

Supreme Court of India
Supreme Court of India
Princl.Chief Conservator Of ... vs J.K.Johnson & Ors on 17 October, 2011
Author: R Lodha
Bench: R.M. Lodha, Jagdish Singh Khehar
REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2534 OF 2011

Princl. Chief Conservator of Forest & Anr. Appellants Versus

J.K. Johnson & Ors.Respondents JUDGMENT

R.M. Lodha, J.

The significant and important question raised in this appeal, by special leave, is : whether a specified officer empowered under Section 54(1) of the Wild Life (Protection) Act, 1972 as amended by the Wild Life (Protection) Amendment Act, 2002 (Act 16 of 2003) to compound offences has power, competence and authority, on payment of a sum of money by way of composition of 1

the offence by a person who is suspected to have committed offence against the Act, to order forfeiture of the seized items?

2. The above question arises in this way. In the intervening night of July 24/25, 2004, at the Pothamsettipalli, Cross Roads, the vehicles were being checked by the Sub-Inspector of Police, Kulcharam Police Station, District Medak. In the course of the checking, at 2.45 a.m. a jeep bearing Registration No. AP - 12 - D 703 was also stopped and checked. The said jeep was occupied by the present respondent nos. 1, 2 and 3 and two other persons. On checking, the Sub-Inspector of Police found one gunny bag tied to the front side of the bumper of the jeep. The gunny bag had two bags inside; one bag contained a hunted wild boar and the other had three rabbits. The seizure panchnama was prepared immediately at 3.30 a.m. The jeep, a battery, a torchlight, dead animals and two rifles of foreign make fitted with telescope were seized. The persons (including respondent nos. 1 to 3 who were occupying the jeep) were taken into custody and a case (Crime No. 43 of 2004) was registered against them under Section 9 of the Wild Life (Protection) Act, 1972 (for short, 'the 1972 Act'). The Division Forest Officer, Medak was also immediately informed. 2

3. On July 25, 2004 itself, the Divisional Forest Officer, Medak recorded the statement of respondent nos. 1 to 3 and two other persons. They gave some explanation with regard to the gunny bag containing wild pig and three rabbits and the rifles in their possession but stated that the offence was done by them in ignorance and they were willing to pay money by way of composition of the offence.

4. On August 10, 2004, the Conservator of Forests, Nizamabad Circle, Nizamabad on the report submitted by the Divisional Forest Officer, Medak that the accused persons (Respondent Nos. 1 to 3) had offered for compounding the offence and they were willing to pay the money by way of composition of the offence, ordered that the offence be compounded for Rs. 30,000/- under Section 54 of the 1972 Act and the vehicle and the weapons used in committing the offence be forfeited.

5. The respondent no. 1 challenged the above order in appeal before the Principal Chief Conservator of Forests, Andhra Pradesh. The Principal Chief Conservator of Forests although by his order dated October 9,

2004 held that appeal was not maintainable but asked the Conservator of Forests, Nizamabad to reduce the composition fee from Rs. 30,000/- to Rs. 25,000/- . The 3

respondent no. 1 was asked by the Principal Chief Conservator of Forests to approach the Conservator of Forests, Nizamabad for further action.

6. The Conservator of Forests, Nizamabad then passed a fresh order on November 4, 2004 permitting the respondent nos. 1 to 3 to compound the offence for Rs. 25,000/-. The seized items viz; vehicle No. AP - 12 - D 703 and two rifles were ordered to be forfeited to the state government. It was also ordered that if the offenders fail to pay compounding fee within seven days, necessary action against them for their prosecution under Section 51 of the 1972 Act may be taken.

7. The respondent nos. 1, 2 and 3 challenged the above three orders insofar as forfeiture of the vehicle and two rifles to the state government was concerned in a writ petition filed under Article 226 of the Constitution of India before the Andhra Pradesh High Court.

8. The Single Judge of the High Court, on hearing the parties, by his judgment dated March 29, 2005 set aside the order of forfeiture of the vehicle and the two rifles.

9. The present appellants--the Principal Chief Conservator of Forests, Hyderabad and the Conservator of Forests, Nizamabad - 4

preferred intra-court appeal against the order of the Single Judge. The Division Bench of the High Court dismissed the intra-court appeal and maintained the order of the Single Judge. This is how the present appeal has reached this Court.

