

G. Raja Vs. the Forest Range Officer, Pernambut Division and Another

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Court : Chennai

Decided On : Dec-05-2012

Reported in : 2013(1)MLJ(CrI)455; 2013(1)LW(CrI)450

Judge : B. Rajendran

Appeal No. : Criminal Revision Case No. 891 of 2012

Appellant : G. Raja

Respondent : The Forest Range Officer, Pernambut Division and Another

Advocate for Pet/Ap. : For the Petitioner: I. Paul Nobel Devakumar, Advocate.
For the Respondents: Mohammed Riyaz, Government Advocate.

Judgement :

(Prayer: Criminal Revision Case filed under Section 397 and 401 of Cr.P.C. against the Order dated 22.02.2012 passed in C.M.P. No. 451 of 2012 on the file of the learned Judicial Magistrate, Gudiyatham.)

1. This Criminal Revision Case is filed by the petitioner challenging the order dated 22.02.2012 passed by the learned Judicial Magistrate, Gudiyatham in C.M.P. No. 451 of 2012, by which, the application filed by him for return of vehicle under Section 451 of Cr.P.C. was dismissed.

2. According to the petitioner, he is the owner of the two wheeler - Hero Honda Splendor bearing Registration No. TN-23-AU 5491 and it was seized by the first respondent in connection with the case in W.L.O.R. No. 11 of 2009 registered for the offence punishable under Sections 9, 39, 51 and 54 of The Wild Life (Protection) Act, 1972 (hereinafter referred to as 'The Act'). Pursuant to such seizure, the offence was compounded and the petitioner also paid the compounding fee to the Gudiyatham Range. As per the first information report, the vehicle was shown as a case property and it was not produced before the concerned court. On the contrary, the vehicle was seized by the first respondent and it was given to the custody of the second respondent. As the vehicle was seized as early as on 23.07.2009 and it is kept idle, exposed to sun, heat and rain, the petitioner filed the application in C.M.P. No. 451 of 2012 for release of the vehicle. The said application was dismissed by the court below on the ground that the vehicle itself was seized by the Government, therefore it is a government property and therefore, the vehicle could not be released. It was also pointed out by the court below that the petitioner can always challenge the order of confiscation before the appropriate authority.

3. The learned counsel for the petitioner mainly contend that when the competent authority under the Act has allowed him to compound the offence, there cannot be any seizure of the vehicle, which was involved in the commission of such offence. In this context, the learned counsel for the petitioner relied on the decision of the Honourable Supreme Court reported in (Principal Chief Conservator of Forest and another vs. J.K. Johnson and others) 2011 CIJ 617 ALJ for the proposition that when the accused was permitted to compound the offences under the Wild Life Protection Act, the officials had no power to order confiscation of the seized articles and they had to surrender the articles before the Magistrate, who shall deal with the manner of disposal of the seized articles.

4. The learned counsel for the petitioner further contended that before confiscating the vehicle, a notice has to be issued and an enquiry has to be conducted, but without doing so, the respondents are not entitled to straight away pass an order of confiscation, confiscating the vehicle. In fact, under Section 51 (3) and 54 of the Act, the vehicle has to be produced before the concerned Magistrate who shall

deal with it in accordance with law. In any event, the court below failed to take into consideration the aforesaid aspects and therefore, he prayed for allowing this Criminal Revision Case.

5. On the other hand, the learned Government Advocate would contend that the petitioner himself is the owner of the two wheeler and he had admitted having transported the deer and wild pig, which are scheduled animals as per the Act and therefore mere possession of the animals itself is an offence, hence, the vehicle was rightly seized by the respondents. After seizure, on the same day, the vehicle was confiscated by initiating appropriate confiscation proceedings. Therefore, the petitioner can only challenge the confiscation proceedings and cannot seek for release of the vehicle. Under those circumstance, the court below is right in dismissing the application and he prayed for dismissal of the Criminal Revision Case.

6. I heard the counsel for both sides. Admittedly, the petitioner is the owner of the two wheeler - Hero Honda Splendor motor bike bearing Registration No. TN 23 AU 5491 and he was apprehended by the respondents when he was transporting the prohibited animals listed under the Act, in the vehicle in question on 23.07.2009. After registration of case in W.L.O.R. No. 11 of 2009 for the offences under Section 9, 39, 51 and 54, the offence was compounded on receipt of a compounding fee from the petitioner on 24.07.2009. Thereafter, the petitioner sought for returning the vehicle, but it was not returned. Therefore, the petitioner filed the application in CMP No. 451 of 2012 before the learned Judicial Magistrate, Gudiyatham and the same was dismissed.

7. The respondents would contend that the vehicle as well as the scheduled animals which were in possession of the petitioner were seized and once the vehicle was seized, it became the property of the Government and the petitioner is not entitled for custody of the same. The respondents relied on the letter dated 20.02.2012 sent by the Forest Range Officer to the learned Judicial Magistrate, Gudiyatham in which an endorsement was made on the reverse of the letter stating that the property is now in the custody of the District Forest Officer, Vellore and confiscation proceedings have been initiated by the officer.

