



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.A. (MD) No.128 of 2013

A.Pushparaj

... Appellant / Petitioner

-vs-

- 1.The District Forest Officer
Tirunelveli Division, Tirunelveli
- 2.The Assistant Conservator of Forest
Tirunelveli
- 3.The Forest Ranger
Tirunelveli Range
Tirunelveli
- 4.The Forester
Nazareth Section
Tirunelveli Range

... Respondents / Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 06.06.2012, made in W.P.(MD) No.8566 of 2006, on the file of this Court.

Prayer in WP(MD). 8566/ 2006 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to return the seized property of gun in Forest Crime No. W.L.3/2005 to the petitioner

For Appellant : Mr.T.A.Ebenezer

For Respondents : Mr.D.Muruganantham
Addl.Govt.Pleader

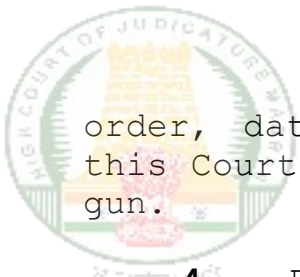
J U D G M E N T

[Judgment of the Court was made by M.SATHYANARAYANAN, J.]

The appellant claims to be an Ex-president of Anandapuram Panchayat and also Secretary of C.S.I.Church and according to him, his father was having a gun licence and after the demise of his father, the licence was transferred in his name and on 09.10.2005, at about 03.30 a.m., when he was coming from his Coconut Grove, with his gun, along with one Babu, the forest officials, who came in a car, asked him about the gun licence and for which he responded that he is having a valid gun licence, but in the interregnum, one of the officials suddenly snatched the gun from his hand and compelled him to board their car and thereafter he was taken to their Office, where under threat and compulsion some written statements were obtained from him and he also claims to have paid illegal gratification to come out, but the respondents, without any proceedings whatsoever, has retained his gun and hence he filed a writ petition, in W.P.(MD) No.8566 of 2006, before the Single Bench of this Court, praying for issuance of a writ of mandamus directing the respondents to return the gun concerned in Forest Crime No.W.L.3/2005 to him.

2. The learned counsel for the appellant / petitioner would submit that as per Section 50(4) of Wild Life (Protection) Act, person detained, or things seized under the foregoing power, shall forthwith be taken before a Magistrate to be dealt with according to law under intimation to the Chief Wild Life Warden or the officer authorised by him in this regard, but they have not done so and though the third respondent, who has no jurisdiction to compound the offence, threatened the appellant / petitioner to compound the offence and unless and until the licence is cancelled, the authority concerned has no power to retain the possession of the gun. But, the learned Single Judge of this Court, without appreciating the scope and purport of the statutory provisions, has found that though the offence has been compounded, since the seized material was confiscated to the Government, writ of mandamus sought for by the appellant / petitioner to direct the respondents to return his gun cannot be issued and ultimately dismissed the writ petition.

3. It is the submissions of the learned counsel for the appellant that in the light of the decision in **Principal Chief Conservator of Forest v. J.K.Johnson**, reported in (2012) 2 MLJ 257 (SC), in the event of compounding the offence, the authority concerned has no power to order forfeiture of the seized items and admittedly in the instant case on hand also, the offence was compounded and the licence is yet to be cancelled and hence the respondents have no power to retain the possession of the appellant's gun and therefore prays for setting aside the impugned



order, dated 06.06.2012, passed by the learned Single Judge of this Court with further direction to the respondents to return his gun.

4. Per contra, Mr.D.Muruganandam, learned Additional Government Pleader, would submit that the appellant, without any coercion or compulsion, has compounded the offence and in the public interest, his gun has been retained by the respondents and hence the remedy open to him is to challenge the order compounding the offence on the ground that the composition of offence was under coercion and compulsion and since the appellant has not done so, it is not open to him otherwise and hence prays for dismissal of the writ appeal.

5. This Court has carefully considered the rival submissions and perused the materials produced.

6. It is relevant to extract Paragraph Nos.36, 37 and 39 of the decision in **J.K. Johnson** (cited supra):

"36. There may be myriad reasons, for a person, suspected of commission of offence, to apply for composition of the offence. What is important is not the reason for composition of offence but the effect of composition. The effect of composition of offence has to be found in the statute itself. Section 54(2) provides that on payment of money to the empowered officer, the suspected person, if in custody, shall be discharged and no further proceedings in respect of the offence shall be taken against such person. In terms of sub-section (2) of Section 54, therefore, on composition of the offence, the suspected person is saved from criminal prosecution, and from being subjected to further proceedings in respect of the offence.