10. We heard Mr. R. Sundervardhan, learned senior counsel for the appellants and Mr. Jayant Kumar Mehta, learned counsel for the contesting respondent nos. 1 to 3.

11. Mr. R. Sundervardhan, learned senior counsel for the appellants invited our attention to Section 54 of the 1972 Act, particularly sub-section (2) thereof prior to its amendment by Act 16 of 2003 and the amended Section 54 (2) whereby the portion, "the property other than Government property, if any, seized, shall be released" has been omitted and submitted that the legislative intent was clear that release of seized items was not permissible and it was competent for the specified officer empowered to compound offences to order forfeiture of the seized items to the state government. In this regard, learned senior counsel also referred to Section 39 (1)(d) of the 1972 Act and submitted that the property seized from a person accused of commission of an offence against the 1972 Act, irrespective of the fact that offence has been compounded, stands forfeited and the property becomes the 5

property of the state government or central government, as the case may be.

12. Mr. R. Sundervardhan, learned senior counsel would submit that the Statement of Objects and Reasons of Act 16 of 2003 leaves no manner of doubt that one of the objects sought to be achieved by the amendment was to provide that the vehicles, vessel, weapons, tools etc. used in committing compoundable offences are not returned to the offenders. He argued that legislative intent and policy must be given due regard.

13. Learned senior counsel for the appellants would also contend that compounding of the offences under Section 54 is not during the course of a trial or in the trial of a compoundable offence and, therefore, an order of empowered officer in compounding the offence is not an order of acquittal; it is plain and simple departmental compounding. He urged that the effect of the compounding offences, as provided in Section 320(8) of the Code of Criminal Procedure, 1973, (for short, 'the Code') is not applicable to the compounding of offences under Section 54 of the 1972 Act as amended by Act 16 of 2003. He also referred to two decisions

of this Court (i) Sewpujanrai Indrasanrai Ltd. v. Collector of Customs 6

and Ors.1 to draw distinction between the expressions, "offender", "offence" and "confiscation" and (ii) Biswabahan Das v. Gopen Chandra Hazarika and Ors.2, particularly, paragraphs 8, 9 and 13 thereof. Learned senior counsel, thus, submitted that the view of the High Court in quashing the order of forfeiture of the seized items is contrary to the statutory provisions in the 1972 Act as amended by Act 16 of 2003.

14. On the other hand, Mr. Jayant Kumar Mehta, learned counsel for respondent nos. 1 to 3 stoutly supported the view of the High Court. He submitted that Section 54 did not expressly empower the specified officer to order forfeiture of property in the event of composition of the offence. He submitted that the Statement of Objects and Reasons of Act 16 of 2003 cannot be acted upon in the absence of clear and explicit provision for forfeiture of property in Section 54 of the 1972 Act. Learned counsel submitted that the submission of the learned senior counsel for the appellants that regardless of composition of offence, the property seized from a person accused of commission of an offence against the 1972 Act stands forfeited under Section 39, if accepted, would not only result in anomaly but also lead to vesting of unguided, 1 AIR 1958 SC 845

2 (1967) 1 SCR 447

7

arbitrary or unconstitutional power in the hands of the empowered officer.

15. Mr. Jayant Kumar Mehta, learned counsel for respondent nos. 1 to 3 argued that the plain language of Section 39 (1)(d) does not give sanction to an officer empowered under Section 54 of the 1972 Act to forfeit seized items under the provisions of the Act on composition of offence. He submitted that the expression used in Section 39 (1)(d) is, "..... that has been used for committing an offence" and not, " is suspected to have been used for committing an offence.....".

16. Learned counsel for respondent nos. 1 to 3 also referred to Section 50, Section 51(2) and Section 53 of the 1972 Act and submitted that if the interpretation canvassed by the learned senior counsel for the appellants is accepted, that would render Section 50(4), Section 51(2) and Section 53 superfluous. He argued that even in cases of casus omissus, the court should not supply any words which are found to be missing in the enactment. The Statement of Objects and Reasons cannot be read to supplement or supplant a statutory provision much less a source of power and in any event, the penal provisions in the 1972 Act are required to be construed strictly. He relied upon the Full Bench decision of the 8

Madhya Pradesh High Court in the case of Madhukar Rao S/o Malik Rao v. State of M.P. and others3 and the judgment of this Court in State of Madhya Pradesh and Others v. Madhukar Rao4 affirming the Full Bench decision of Madhya Pradesh High Court. He also relied upon decisions of this Court in A.C. Sharma v. Delhi Administration5; State of Maharashtra v. Marwanjee F. Desai and Others6; Prakash Kumar alias Prakash Bhutto v. State of Gujarat7; Mohd. Shahabuddin v. State of Bihar and others8 and Mandvi Cooperative Bank Limited v. Nimesh B. Thakore9.