8. From a reading of "Forest Offence Form-C' enclosed along with the typed set of papers, it could be seen that the offence has been compounded and the petitioner was directed to pay the compounding fee and it was also paid by the petitioner. As far as seizure of the vehicle is concerned, an endorsement was made as "confiscated". As stated supra, on 24.07.2009, the amount was paid by the petitioner and the challan to that effect has been produced by the petitioner. While so, the court below dismissed the application for return of the vehicle on the ground that the vehicle has already been confiscated and therefore the petitioner has to approach the authorities concerned regarding the release of the vehicle.

9. In this connection, it is relevant to refer to the decision of the Honourable Supreme Court reported in (Principal Chief Conservator of Forest and another vs. J.K. Johnson and others) 2011 CIJ 617 ALJ wherein in para Nos. 28, 33, 37 and 39, it was held as follows:-

"28. One thing is clear that the statutory provisions noticed above do not in explicit terms provide for the forfeiture of the seized items by the departmental authorities from a person who is suspected to have committed offence/s against the 1972 Act. Chapter VI-A which has been inserted in the 1972 Act by Act 16 of 2003 that provides for forfeiture of property derived from illegal hunting and trade is entirely different provision and has nothing to do with forfeiture of the property seized from a person accused of commission of offence against the 1972 Act. Insofar as Section 39(1) (d) of the 1972 Act is concerned, it provides that every vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of the Act shall be the property of the state government and in a certain situation, the property of the central government. The key words in Clause (d) of Section 39(1) are "..... has been used for committing an offence". What is the meaning of these words? The kind of absolute vesting of the seized property in the state government, on mere suspicion of an offence committed against the 1972 Act, could not have been intended by the Parliament. It is not even scarcely disputed that every enactment in the country must be in conformity with our Constitution. In this view, it is not sufficient - nor the law-makers intended to make it - to deprive a person of the property seized under the 1972 Act on accusation that such property has been used for committing an

offence against the Act. Section 39(1)(d) does not get attracted where the items, suspected to have been used for committing an offence, are seized under the provisions of the Act. It seems to us that it is implicit in Section 39(1)(d) that for this provision to come into play there has to be a categorical finding by the competent court of law about the use of seized items such as vehicle, weapon, etc. for commission of the offence. There is merit in the submission of the learned counsel for the respondent nos. 1 to 3 that if the construction put upon Section 39(1)(d) by Mr. R. Sundervardhan is accepted, the expression 'has been used for committing an offence' occurring therein has to be read as, 'is suspected to have been used for committing an offence'. In our view, this cannot be done.

33. Now, we have to see whether Section 54(2) of the 1972 Act, after its amendment by Act 16 of 2003, empowers the specified officer to order forfeiture of the property, in respect of the offences against the Act suspected to have been committed by such person, on composition of such offence. In other words, whether in the absence of any specific provision in Section 54(2) that the property seized shall be released, the specified officer empowered to compound offences is authorized to order forfeiture of the seized property and not return the property to the person from whom it has been seized.

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 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.

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) and Section 54 (2) as substituted by Act 16 of 2003 makes the legislative intent clear that seized articles shall be forfeited on composition 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 composition 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."

10. From a reading of the judgment of the Honourable Supreme Court, it is very clear that when once the respondents have allowed the offence to be compounded and compounding fee was also paid by the petitioner, the respondents have no authority to order for forfeiture or confiscating the vehicle and they have to only surrender the vehicle before the Magistrate concerned who shall deal with it in accordance with law. It has to be stated that mere possession of the scheduled animals under the Act is an offence and not the possession of the vehicle. Even though the vehicle was used in the commission of the offence and confiscation proceedings have been initiated, before initiating such proceedings, the petitioner has to be put on notice regarding the said proceedings. In the present case, even according to the respondents, on the date of occurrence itself, the vehicle was seized and confiscation proceedings have been initiated and they contend that the vehicle is the property of the government. Therefore it is clear that the confiscation proceedings have been initiated without any notice to the petitioner. The respondents ought to have issued notice to the petitioner especially when the offence itself was compounded by payment of compounding fee. Therefore, I am of the view that the respondents ought to have produced the vehicle in question before the Magistrate concerned who shall deal with it in accordance with law. Even though the petitioner has filed an application for return of the property under Section 451 of Cr.P.C. it was dismissed by the court below on the erroneous view that confiscation proceedings have been initiated, order has been passed thereon and the petitioner has to only challenge the confiscation proceedings when there cannot be any confiscation proceedings for the vehicle as the offence itself has been compounded. Therefore, the respondents have to be directed to produce the vehicle before the Magistrate concerned who shall deal with it in accordance with law.

11. In view of the aforesaid discussion and in the light of the order passed by the Honourable Supreme Court referred to above, the Criminal Revision Case is allowed by setting aside the Order dated 22.02.2012 passed in C.M.P. No. 451 of 2012 on the file of the learned Judicial Magistrate, Gudiyatham. The respondents are directed to produce the two wheeler - Hero Honda Splendor bearing Registration No. TN-23-AU 5491 owned by the petitioner to the learned Judicial Magistrate, Gudiyatham, who in turn shall deal with it and pass orders in

accordance with law for return of the same to the custody of the petitioner.

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