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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.NO.1797 OF 2012

Fr.Sebastian Fernandez

... Appellant

-Vs-

1. The District Forest Officer,
Gudalur,
The Nilgiris.

2. The Forest Range Officer,
Gudalur,
The Nilgiris.

... Respondents

PRAYER:-

Appeal filed under Clause 15 of the Letters Patent against the order dated 23.03.2011 made in W.P.No.26297 of 2001.

Prayer in W.P.No.26297 of 2001:-

Writ Petition filed under Article 226 of the Constitution of India for issue of Writ of Certiorarified Mandamus to call for the records of the first respondent herein made in TNF OR 64/2001 dated 21/06/2001 and quash the same and to direct the 1st respondent to refund the amount of Rs.4,00,000/- accepted by way of composition of the offence together with interest to the petitioner.

For Appellant :: Mr.A.U.Iango

For Respondents :: Mr.S.Prabhu
Addl.Government Pleader (F)



JUDGMENT

(Judgment of the Court was made by T.RAJA, J.)

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This writ appeal has been directed against the impugned order dated 23.3.2011 passed in Writ Petition No.26297 of 2001 refusing the prayer of the appellant to quash the order impugned dated 21.6.2001 passed by the first respondent, whereupon the learned single Judge has held that the compounding fee paid voluntarily by the appellant to avoid prosecution for the offence said to have been committed under the provisions of the Wild Life (Protection) Act, 1972 cannot be allowed to be refunded.

2. Learned counsel appearing for the appellant submitted that one Fr. Sebastian Fernandez, belonging to the Society of Jesuits, was the Manager of St. Joseph Estate measuring about 150 acres in Thorapally, Gudalur, the Nilgiris, which is owned by The Nilgiris Jesuit Educational and Charitable Society, where plantations like coffee, tea, cardamom, pepper etc., were being raised on the land. Although several estate workers are residing in the estate, there is a servant boy to look after the dogs. But no cooking is being done in the premises. Even the food for the Father is prepared and sent by Fathima Girls Higher Secondary School, Gudalur. There is a refrigerator in the house, but the same is used by the servant boy for storing the meat for the dogs. While so, on 20.6.2001, at about 5.00 P.M., a team of forest officials headed by one Gudan, Forester barged into the residence without search warrant from any competent Court and seized two licensed guns and an air gun from the ante room of the dining hall. These guns were held by Fr. Sebastian Fernandez as retainer under Order No.1089/ARM 90-91 dated 27.11.90. The licence has also been in the name of the President and Provincial of Karnataka Jesuit Province, Bangalore and the same was renewed upto 17.1.2003. But the Fr. Sebastian Fernandez does not know how to even use these arms and the air gun does not require any licence. But after the forest officials forcibly took the said Fr. Sebastian Fernandez in their jeep to the office of the first respondent District Forest Officer and he was detained for the whole night, it was claimed by the forest officials that they have recovered the deer meat weighing about 1.5 kgs., and also an unlicensed gun. But this was refuted by the said Fr. Sebastian Fernandez as false and untrue. On an earlier occasion, prior to this incident on 20.6.2001, the wild life forest officers from Kargudi, with the permission of the Fr. Sebastian Fernandez, entered upon the estate to investigate some poaching incident of that early morning. The tribals who were earlier caught red-handed with the deer meat and knives by the officials, were also there at that time. Therefore, these



tribals were also brought to the office of the District Forest Officer in the evening, For the reasons best known to them, the tribals confessed that they were set up by the poachers from Vimalagiri, who provided the unlicensed gun. That shows that the unlicensed gun belonged to them. After detaining the Fr. Sebastian Fernandez in the office of the District Forest Officer, he was forced to sign statements prepared in Tamil. The said Fr. Sebastian Fernandez was not familiar with Tamil.

3. Learned counsel appearing for the appellant also argued that when there was a demand by the first respondent to pay a sum of Rs.4 lakhs with the promise to drop all actions, Fr. Sebastian Fernandez did not agree to pay the amount. But the first respondent warned him that he would be sent to prison. The threats held out by the respondents affected Fr. Sebastian Fernandez's health and he almost collapsed. Thereafter, he hurriedly collected the amount and paid the same on 21.6.2001 only to avoid the ignominy of being sent to prison. But Fr. Sebastian Fernandez has not committed any offence as alleged by the respondents, because he is a law abiding citizen and also a member of the Society of Jesuits. However, the first respondent has virtually extorted a huge sum of Rs.4 lakhs under duress and threat of putting the Fr. Sebastian Fernandez behind the bars. Therefore, the money taken from Fr. Sebastian Fernandez under threat should be returned back. But the learned single Judge, disbelieving the case of the appellant/writ petitioner, dismissed the writ petition wrongly holding that the alleged offence committed by the appellant was much prior to the amendment, as it took place on 20.6.2001, therefore the writ petitioner cannot rely upon the amendment and cannot be permitted to turn around to contend that the composition fine had to be restricted only to Rs.2000/- or at the maximum of Rs.25,000/- as per the amendment, because Section 54 of the Act stood amended by virtue of the Wild Life (Protection) Amendment Act, 2003, Act 16 of 2003 w.e.f. 1.4.2003 and in the said amendment under sub-section (4) of Section 54, clause (b) of sub-section (1) as was originally found was deleted and sub-section (1) alone was retained and the compensation fee was increased from Rs.2000/- to Rs.25,000/-. Sub-section (4) of Section 54 of the Act as it stood prior to its amendment states that the sum of money accepted or agreed to be accepted as composition under clause (b) shall in no case exceed the sum of Rs.2000/-. It was also canvassed that the inclusion of clause (b) in sub-section (4) of Section 54 is a drafting error committed by the draftsmen of the legislation and it should be read in such a manner that the fine shall in no case exceed a sum of Rs.2000/- even in cases where compounding is done under clause (a). Arguing further, learned counsel appearing for the appellant submitted that the amount of Rs.4 lakhs paid was not a penalty or fine pending adjudication of an offence and it was



only a fee paid by the appellant voluntarily in order to escape from the clutches of law and to avoid prosecution under the Wild Life (Protection) Act, therefore, the amount collected without prior authority shall be directed to be refunded, he pleaded.