17. Mr. R. Sundervardhan, learned senior counsel, in rejoinder, distinguished the decision of this Court in the case of Madhukar Rao4. He submitted that the issue in Madhukar Rao4 and the issue raised in the present appeal are distinct and even on facts the case of Madhukar Rao4 is distinguishable. He submitted that Section 54 of the 1972 Act as amended by Act 16 of 2003 was not under consideration in Madhukar Rao4.

18. For a proper consideration of the question raised before us as noted above, it is necessary to read few relevant sections of 3 2000 (1) MPLJ 289

4 (2008) 14 SCC 624

5 (1973) 1 SCC 726

6 (2002) 2 SCC 318

7 (2005) 2 SCC 409

8 (2010) 4 SCC 653

9 (2010) 3 SCC 83

9

the 1972 Act prior to amendment by Act 16 of 2003 and Section 54 after amendment with effect from April 1, 2003.

19. The 1972 Act was enacted by the Parliament to provide for the protection of wild animals and birds and for matters connected therewith or ancillary or incidental thereto. The Act, inter alia, seeks to regulate hunting of wild animals and birds; regulate possession, acquisition or transfer of, or trade in, wild animals, animal articles and trophies and taxidermy thereof and provide penalties for contravention of the Act. Pertinently, the 1972 Act has been subjected to extensive amendments from time to time. It has been amended by Act 23 of 1982, Act 28 of 1986, Act 44 of 1991, Act 26 of 1993 and Act 16 of 2003.

20. The relevant portion of Section 39 in Chapter V, 'Trade or Commerce in Wild animals, Animal articles and Trophies' is as follows :

"S. 39. Wild animals, etc., to be Government property.--(1) Every--

(a), (b), (c) x x x x x

(d) vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act,

shall be the property of the State Government, and, where such animal is hunted in a sanctuary or National Park 10

declared by the Central Government, such animal or any animal article, trophy, uncured trophy or meat derived from such animal or any vehicle, vessel, weapon, trap or tool used in such hunting shall be the property of the Central Government.

(2), (3) (a), (b), (c) x x x x x"

21. Chapter VI deals with the prevention and detection of offences. Section 50 after its amendment by Act 44 of 1991 and Act 16 of 2003 to the extent it is relevant, reads as follows : "S.50. Power of entry, search, arrest and detention.-- (1) Notwithstanding anything contained in any other law for the time being in force, the Director or any other officer authorised by him in this behalf or the Chief Wild Life Warden or the authorised officer or any Forest Officer or any Police Officer not below the rank of a sub-inspector, may, if he has reasonable grounds for believing that any person has committed an offence against this Act,-- (a) require any such person to produce for inspection any captive animal, wild animal, animal article, meat, trophy, uncured trophy, specified plant or part or derivative thereof in his control, custody or possession, or any licence, permit or other document granted to him or required to be kept by him under the provisions of this Act; (b) stop any vehicle or vessel in order to conduct search or inquiry or enter upon and search any premises, land, vehicle or vessel, in the occupation of such person, and open and search any baggage or other things in his possession;

(c) seize any captive animal, wild animal, animal article, meat, trophy or uncured trophy, or any specified plant or part or derivative thereof, in respect of which an offence against this Act appears to have been committed, in the possession of any person together with any trap, 11

tool, vehicle, vessel or weapon used for committing any such offence and, unless he is satisfied that such person will appear and answer any charge which may be preferred against him, arrest him without warrant, and detain him: (2) (3) It shall be lawful for any of the officers referred to in sub-section (1) to stop and detain any person, whom he sees doing any act for which a licence or permit is required under the provisions of this Act, for the purposes of requiring such person to produce the licence or permit and if such person fails to produce the licence or permit, as the case may be, he may be arrested without warrant, unless he furnishes his name and address, and otherwise satisfies the officer arresting him that he will duly answer any summons or other proceedings which may be taken against him.

