IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 22ND DAY OF JULY 2024 / 31ST ASHADHA, 1946

WP(C) NO. 8121 OF 2024

PETITIONER:

MOHANAN POTTI K.U.
AGED 47 YEARS
S/O. K.U.KRISHNAN POTTI,
VADAKKEMADAM HOUSE, CHIRANGARA DESOM,
KORATTI KIZHAKKUMURI VILLAGE,
CHALAKKUDI TALUK,
THRISSUR DISTRICT, PIN – 680308

BY ADV K.RAKESH

RESPONDENTS:

1 **THE STATE OF KERALA**
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF FOREST, SECRETARIAT,
TRIVANDRUM, PIN - 695001

2 **THE DIVISIONAL FOREST OFFICER**
DIVISIONAL FOREST OFFICE, CHALAKKUDI,
THRISSUR DISTRICT, PIN - 680307

3 **THE DEPUTY RANGE FOREST OFFICER**
KONNAKUZHY FOREST STATION, PARIYARAM,
KONNAKUZHY, CHALAKKUDI DIVISION,
THRISSUR DISTRICT, PIN - 680721

T.P.SAJAN, SPL. G.P.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

The petitioner is involved in a forest crime of Kannamkuzhy Forest Station as O.R.No.17/2018 for the offences punishable under Sections 47C(1)(i), 47F(1), 47G(1) r/w Section 84, 47G(2) & 47G(3) of the Kerala Forest Act, 1961 (for short, 'the Act'). He is the second accused. The allegation is that the first accused trespassed into the reserve forest, cut and removed sandal wood and sold two pieces to the petitioner for Rs.2,000/-.

2. The offences alleged against the petitioner are compoundable under Section 68 of the Act. The petitioner submitted Ext.P2 compounding petition before the respondent No.2 who is the authority to compound the offence. The respondent No.2 rejected Ext.P2 as per Ext.P4 order. The petitioner has challenged Ext.P4 order before this Court in W.P.(C) No.37583/2023. This Court as per Ext.P5 judgment set aside Ext.P4 and remanded the matter for reconsideration. The respondent No.2 after remand again dismissed Ext.P2 as per Ext.P6 order. The petitioner has challenged Ext.P6 order in this writ petition.

3. I have heard Sri.K.Rakesh, the learned counsel appearing for the petitioner and Sri.T.P.Sajan, the learned Special Government Pleader.

4. Section 68 of the Kerala Forest Act, 1961 gives power to forest officers not below the rank of an Assistant Conservator of Forests to compound an offence by accepting a sum of money by way of compensation. On such payment, accused person is entitled to be discharged and the seized property shall be released. The power under the section is not exercisable in the case of offences under Sections 62 and 65. The offences alleged against the petitioner are compoundable and the respondent No.2 is the competent authority to compound the offence. In Ext.P4 order, the reason shown for rejection of the compounding application is two fold. (i) the case has already been charge sheeted and (ii) the first accused is involved in similar cases. However, after the remand, over and above the above reasons, the respondent No.2 has shown few more reasons for rejecting the application for compounding.

5. The respondent No.2 was not correct in holding that there could be no composition of offence under Section 68 of the Act when the case is pending before the criminal court. There is nothing in Section 68 of the Act which takes away the power of the officer concerned to compound the offence even when the case is pending before a court. The only requirement is that in case the offence is compounded, the officer compounding the offence has to give a report to the court where the case is pending and on such report

being received, the case is to be closed and the accused if he is in custody is to be discharged (***Mathew v. State of Kerala*** [2011 (3) KLT 1]). Thus, the first objection raised in Ext.P4 will not stand. The fact that the first accused is involved in other similar cases is not a ground to deny the benefit of compounding to the petitioner. Hence, both grounds stated in Ext.P4 must fail.

6. It is settled that the exercise of power under Section 68 of the Act, which allows for compounding for forest offences, must be judicially exercised, considering the factors such as the gravity of the offence, the loss caused to the Government and other relevant circumstances, if any (See ***Rakesh @ Tattu v. the State of Madhya Pradesh and others*** [(2020) 17 SCC 190].

7. When this Court remanded the matter for fresh consideration, the respondent No.2 found out few other grounds which were not there in Ext.P4 order. I am of the view that since those were not raised in Ext.P4 order, those reasons cannot be a ground to deny the benefit of compounding to the petitioner. The respondent No.2 ought to have exercised the power under Section 68 of the Act in a judicious manner. I am of the view that Ext.P6 order is vitiated by non exercise of discretion in judicious manner. Hence,

Ext.P6 order stands set aside. The respondent No.2 is directed to reconsider Ext.P2 application afresh in the light of the observations made in this judgement and pass orders in accordance with law, within a period of six weeks from the date of receipt of a copy of this judgment.

Writ petition is disposed of as above.

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

APA

APPENDIX OF WP(C) 8121/2024

PETITIONER EXHIBITS

EXHIBIT P1	**A TRUE COPY OF THE CHARGE SHEET SUBMITTED BY THE 3RD RESPONDENT**
EXHIBIT P2	**A TRUE COPY OF THE COMPOUNDING PETITION FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT DATED 4-8-2023**
EXHIBIT P3	**A TRUE COPY OF THE ACKNOWLEDGEMENT RECEIPT ISSUED FROM THE OFFICE OF THE 2ND RESPONDENT DATED 4-8-2023**
EXHIBIT P4	**A TRUE COPY OF THE ORDER DATED 25-09-2023 PASSED BY THE 2ND RESPONDENT REJECTING EXHIBIT P2 COMPOUNDING PETITION**
EXHIBIT P5	**A TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P(C).NO.37583/2023 DATED 14-11-2023**
EXHIBIT P6	**A TRUE COPY OF THE ORDER DATED 27-1-2024 PASSED BY THE 2ND RESPONDENT**