

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.07.2022

CORAM :

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.R.C.No.625 of 2014

and

M.P.No.1 of 2014

State by Forest Range Officer,
Tambaram Range, Chennai.

.. Petitioner

Vs.

1.Guoxing
New Revision Hotel 93,
Residence Road, Bangalore - 560025.

2.Bureau of Immigration,
Shastri Bhawan,
Annexure building,
No.26, Haddows Road,
Nungambakkam, Chennai-600 006.

3.The Under Secretary to Government,
CPV Division,
Department of External Affairs,
Ministry of External Affairs,
New Delhi.

[R2 is impleaded as per order in
Crl.R.C.No.625/2014 dated 08.02.2021]

[R3 is suo-motu impleaded as per order in
Crl.R.C.No.625 of 2014 dated 12.01.2022]

..Respondents

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to call for the records in C.C.No.1390 of 2013 passed by the Judicial Magistrate, Tambaram and set aside the order passed by the Judicial Magistrate, Tambaram in STOR.No.3 of 2013 in C.C.No.1390 of 2013 dated 31.12.2013.

For Petitioner : No appearance

For R1 : No appearance

For R2 and R3 : Mr.Venkataswamy Babu
Addl.Central Govt. Standing Counsel

ORDER

The State Government being aggrieved by the order passed by the learned Judicial Magistrate, Tambaram in C.C.No.1390 of 2013 dated 31.12.2013 compounding the offence under Section 55(2) of Tamil Nadu Forest Act, 1882 for the offence punishable under Section 35(b) of the Tamil Nadu Forest Act, preferred this Criminal Revision Case alleging that the learned Magistrate failed to consider the fact that the offence is not compoundable and the alleged compromise entered between the accused who is the Chinese national and the Forest Range Officer who has no power to enter into compromise is non est in law.

2. Considering the nature of the allegations made by the revision petitioner and the gravity of the subject matter of the offence, this Court impleaded the Bureau of Immigration as the 2nd respondent on 08.02.2021 and subsequently suo-motu impleaded Under Secretary of the Government, CPV Division, Department of External Affairs as the 3rd respondent on 12.01.2022 and directed the Central Government Standing Counsel to take notice and get instructions, since the Court has its own reservation about service of notice to the accused, who is a Chinese national and had left India after compounding the offence.

3. Thereafter, the matter has been adjourned on several occasions, there is no interest evinced by the petitioner / the Government of Tamil Nadu.

4. The gist of the complaint and the subject matter of the revision Case is that the 1st respondent namely Guoxing a Chinese National holding Chinese passport was found in possession of 42 pieces of red sanders total weight 27 kgs and market value of Rs.25,650/- he also had Indian currency of Rs.50,000/- besides some Chinese currency.

5. The Custom Intelligent Officer at the International Airport on 18.11.2013 at about 10.00 a.m., intercepted him and recovered the contraband, thereafter, he was handed over to the officials of the Forest Department along with contraband. Being apprehended for possessing the red sanders, an offence punishable under Section 35(b) of Tamil Nadu Forest Act 1882, registered a case in Crime No.S.T.O.R.No.3 of 2013 and arrested the accused and remanded him to the judicial custody. The arrest of the 1st respondent duly intimated to the Consul General of China in India. While so, the petition under Section 55(2) of Tamil Nadu Forest Act had been filed by the accused / the 1st respondent to compound the offence.

6. Taking note of the endorsement made by the Forest Range Officer that the accused / 1st respondent has paid compensation of Rs.50,000/-, the learned Magistrate has compounded the offence and discharged the accused. The learned Judicial Magistrate has also directed to hand over the passport of the accused and Rs.50,000/- seized from the accused. After receiving the passport the accused has left India to his country.

6. This Revision Case after ensuring that the accused had left India has been filed by the very the Forest Range Officer challenging the action of then Officer of his own department and after filing this revision case, in spite of adjourning the matter for several occasions, not duly represented through counsel.

7. It is not made clear in the petition what action has been taken against the Forest Range Officer who made the endorsement for compounding the offence. This Court on perusing the Section 55 of the Tamil Nadu Forest Act , 1882, it indicates that any schedule timber value less than Rs.10,000/-, the offence is compoundable. For reference, Section 55 of Tamil Nadu Forest Act, 1882 is extracted below:

"55.Power to compound offences:- (1) Any Forest Officer specially empowered in this behalf may accept, from any person reasonably suspected of having committed any forest-offence other than an offence under Section 50 [or Section 52], [...] a sum of money by way of compensation for the offence which may have been committed, and where any property has been seized as liable to confiscation, may release the same 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 accused person, if in custody, shall be discharged, the property seized shall be released, and no further proceedings shall be taken against such person or property.

(3) Nothing contained in sub-sections (1) and (2) shall apply to any offence in respect of -

(a) any sandalwood, where the weight of such sandalwood involved in such offence is more than one hundred kilograms; and

(b) any scheduled timber (other than sandalwood) where the value of such

scheduled timber involved in such offence is more than ten thousand rupees."

8. Whereas, the complaint indicates that the value of the timber is about Rs.25,650/- therefore, neither the judicial Magistrate nor the Forest Range Officer ought to have allowed the application for compounding.

9. For the reasons best known, the Forest Range Officer has acceded the compounding of offence and the Court has accepted the same and compounded the offence. At this length of time, allowing of the revision petition would serve no purpose. If the petitioner's department has any grievance about the officer who had misled this Court and allowed the foreign national to flee away from the country, it is to the Department to take appropriate departmental action.

10. With this observation, this Criminal Revision Case is dismissed. Consequently, the connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rpl

To

1.The Judicial Magistrate, Tambaram.

2.Bureau of Immigration,
Shastri Bhawan,
Annexure building,
No.26, Haddows Road,
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3.The Under Secretary to Government,
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SKM(CO)
CT/25/07/2022