(3A) Any officer of a rank not inferior to that of an Assistant Director of Wild Life Preservation or an Assistant Conservator of Forests, who, or whose subordinate, has seized any captive animal or wild animal under clause (c) of sub-section (1) may give the same for custody on the execution by any person of a bond for the production of such animal if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

(4) Any person detained, or things seized under the foregoing power, shall forthwith be taken before a Magistrate to be dealt with according to law under intimation to the Chief Wild Life Warden or the officer authorized by him in this regard.

(5) to (9) x x x x x x.

22. The penalties are provided in Section 51 of the 1972 Act. This Section too has undergone changes in 1986, 1991 and 2003. Section 51 has also been amended subsequently by Act 39 of 12

2006 but that is not relevant for our purpose. Sub-section (2) of Section 51 reads as under:

"S. 51. Penalties.--

(1), (1A), (1B) x x x x x x

(2) When any person is convicted of an offence against this Act, the court trying the offence may order that any captive animal, wild animal, animal article, trophy, uncured trophy, meat, ivory imported into India or an article made from such ivory, any specified plant, or part or derivative thereof in respect of which the offence has been committed, and any trap, tool, vehicle, vessel or weapon, used in the commission of the said offence be forfeited to the State Government and that any licence or permit, held by such person under the provisions of this Act, be cancelled.

(3), (4), (5) x x x x x x

23. Section 54, prior to amendment by Act 16 of 2003, read as under :

"S. 54. Power to compound offences.--(1) The Central Government may, by notification, empower the Director of Wild Life Preservation or any other officer and the State Government may, by notification, empower the Chief Wild Life Warden or any officer of a rank not inferior to that of a Deputy Conservator of Forests,--

(a) to accept, from any person against whom a reasonable suspicion exists that he has committed an offence against this Act, payment of a sum of money by way of composition of the offence which such person is

suspected to have committed; and

13

(b) when any property has been seized as liable to be forfeited, to release the same on payment of the value thereof as estimated by such officer.

(2) On 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, and the property, other than Government property, if any, seized, shall be released and no further proceedings in respect of the offence shall be taken against such person. (3) The officer compounding any offence may order the cancellation of any licence or permit granted under this Act to the offender, or if not empowered to do so, may approach an officer so empowered, for the cancellation of such licence or permit.

(4) The sum of money accepted or agreed to be accepted as composition under clause (b) of sub-section (1) shall in no case, exceed the sum of two thousand rupees:

Provided that no offence, for which a minimum period of imprisonment has been prescribed in sub-section (1) of section 51, shall be compounded."

24. After amendment by Act 16 of 2003, Section 54 reads as follows :

"S. 54. Power to compound offences.--(1) The Central Government may, by notification, empower the Director of Wild Life Preservation or any other officer not below the rank of Assistant Director of Wild Life Preservation and in the case of a State Government in the similar manner, empower the Chief Wild Life Warden or any officer of a rank not below the rank of a Deputy Conservator of Forests, to accept from any person against whom a reasonable suspicion exists that he has committed an offence against this Act, payment of a sum of money by way of composition of the offence which such person is suspected to have committed.

14

(2) 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.

(3) The officer compounding any offence may order the cancellation of any licence or permit granted under this Act to the offender, or if not empowered to do so, may approach an officer so empowered, for the cancellation of such licence or permit.

(4) The sum of money accepted or agreed to be accepted as composition under sub-section (1) shall, in no case, exceed the sum of twenty-five thousand rupees: Provided that no offence, for which a minimum period of imprisonment has been prescribed in section 51, shall be compounded."

25. Chapter VI-A has been inserted in the 1972 Act by Act 16 of 2003. This chapter makes provision for forfeiture of property derived from illegal hunting and trade. The applicability of Chapter VI-A is provided in Section 58 A. This Chapter is, accordingly, applicable to (a) every person who has been convicted of an offence punishable under the Act with imprisonment for a term of three years or more; (b) every associate of a person referred to in clause (a) and (c) any holder of any property which was at any time held by a person referred to in clause (a) or clause (b) unless the present holder or, as the case may be, anyone who held such property after such person and before the present holder, is or was transferee in good faith for adequate consideration.

15

26. The Statement of Objects and Reasons (Act 16 of 2003) annexed with Wild Life (Protection) Amendment Bill, 2002, in clause (xvi), proposed, "to provide that the vehicles, weapons and tools, etc. used in committing compoundable offences are not to be returned to the offenders".

