

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S).1689 OF 2019
(Arising out of SLP (Cr1.) No(s).11053/2018)

RAKESH @ TATTU

APPELLANT(S)

VERSUS

THE STATE OF MADHYA PRADESH & ORS.

RESPONDENT(S)

O R D E R

1. Leave granted.
2. This appeal takes exception to the judgment and order dated 28th September, 2018 passed by the High Court of Madhya Pradesh at Jabalpur in MCRC NO.5482 of 2018.
3. The short question involved in this appeal is whether the offer made by the appellant of compounding the offence in respect of violation of Sections 26(1)(g) and 41 of the Indian Forest Act, 1927 (for short, 'the Act') has been justly declined by the competent authority.
4. Indeed, Section 52 of the Act enables the competent authority to confiscate the seized vehicle-Tractor used in connection with the stated offence. Even so, when the owner of the Tractor admits the use of the Tractor, the provisions of

Section 68 of the Act, as applicable at the relevant time in the State of Madhya Pradesh, enabled the State Government to authorize the Forest Officer to accept the offer of compounding the offence and release the seized property. The Section reads thus:

"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 on payment of the value thereof as estimated by such officer."

5. Indisputably, the present case does not fall under excepted category, as the offences are under Sections 26(1)(g) and 41 of the Act. The competent authority in its order dated 23.02.2016, while dealing with the request made by the appellant for compounding of the offence, observed thus:

"Forest offence committed by using vehicle has been admitted and he seeks settlement with the department and whatever penalty that may be imposed by the department he is ready to pay the same. Vide office letter

No.S.D.C./27580 dated 09.11.2015 was sent to Range Assistant of Bansa to furnish document regarding valuation sheet of forest produce seized in the case. However, the said document has not been submitted till date by the Range Assistant of Bansa before this court. Therefore, the entire prosecution evidence and admission of forest offence by accused Rakesh alias Tattu Pathak R/o Bansa Tarkhera as per his written reply itself proves involvement of seized vehicle Escort Tractor Trolley No.M.P. 15F.1223 in forest offence which is violation of Section 26(1) of Indian Forest Act, 1927.

Accused himself agreeing for settlement also admits the incident as deposed by the witnesses during the entire proceeding which proves that on the date of incident accused persons after illegal excavation of 1 trolley of Kathal stone from Forest Compartment R.F.118 have committed the offence of illegal transportation of the same in tractor trolley No.M.P.15 F.1223, which amounts to violation of Section 26(1) (g) and 41 of Indian Forest Act 1927. On finding vehicle seized in the case being liable to be confiscated under Section 52(3) of the Indian Forest Act, 1927, it is ordered that:

XXX

XXX

xxx"

6. On a fair reading of the aforesaid observation of the competent authority, it appears to us that the sole consideration weighed with the authority was that the appellant had admitted the commission of offence in question. That by itself cannot be the basis to deny the option of compounding predicated in Section 68 of the Act, reproduced above.

7. Counsel for the respondent placed reliance on a decision of this Court in "*State of Jharkhand and Another vs. Govind Singh*", reported in (2005) 10 SCC 437 and placed emphasis on paragraph 26 thereof. The same reads thus:

"26. xxx xxx xxx
The power to act in terms of Section 68 of the Act is limited to offences other than those specified in clauses (c) and (d) to Section 26, clauses (c) and (d) to Section 33 or Section 62 or Section 63. Sub-section (1)(b) of Section 68 is also relevant. It provides that where any property has been seized as liable for confiscation, an officer empowered by the State Government has power to release the same on payment of the value thereof as estimated by such officer. The officer has to be empowered in the official gazette by the State Government. To act in terms of the position the value of the property seized or as liable for confiscation has to be estimated. Therefore, on a combined reading of Section 52 and Section 68 of the Act as amended by the Bihar Act, the vehicle as liable for confiscation may be released on payment of the value of the vehicle and not otherwise. This is certainly a discretionary power, exercise of which would depend upon the gravity of the offence. The officer is empowered to release the vehicle on the payment of the value thereof as compensation. This discretion has to be judicially exercised. Section 68 of the Act deals with power to compound offences. It goes without saying that when the discretionary power is conferred, the same has to be exercised in a judicial manner after recording of reasons by the

concerned officer as to why the compounding was necessary to be done. In the instant case, learned Single Judge did not refer to the power available under Section 68 of the Act and on the contrary, introduced the concept of reading into Section 52 of the Act, a power to levy fine in lieu of confiscation which is impermissible. In the impugned judgment nowhere the value of the truck which was liable for confiscation was indicated. It appears that the first appellate Court and the revisional authority did not consider it to be a fit case where the vehicle was to be released and were of the considered view that confiscation was warranted. They took specific note of the fact that fake and fabricated documents were produced to justify possession of the seized articles. In any event the respondent had not made any prayer for compounding in terms of Section 68 of the Act.

xxx

xxx

xxx"

8. In our opinion, the competent authority in the present case has not considered the matter in proper perspective. It has failed to give full effect to the provisions of Section 68 of the Act. In that, the Authority proceeds merely on the basis that the appellant has admitted his guilt and the use of subject vehicle in the commission of offence. As aforesaid, that by itself is not enough. As a matter of fact, ordinarily, when the accused takes recourse to the remedy of compounding the offence, it presupposes that he

has admitted the commission of stated offence or about the use of seized vehicle in the commission of the offence. Only then he would apply for compounding the offence. Counsel for the appellant justly submits that the exercise of power, though discretionary, has to be judicially exercised. While doing so, the competent authority is obliged to reckon tangible factors such as gravity of offence as expounded in Govind Singh (supra) or that the vehicle has been used for commission of specified offence even in the past etc. In the present case, however, the only factor weighed with the authority is that the appellant has admitted the commission of offence. In other words, the authority has not exercised its discretion in judicious manner.

9. In our opinion, therefore, the impugned judgment and order deserves to be quashed and set aside. We order accordingly.

10. Instead, we allow the prayer of the appellant to compound the stated offences and to take follow up steps in that regard by releasing the subject vehicle upon payment of requisite

amount, as may be determined by the authorities as per the applicable rules and regulations and complying with other formalities including filing of undertaking, if any. That be so done within four weeks from today.

11. The appeal is accordingly allowed.

....., J.
(A.M. KHANWILKAR)

....., J.
(DINESH MAHESHWARI)

NEW DELHI
NOVEMBER 15, 2019

ITEM NO.27

COURT NO.7

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s). 11053/2018

(Arising out of impugned final judgment and order dated 28-09-2018 in MCRC No. 5482/2018 passed by the High Court Of M.p Principal Seat At Jabalpur)

RAKESH @ TATTU

Petitioner(s)

VERSUS

THE STATE OF MADHYA PRADESH & ORS.

Respondent(s)

(IA No. 183095/2018 - EXEMPTION FROM FILING O.T.)

Date : 15-11-2019 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Petitioner(s) Mr. Amol Chitale, Adv.
For Mrs. Pragya Baghel, AOR

For Respondent(s) Mr. Varun K. Chopra, Dy.Adv.Gen. (M.P.)
Mr. Gurtej Pal Singh, Adv.
For Mr. Rahul Kaushik, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed
order.

In view of the above, pending application(s)
shall stand disposed of.

(NEETU KHAJURIA)
COURT MASTER

(VIDYA NEGI)
COURT MASTER

(Signed reportable order is placed on the file.)