37. Section 54(2) of the 1972 Act, prior to the amendment by Act 16 of 2003, authorized the empowered officer, on payment of value of the property liable to be forfeited, to release the seized property, other than the government property. The provision underwent changes w.e.f. April 1, 2003 and the provision for release of the seized property has been deleted. Does the provision in new Section 54(2) authorize the empowered officer to order forfeiture of the seized property to the state government? We think not. In the first place, by deletion of such expression, it cannot be said that the Parliament intended to confer power on the specified officer



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to order forfeiture of the seized property which is nothing but one form of penalty in the context of the 1972 Act. Had the Parliament intended to do so, it would have made an express provision in that regard. Such conferment of power of penalty upon the specified officer cannot be read by implication in Section 54(2). Secondly, any power of forfeiture conferred upon Executive authority merely on suspicion or accusation may amount to depriving a person of his property without authority of law. Such power cannot be readily read by relying on the Statement of Objects and Reasons (Act 16 of 2003) without any express provision in the statute.

38....

39. It is true that by Act 16 of 2003, the Parliament has consciously deleted from Section 54 the provision concerning release of seized property liable to be forfeited on payment of value of such property but the plain language that is retained in Section 54(2) after amendment which reads, 'on payment of such sum of money to such officer, the suspected person, if in custody, shall be discharged and no further proceedings in respect of the offence shall be taken against such person' does not show that the Legislature intended to empower the specified officer under Section 54 to forfeit the seized property used by the suspected person in commission of offence against the Act. There is no replacement of the deleted words by any express provision. Section 54 substituted by Act 16 of 2003 does not speak of seized property at all - neither its return nor its forfeiture - while providing for composition of offence. The property seized under Section 50(1)(c) and Section 50(3A) has to be dealt with by the Magistrate according to law. This is made clear by Section 50(4) which provides that things seized shall be taken before a Magistrate to be dealt with according to law. Section 54 substituted by Act 16 of 2003 does not empower the specified officer to deal with the seized property. In this view of the matter, we are unable to accept the submission of the learned senior counsel for the appellants that a comparative reading of pre-amended Section 54(2)



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and Section 54(2) and Section 54(2) as substituted by Act 16 of 2003 makes the legislative intent clear that seized articles shall be forfeited on commission of the offence under the 1972 Act. When the language of the statutory provision is plain and clear no external aid is required and the legislative intention has to be gathered from the language employed. In our view, neither Section 54(2) of the 1972 Act by itself nor Section 54(2) read with Section 39(1)(d) or any other provision of the 1972 Act empowers and authorizes the specified officer under Section 54, on commission of the offence, to deal with the seized property much less order forfeiture of the seized property used by the person suspected of commission of offence against the Act."

7. Admittedly, in the instant case on hand, though the offence was compounded, according to the appellant it was under coercion and compulsion. The fact remains that the licence of the gun is yet to be cancelled and therefore it is not open to the respondents to retain the possession of the appellant's gun.

8. In the result, the writ appeal is allowed and the impugned order, dated 06.06.2012, passed in W.P.(MD) No.8566 of 2006, by the learned Single Judge of this Court, is set aside and the respondents 1 and 2 are directed to return the appellant's gun concerned in Forest Crime No.W.L.3/2005 to him within a period of two weeks from the date of receipt of a copy of this Order. It is also open to the respondents to proceed further in accordance with law, if they wish to do so. No costs.

Sd/
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To:

- 1.The District Forest Officer,
Tirunelveli Division, Tirunelveli.
- 2.The Assistant Conservator of Forest,
Tirunelveli.
- 3.The Forest Ranger,
Tirunelveli.



4.The Forester,
Nazareth Section,
Tirunelveli Range.

+1 cc to MR.T.A.EBENEZER, Advocate SR.No.55255

+1 cc to Special Government Pleader SR.No.55612

W.A. (MD) No.128 of 2013
23.09.2016

SMA/AAL-MPA/05/10/2016 :6P/7C