27. In the backdrop of the above scheme of law, we have to consider the correctness of the view of the High Court and the question of law raised in the appeal.

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 16

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 17

suspected to have been used for committing an offence'. In our view, this cannot be done.

29. Section 51(2) of the 1972 Act provides for forfeiture of the property on conviction; it says, inter-alia, that when any person is convicted of an offence against the Act, the court trying the offence may order that any captive animal, wild animal, etc. in respect of which the offence has been committed and any vehicle, vessel or weapon etc. used in the commission of the said offence be forfeited to the state government.

30. 'Forfeiture' and 'seizure' have different meaning and connotation in law. In 'The Law Lexicon' by P. Ramanatha Aiyer [2nd edition (Reprint 2000)], 'forfeiture' is defined as the divestiture of specific property without compensation in consequence of some default or act forbidden by law. The word 'forfeit' is defined in Concise Oxford English Dictionary (Tenth Edition): 'lose or be deprived of (property or a right or privilege) as a penalty for wrongdoing'. In R.S. Joshi etc. v. Ajit Mills Ltd & Anr.10., this Court speaking through Krishna Iyer, J., with reference to expression 'forfeiture' occurring in Section 37 (1) of the Bombay Sales Tax Act, said, "this word 'forfeiture' must bears the same meaning of a penalty 10 AIR 1977 SC 2279

18

for breach of a prohibitory direction". While construing the word 'forfeiture' with reference to Sections 431 and 432 of the Bengal Municipal Act (15 of 1932), this Court stated in the case of The Chairman of the Bankura Municipality v. Lalji Raja & sons11 that unless the loss or deprivation of the goods is by way of a penalty or punishment for a crime, offence or breach of engagement, it would not come within the definition of forfeiture. However, in light of the provisions under consideration, the Court held that forfeiture of property

was not one of the penalties or punishments for any of the offences under that Act. `Seizure' on the other hand is generally understood to mean a forcible taking possession. In law, seizure is the taking possession of property by an officer under legal process. Seizure of property under legal process is a temporary measure. It is temporary interference with the right to hold the property. Seizure under legal process is usually followed by confiscation or forfeiture or disposal in accordance with the provisions under which seizure has been made or the property is returned to the person from whom it has been seized or to the lawful claimant to such property. While Section 39(1)(d) provides that seized property under the 1972 Act used for commission of the offence/s against the Act shall be the 11 AIR 1953 SC 248

19

property of the state government or the central government as the case may be, the other provisions like Section 51(2) and Chapter VI- A provide for forfeiture of the property in certain situations. However, for the seized property used for commission of offence to be the property of the state government or the central government under Section 39(1)(d), in our view, offence against the Act has to be legally ascertained and adjudicated by a competent court of jurisdiction.

31. In Madhukar Rao⁴, albeit, the question was little different but this Court considered the ambit and scope of Section 39(1)(d). That matter reached this Court from a Full Bench decision of the Madhya Pradesh High Court. The question before the Full Bench was whether as a result of deletion of sub-section (2) of Section 50 withdrawing power of interim release, there existed any power with the authorities under the 1972 Act or the Code to release the vehicle used in the course of alleged commission of offence under the Act. The Full Bench of the High Court held that any property including vehicle seized on accusation or suspicion of commission of offence under the 1972 Act can be released by the Magistrate pending trial in accordance with Section 50(4) read with Section 451 of the Code. The Full Bench also held that mere seizure of any property including vehicle on the charge of commission of offence would not make the 20

property to be of the State Government under Section 39(1)(d) of the 1972 Act. Against the decision of the Full Bench, the State of Madhya Pradesh preferred special leave petition in which leave was granted. This Court extensively considered the statutory provisions and approved the view of the Full Bench of the High Court that deletion of sub-section (2) and its replacment by sub-section (3)(A) in Section 50 of the 1972 Act had no effect on the powers of the Court to release the seized vehicle during the pendency of trial under the provisions of the Code. While dealing with Section 39(1)(d), this Court also approved the view of the Full Bench of the High Court that Section 39(1)(d) would come into play only after a court of competent jurisdiction found that accusation and allegations made against the accused were true and recorded the finding that the seized article was, as a matter of fact, used in the commission of offence. This Court said :

" Any attempt to operationalise Section 39(1)(d) of the Act merely on the basis of seizure and accusations/allegations levelled by the departmental authorities would bring it into conflict with the constitutional provisions and would render it unconstitutional and invalid....."

