

Kesharsingh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Sep-20-1983

Reported in : AIR1984MP50

Judge : G.G. Sohani and ;R.K. Vijayvargiya, JJ.

Acts : [Forest Act, 1927](#) - Sections 68(2) and 76; Madhya Pradesh Transit (Forest Produce) Rules, 1961 - Rule 27; Madhya Pradesh Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 - Sections 5 and 11; Madhya Pradesh Van Upaj (Vyapar Viniyaman) Kashta Niyam, 1973 - Rules 7 and 9

Appeal No. : Misc. Petn. No. 144 of 1983

Appellant : Kesharsingh

Respondent : State of M.P.

Advocate for Def. : S. Kulshreshtha, Deputy Govt. Adv.

Advocate for Pet/Ap. : V.S. Kokje, Adv.

Judgement :

Vijayvargiya, J.

1. This is a petition under Article 226 of the Constitution.

2. The material facts giving rise to this petition are as follows: The petitioner is engaged in the business of running a saw mill at Khargone. On 26-11-1982 the saw mill of the petitioner was checked by the officers of the forest department. The Saw machine and the timber found therein were seized on the ground that the petitioner by running the saw mill was violating the provisions of Rule 27 of the M. P. Transit (Forest Produce) Rules, 1961 framed in exercise of powers conferred under Sections 41, 42 and 76 of the Indian Forest Act (for short 'the Central Act') and the provisions of Section 11 of the M. P. Van Upaj (Vyapar Viniyaman) Adhiniyam 1969 (for short 'the State Act') and Rule 7 of the M. P. Van Upaj (Vyapar Viniyaman) Kashta Niyam 1973. The saw machine was then sealed by the checking party. It is said that the petitioner admitted the offence and. proposed composition thereof which was accepted by the respondent No. 3 and a penalty of Rs. 500/- was imposed which was paid by the petitioner. The respondent No. 3 then served a notice on the petitioner on 1-12-1982 informing the petitioner that the value of the saw machine was estimated by him at Rs. 25,000/- and to show cause why the petitioner be not required to pay the said sum of Rs. 25,000/- for the release of the saw machine. The petitioner showed cause.

3. The respondent No. 3 after considering the explanation of the petitioner passed an order on 27-12-1982 (Ann. 'C') the operative part of which may be translated as follows :

'Thus Rule 27 of the M. P. Transit Rules, 1961 Section 5(1)(g) of the State Act, Rules 7, 7(4) and 9 of the Kashta Rules 1973 have been violated. Consequently the saw machine belonging to the petitioner is liable to be confiscated under Section 52 of the Central Act because the same was used for commission of the aforesaid forest offences and therefore it was seized and sealed. In exercise of powers conferred under Section 68 of the Central Act confiscating the amount of Rs. 500/- deposited by the owner of the saw mills on having admitted commission of the aforesaid offences it is ordered that the saw machine which is liable to be confiscated under Section 52 of the Central Act and which has been seized and the value of which has been estimated at Rs. 25,000/- on the basis of the market price shall be released on payment of the estimated value by the owner of the saw machine.'

The other part of the operative order is not relevant for the purposes of this petition.

4. The petitioner in this petition has assailed the said order (Ann. 'C') passed, by the respondent No. 3 on the ground that the alleged offences have not been compounded by the petitioner and therefore the respondent No. 3 had no jurisdiction to estimate the value of the saw machine and to require the petitioner to pay the estimated amount of Rs. 25,000/-for restoration of the saw machine to him. The petitioner has prayed that the impugned order passed by the respondent No. 3 be quashed and the respondents be directed to restore the saw machine to the petitioner. The other reliefs prayed for by the petitioner in the petition were not pressed at the hearing of the petition and therefore it is not necessary to mention them.

5. In the return filed on behalf of the respondents it is averred that the petitioner has contravened the provisions of Rule 27 of the Transit Rules as also the provisions of the Kashta Niyam and the State Act. The petitioner admitted having committed the various offences and offered to compound the same. The petitioner also paid a sum of Rs. 500/-which was accepted by the respondent No. 3 and who in exercise of powers conferred upon him by Section 68(1)(f) of the Central Act estimated the value of the saw machine which the petitioner is bound to pay to the respondent No. 3 in order to get the machine released. According to the respondents the order passed by the respondent no, 3 was in accordance with law and the petitioner is not entitled to any relief in this petition.

6. The learned counsel for the petitioner contended that the composition of an offence under the Central Act is effected only by payment of a sum of money by way of compensation as also the payment of the value of the property seized as estimated by the authorised officer. As the value of the seized saw machine as estimated by the respondent No. 3 was not paid by tne petitioner there was no composition of the offence and provisions of Section 68 of the Central Act were not attracted and the respondents had no power to compel the petitioner to pay the said sum of Rs. 25,000/- to get his saw machine released and that the respondents are bound to restore the saw machine to the petitioner because they

have not proceeded to prosecute the petitioner for the offences alleged to have been committed by him.

7. The learned Deputy Government Advocate appearing for the respondents contended that as the petitioner paid the amount of compensation which was accepted by the respondent No. 3 the composition of the offence was complete and the respondent No. 3 had jurisdiction under Section 68(1)(b) of the Central Act to estimate the value of the seized saw-machine and to order release of the same on payment by the petitioner of the value so estimated.

8. Having heard learned counsel for the parties we have come to the conclusion that this petition deserves to be allowed. Section 68 of the Central Act reads as follows:

'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.