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4. Learned Additional Government Pleader appearing for the respondents submitted that the payment made by the appellant is not in the nature of a penalty, but it is a compounding fee. Since the compounding took place only on the express consent of the appellant by writing the word "accepted", the first respondent proceeded to compound the offence. Learned Additional Government Pleader appearing for the appellant further submitted that the appellant had admitted the recovery of 1.5 kgs of deer meat from his refrigerator and further admitted the possession of unlicensed weapons, namely, .22 rifle 1 no., one 405 rifle, one DBBL gun, one air gun and No.1 cartridge 12 bore 1 no., 2 nos. of 405 rifle cartridge, as per Section 50(1)(b) & (c) of the Wildlife (Protection) Act, 1972 and hence they were seized from the appellant's residence. Therefore, when the respondents proceeded to arrest him, to avoid the arrest, he voluntarily came forward and paid a sum of Rs.4 lakhs towards compounding fee. The affidavit filed by the appellant in the writ petition also admits the said fact. When the appellant has admitted the possession of 1.5 kgs of deer meat in his refrigerator and the offence was compounded for a sum of Rs.4 lakhs and the said amount has been remitted by the appellant in the State Bank of India, Gudalur on 21.6.2001 and receipt No.149630 dated 21.6.2001 in TNWLOR 64 of 2001 was issued to him, for the possession of unlicensed weapons, the appellant was handed over to the police in FIR of 2001 dated 21.6.2001 under the Arms Act, therefore, no fault can be found with the impugned order, he pleaded.

5. Heard both sides.

6. Admittedly, when the premises of the appellant was inspected on 20.6.2001 in connection with the alleged deer poaching, he was found to be in possession of unlicensed weapons and he was also possessing 1.5 kgs of deer meat recovered in his presence from the refrigerator. The special team also found the killing of two spotted deer which are endangered species and they have also recovered illicit weapon cartridges from the bungalow and the carcass of one deer and left overs of another killed deer with bullet injury. As the appellant was not able to produce any valid licence for the possession of the above weapons, although he tendered a xerox copy of licence purporting to have been issued in somebody's name with alternations, the matter is now under investigation by the police department under the Arms Act. Since the action of the appellant was an offence under the provisions of the Wild



Life (Protection) Act, he was arrested along with his accomplices Mr.C.K.Balan, S/o Krishnan Nair, Mr.Krishnan, S/o Veeran Chetty, Mr.Muniappan, S/O Ramaiah of Thorapalli and they were produced before the respondents for investigation. After the seizure, Fr.Sebastian Fernandez was willing to compound the offence, as per the provisions of the Wild Life (Protection) Act. He also gave a confession statement admitting the guilt. He also made an endorsement that he accepted the compounding of offence and signed the relevant paper. The statement of the appellant was also recorded in the presence of the respondents, Deputy Tahsildar, Forest Ranger and other subordinate staff. In such event, the offence was compounded for a sum of Rs.4 lakhs. Since the amount has been remitted by the appellant in State Bank of India, Gudalur and the receipt No.149630 dated 21.6.2001 in TNWLOR No.64 of 2001 was also issued to him, he cannot complain that the respondents have collected the amount under duress and threat, when he had paid the amount to escape from the clutches of law to avoid prosecution under the Wild Life (Protection) Act. So far as the competence of the respondents to compound the offence is concerned, Section 54(1)(a) empowers the respondents to compound the offence under the Wild Life (Protection) Act, 1972. Since the compounding fee also depends on the gravity of the offence, considering the value of the endangered species, the respondents, considering the fact that one dead female deer with bullet injury was found and 1.5 kgs of deer meat was also recovered from the refrigerator in addition to the recovery of unlicensed weapons, the amount of Rs.4 lakhs was found appropriate by the respondents and the said amount was also paid by the appellant. Moreover, Section 51 of the Wild Life (Protection) Act empowers the Magistrate to impose imprisonment, which may extend to three years or with fine or both. Section 54 also vests the administrative authority with sufficient power to compound the offence without even specifying the minimum or maximum amount. Therefore, when the respondents, based on the acceptance given by the appellant, have rightly compounded the offence, no merits can be found in the appeal. Therefore, the writ appeal fails and it is dismissed. For the same reasons, C.M.P.No.8373 of 2021 seeking to substitute the name of the proposed petitioner in the place of the deceased appellant is also dismissed as unnecessary. However, there is no order as to costs.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1. The District Forest Officer,
Gudalur,
The Nilgiris.

2. The Forest Range Officer,
Gudalur,
The Nilgiris.

+lcc to Mr.A.U.Iango, Advocate, S.R.No.27087

+lcc to the Special Government Pleader, S.R.No.26971

W.A.NO.1797 OF 2012

BP (CO)
PBS/16/09/2021