

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31/07/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.13060 OF 1999

and

W.M.P.NO.18713 OF 1999

Dr.M.B.S. Krishnan,
S/o. Srinivasa Rao
No.48, Channel Road, Melur,
Madurai District 625 106. .. Petitioner

-Vs-

1. Government of Tamil Nadu
represented by its Secretary
Forest Department,
Fort St. George,
Chennai 600 009.

2. The Chief Wildlife Warden,
Chennai.

3. The District Forest Officer,
Madurai District.

4. The Forest Ranger,
Madurai 625 020. .. Respondents

Petition filed under Article 226 of the Constitution of India for the
issuance of Writ of Mandamus as stated therein.

For Petitioner : Mr.P.L. Narayanan

For Respondents : Ms. Selvi George,
Government Advocate
for Special Govt. Pleader
(Forests)

:J U D G M E N T

The petitioner has prayed for writ of Mandamus directing the respondents to return the sum of Rs.1,00,000/- collected under Receipt No.2 59585 dated 4.2.1999 purporting to be the compounding fee in respect of Ka.Ku.No.446/98-99 and direct the respondents to issue a copy of the proceedings or notice in Ka.Ku.No.446/98-99.

2. It is alleged in the writ petition that a gypsy had brought an injured spotted deer for treatment and the petitioner, who is a Doctor, took care of the said animal under the advice of Veterinary Doctors and the animal remained with the petitioner and his family. It is alleged that on 3.2.1999 some persons came from the office of the Forest Ranger, Madurai and enquired about the deer and the petitioner explained the circumstances under which the deer was with the petitioner. It is further alleged that under the threat of arrest, the petitioner was made to pay a sum of Rs.1 lakh. It is alleged that he was made to write and sign a statement as dictated by the authorities. Soon thereafter the petitioner wrote a letter to the Minister of Forest Department with copy to the respondents seeking refund of Rs.1 lakh and return of the deer but no action has been taken. It is alleged that the respondents have no authority to impose compounding fee of Rs.1 lakh and at any rate the compounding fee was highly exorbitant and should be refunded or atleast suitably reduced.

By way of supplementary affidavit, the petitioner has further stated that as per Rule 48 of the Wild Life (Protection) (Tamilnadu) Rules, 1975 for the purpose of Section 54, only the Chief Wildlife Warden, the Wildlife Wardens and the District Conservator of Forests have jurisdiction to accept money for compounding the alleged offence and the acceptance by the Forest Ranger is without jurisdiction. It is further indicated that the Conservator of Forests, Madurai, who is the Superior Officer of the District Forest Officer, in Proceedings No.A2/3 A-66199 dated 15.4.1999 had recommended return of the sum of Rs.1 lakh collected on 4.2.1999 in whole or atleast a part thereof.

3. A counter affidavit has been filed on behalf of the District Forest Officer, the third respondent. It has been indicated that the forest officials have visited the house of the petitioner and seized the spotted deer (Zoological name □ Chital) which is included in Schedule III. It is stated that since no possession certificate was there, an offence under Section 49 of the Wild Life Protection Act had been committed and accordingly O.R.No.46/98-99 dated 3-2-99 was registered under Sections 49 and 51 of the Wild Life Protection Act. The petitioner had given a confessional statement in writing dated 3.2.1999 and accepted to abide by the orders and the offence was compounded for a sum of Rs.1 lakh and necessary orders were passed by the District Forest Officer on 3.2.1999 and the amount was deposited without any protest. It has been further indicated that under Section 54 of the Act such case can be compounded by any officer of a rank not inferior to the rank of Deputy Conservator of Forests and since District Forest Officer is not an officer inferior to the Deputy Conservator of Forests he is empowered to compound the offence. The amount was collected by the Forest Ranger under the direction of the District Forest Officer. The contention to the effect that no notice was issued to the petitioner prior to the compounding order has been refuted on the ground that there is no provision to issue any prior notice

before invoking powers under Section 54 of the Act to compound an offence and it has been further submitted that an offence can be compounded only if the same is accepted by the accused and where the accused does not agree, there cannot be any compounding and after accepting the compounding there is no necessity to issue any separate notice. It was further indicated that in practice, notice in "C" and "G" Forms prescribed in Appendix 10 of Tamil Nadu Forest Department Code is served and in the present case notice in "G" Form is served on the accused. It has been further indicated that fixation of an amount for compounding is within the discretion of the concerned officer and no fee has been prescribed. It has been further stated that

"... The Conservator of Forests, Madurai Circle in his ref.No.A2/3866/00 dated 1-3-99 has called for the remarks on the petition sent by the petitioner. A detailed report was also sent to the Conservator of Forests by this Respondent vide ref.No.1518/99 M2 dated 24-3-99 and to the knowledge of the respondent no orders and no recommendation were made by the Conservator of Forests to refund either fully or partly and the petitioner is put to strict proof of the same. If there is any such order from the Conservator of Forests the petitioner would have definitely produced the same before this Hon'ble Court. Without any document it is not open for the petitioner to make such a statement with ulterior motive."

It is the further contention of the respondent No.3 in the counter that under Article 226 of the Constitution, the High Court cannot enter into such disputed question of facts and cannot interfere with the discretionary order passed.

4. Relevant file has been produced by the counsel representing the State and translated copy of the relevant documents had been furnished.

5. Under the Wild Life Protection Act nothing has been provided as to the extent of the compounding fee to be levied. Obviously the amount or fee to be levied as compounding fee should have some correlation with the nature of the offence and the nature of punishment likely to be imposed. As a matter of fact, Section 54 itself makes it clear that an offence, where minimum imprisonment is prescribed, cannot be compounded. In other words, compounding can be for less serious offence and it goes without saying that the compounding fee must have got some reasonable nexus with the nature of punishment which is likely to be inflicted. The Act itself contemplates that fine can extend upto Rs.25,000/- and for commission of second offence or subsequent offence, more severe punishment is contemplated. While considering the question of fixing the compounding fee, the concerned officer obviously has to take into account all these aspects as well as the background for commission of the offence.

6. In the present case, the statement of the petitioner indicates that he had merely stated that a deer had been kept by him and he was prepared to return the deer and abide by any action taken in the matter. It is of course true that the amount has been paid, but as already indicated, the amount had to be paid, otherwise the petitioner would have been taken into

custody. The petitioner has also asserted that the Conservator of Forests had directed that the amount should be returned either fully or partly. There is a vague denial so far as this aspect is concerned and the respondent No.3 has stated that to his knowledge there is no such order. However, the petitioner in his affidavit had given the proceedings number. A specific denial should have been made by the respondent No.3 or the relevant file should have been produced to show the correct state of affairs. The representation which has been made does not appear to have been disposed of.

7. In such circumstances, respondent No.2 is directed to consider the representation keeping in view the various facts and circumstances and if it is found by respondent No.2 that the compounding fee collected from the petitioner was excessive, appropriate direction may be issued regarding refund of the part of the compounding fee. This may be done within a period of eight weeks from the date of communication of this order. The writ petition is disposed of accordingly. Consequently, WMP.No.18713 of 1999 is closed.

Index : Yes

Internet : Yes

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To

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