(2) On the payment of such sum of money or such value or both as the case may be to such officer the suspected person if in custody shall be discharged the property if any seized shall be released and) no further proceedings shall be taken against such person or property.

The provisions of Section 19 of the State Act which are substantially similar to the provisions of Section 68 of the Central Act came up for consideration before Division Bench of the Court, in Dildar Mohammad v. State of M. P. (Misc. Petn. No. 222 of 1983 decided on 8-4-1983) : (reported in AIR 1984 Madh Pra 10) in that case it was held that under Section 19 of the State Act the offence can be compounded only by payment of money by the person concerned and accepted

by the authorised officer.

9. The learned Deputy Government Advocate contended that the said decision helps the respondents because in the present case the petitioner has paid the amount of compensation which has been accepted by the respondent No. 3 and therefore the composition of the offence was complete and the respondent No. 3 had jurisdiction to proceed to estimate the value of the seized saw-machine and to release the same on payment of such value by the petitioner.

10. The contention of the learned Deputy Government Advocate is not well founded. It is clear from a bare reading of Section 68(1) of the Central Act that it confers power on the State Government to empower a forest officer to accept a sum of money by way of compensation from a person who is suspected to have committed any forest offence specified therein and also to estimate the value of any property seized and to release the same on payment of such value. Section 68(1) of the Central Act does not deal with the question when a composition of an offence is effected or complete. This question is dealt with in Section 68(2) of the Central Act which provides that on payment of such sum of money by way of compensation or such value of the property as estimated by the officer concerned or both as the case maybe the suspected person, if in custody shall be discharged, the property, if any, seized shall be released and no further proceedings shall be taken against such person or property.

11. Thus, the composition of the forest offence is complete on payment of money by way of compensation and if any property is seized on payment of the value as estimated by the authorised officer. It is only in cases where no property is seized composition is complete on payment of the compensation by the person suspected to have committed the offence. But in cases where the property is also seized the composition of the offence is complete only when both the amount of compensation and the value estimated by the forest officer are paid by the person concerned. If such person pays the amount of compensation only but does not pay the value as estimated by the authorised officer the composition is not complete and the consequences envisaged by Section 68(2) of the Central Act do not follow. In such cases the person suspected to have committed the offence may be

proceeded with as if no composition had taken place and the forest officer concerned, has no power to compel such person to pay the estimated value of the property to get such property released. The court alone which tries the offence against such person has power to pass order as regards disposal of the property liable to confiscation.

12. In the present case it is admitted that the petitioner has not paid the value of the saw-machine as estimated by the respondent No. 3. The petitioner has also raised a dispute regarding payment of the amount of compensation by him. According to him he signed the printed Rajinama form without understanding the same and paid the amount as demanded by the checking party without intending to compound the offence. This allegation has been denied by the respondents. It is not necessary for the disposal of the petition to consider this disputed question of fact. Even assuming that the petitioner paid the amount of compensation which was accepted by the respondent No. 3 the fact remains that the petitioner did not pay the value of the seized property as estimated by the respondent No. 3 and therefore the composition of the offence was not complete and the consequences envisaged by Section 68(2) of the Central Act did not follow.

13. The respondent No. 3 has therefore no right to insist upon the petitioner to pay the amount of Rs. 25,000/- being the value of the saw-machine as estimated by him in order to get the seized saw-machine released. The order (Annexure 'C') passed by the respondent No. 3 to that extent being without jurisdiction deserves to be and is quashed.

14. Now as regards the relief for restoration of the seized saw-machine to the petitioner the learned Deputy Government Advocate contended that the respondent No. 3 shall move the Magistrate before whom the report of offence was made to proceed with in the matter and that the respondents shall also file a complaint against the petitioner for contravention of the provisions of the State Act and the Kashta Rules and that it should be left to the Magistrate to pass orders regarding interim custody of the saw-machine and this court should not order return of the seized property to the petitioner.

15. Ordinarily we would have accepted the contention of the learned Deputy Government Advocate. But in this case it is not disputed that the seized saw-machine has been given to the petitioner on supurdnama and the petitioner is in physical custody of the saw-machine. However, the saw-machine is lying idle because it has been sealed by the respondents. No useful purpose would be served by allowing the seal to continue with the result that the machine will remain idle causing avoidable loss to the petitioner. The interest of the respondents can well be safeguarded by putting suitable terms for the removal of the seal on the seized saw-machines so as to enable the petitioner to work his saw-machine for authorised purposes.

16. As a result of the discussion aforesaid this petition is allowed. The order dated 27-12-1982 (Annexure 'C') passed by the respondent No. 3 in so far as it relates to the estimation of the value of the saw-machine belonging to the petitioner and to the release thereof on payment of such value, is quashed. The respondent No. 3 is directed to remove the seal on the machine belonging to the petitioner and the said saw-machine shall stand restored to him on condition that the petitioner gives an undertaking before the Additional Registrar of this court to the effect that he shall produce the seized saw-machine before the court having jurisdiction whenever he is called upon to do so by such court. The petitioner shall also give a personal bond in the sum of Rupees 25,000/- to the respondent No. 3 to the same effect viz. that the petitioner shall produce the seized saw-machine before the court having jurisdiction whenever he is required to do so by such court. When the requisite undertaking is furnished by the petitioner before the Additional Registrar of this court he shall intimate of the said fact to the respondent No. 3. In the circumstances of the case the parties shall bear their own costs of this petition. The outstanding amount of security deposit be refunded to the petitioner after verification.