32. We are in complete agreement with the view of this Court in Madhukar Rao⁴ that on the basis of seizure and mere 21

accusations/allegations, Section 39(1)(d) of the 1972 Act cannot be allowed to operate and if it is so done, it would be hit by the constitutional provisions.

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.

34. Mr. R. Sundervardhan, learned senior counsel for the appellants was right in contending that the composition of the offence under Section 54 of the 1972 Act is not during the course of trial or in the trial of a compoundable offence. He is also right in his submission that compounding under Section 54 is a departmental compounding and does not amount to an acquittal. But then, what is the sequitar? What is the effect of such departmental composition of offence under Section 54(1) of the 1972 Act?

22

35. The observations made by this Court in *Biswabahan Das*² may be useful in order to understand the effect of compounding offence/s. That was a case in which this Court was concerned with the provision for composition of forest offence under Assam Forest Regulation, 1891 - a provision quite similar to Section 54 of the 1972 Act prior to amendment by Act 16 of 2003. This Court said: ".....It must be borne in mind that although the marginal note to s. 62 of the Assam Regulation is "power to compound offences" the word "compounding" is not used in sub-s. (1) clause (a) of that section. That provision only empowers a forest officer to accept compensation for a forest offence from a person suspected of having committed it. The person so suspected can avoid being proceeded with for the offence by rendering compensation. He may think that he was being unjustly suspected of an offence and he ought to defend himself or he may consider it prudent on his part to pay such compensation in order to avoid the harassment of a prosecution even when he is of the view that he had not committed the offence. By adopting the latter course he does not remove the suspicion of having committed the offence unless he is to have such benefit conferred on him by some provision of law. In effect the payment of compensation amounts to his acceptance of the truth of the charge against him. Sub-s. (2) of s. 62 only protects him with regard to further proceedings, but has not the effect of clearing his character or vindicating his conduct."

36. There may be myriad reasons, for a person, suspected of commission of offence, to apply for composition of the offence. What is important is not the reason for composition of offence but the 23

effect of composition. The effect of composition of offence has to be found in the statute itself. Section 54(2) provides that on payment of money to the empowered 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. In terms of sub-section (2) of Section 54, therefore, on composition of the offence, the suspected person is saved from criminal prosecution, and from being subjected to further proceedings in respect of the offence.

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. 24

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.

38. Way back in 1960, this Court in *The Central Bank of India & Ors. v. Their Workmen*, etc.¹² said that the Statement of Objects and Reasons is not admissible for construing the section, far less can it control the actual

words used. It has been reiterated by this Court time and again that the reference to the Statement of Objects and Reasons is for understanding the enactment and the purpose is to ascertain the conditions prevailing at the time the Bill was introduced and the objects sought to be achieved by the proposed amendment; the Statement of Objects and Reasons is not ordinarily used to determine the true meaning of the substantive provisions of the statute. As an aid to the construction of a statute, the Statement of Objects and Reasons appended to the Bill, ordinarily must be avoided.

12 AIR 1960 SC 12

25

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 26

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.

40. In view of the above, the order passed by the Conservator of Forests, Nizamabad for forfeiture of the vehicle and two rifles to the state government is de hors the provisions of the 1972 Act and unsustainable. The High Court has rightly set aside such illegal order. However, the Single Judge was not right in his order dated March 29, 2005 in directing the respondents therein (present appellants) to release the vehicle and rifles. The Division Bench also erred in maintaining the above direction. Since the items were seized in exercise of the power under Section 50(1)(c), the seized property 27

has to be dealt with by the Magistrate under Section 50(4) of the 1972 Act. The respondent nos. 1 to 3 must accordingly apply to the concerned Magistrate for the return of seized items who obviously will consider such application according to law.

41. We hold, as we must, that a specified officer empowered under Section 54(1) of the 1972 Act as substituted by Act 16 of 2003 to compound offences, has no power, competence or authority to order forfeiture of the seized items on composition of the offence by a person who is suspected to have committed offence against the Act. Our answer to the question framed at the outset is in the negative.

42. The appeal is disposed of as indicated above with no order as to costs.

.....J

(R.M. LODHA)

.....J.

(JAGDISH SINGH KHEHAR)

NEW DELHI

OCTOBER 17, 2011.

28