 68 sub-section (1)(b) when property has been seized as liable to confiscation, may be released at any time before an order of confiscation is passed by the appropriate authority on payment of value estimated by such officer.

From reading of aforesaid Section, it is clear that power to compound the offence can only be exercised when order of confiscation has not been passed. In this case, D.F.O. and thereafter appellate authority, have passed the order of confiscation. Since the order of confiscation has already been passed, learned Additional Sessions Judge committed an error of law in passing orders to compound the offence in view of the proviso of Section 68 sub-section (3) of Indian Forest Act, 1927 and Rule 22 of M.P. Transit

(Forest Produce) Rules. Learned Additional Sessions Judge has committed an error in overlooking the provision of Section 68(1)(b) of the Indian Forest Act, 1927.

In view of above, the order impugned dated 30.08.2017 passed by Additional Sessions Judge suffers from illegality and therefore, same is quashed and the petition filed by the petitioner-State Government is **allowed**.

C.C. as per rules.

(VISHAL DHAGAT)
JUDGE

