

(1991) 01 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 719 of 1990

Divisional Forest Officer (Authorized Officer) and Others

APPELLANT

Vs

Laxman Pratap Ray alias Lakshman

RESPONDENT

Date of Decision : 16-01-1991

Acts Referred:

Andhra Pradesh Forest Act, 1967 — Section 44(2), 44(2A), 44(2B), 44(2E), 59

Andhra Pradesh Forest Offences (Compounding and Prosecution) Rules, 1969 — Rule 10, 12, 4, 5, 6

Citation : (1991) 1 ALT 304

Hon'ble Judges : P.L. Narasimha Sarma, J;M. Jagannadha Rao, J

Bench : Division Bench

Advocate : The Government Pleader for Excise, for the Appellant; Sankara Rao Bilolikar, for the Respondent

Final Decision : Allowed

Judgement

M. Jagannadha Rao, J.—This writ appeal is preferred by the Divisional Forest Officer (A.O.), Adilabad and another, questioning the judgment of the learned single Judge in W.P. No. 1417/1990. The respondent is the writ petitioner. The writ petition was filed by the respondent questioning the order of the appellant dated 28-10-1989 and the appellate order of the learned District Judge, Adilabad dated 16-1-1990 in regard to the confiscation of teak-wood logs and lorry bearing M.P. 20/4717. The lorry was being driven by the owner himself.

2. On 8-10-1989 at about 11-30 p.m. the Forest Range Officer, Adilabad checked the above said lorry at Mavala check-post and found that the lorry was carrying 17 teak-wood logs measuring 1.016 cmts. worth Rs. 11,176/- without valid permit, along with "masoori dhal" of 100 bags. It was then seized u/s 44 (2) of the A.P. Forest Act, 1967 (hereinafter called the Act) and produced before the 1st appellant, the Divisional Forest Officer, Adilabad (the authorised officer), for inquiry. The said officer gave notice to the writ petitioner who was the owner-cum-driver of the vehicle and ordered confiscation of the teak-wood logs and the

lorry. The said order has been confirmed by the learned District Judge u/s 44 (2E) of the Act. Questioning the said orders, the respondent filed the writ petition. The learned single Judge passed the following order:

"The Forest Officer has not considered the question of compounding by exercising power u/s 59 of the Act. The learned Government Pleader submitted that since no application has been filed by the party, the same was (Sic. not) considered. However, the party is at liberty to file an application before the appellate Court within one month from to-day."

It is against this order that the Divisional Forest Officer and the Dy. Range Officer have filed this appeal.

3. In this appeal, it is contended by the learned Government Pleader, Sri Chandrasekhara Reddi, that according to the provisions of the Act and the relevant rules, there is no question of any application being filed before the District Court. It is for the owner of the goods and vehicle to file an application for compounding immediately after seizure of the goods or at the inquiry before the said officer and if no application is filed before him at that stage, it is not permissible to seek compounding at any later stage, either before the authorised officer u/s 44 (2A) or before the appellate authority i.e., the District Court u/s 44 (2E).

4. On the other hand, it is contended by Sri Nilind G. Gokhale that before the application for compounding is filed in the office of the Forest Officer who has seized the goods, the latter must find out whether the accused is "willing" to have the offence compounded and if no such opportunity had been given, the further confiscation proceedings cannot be said to have been fairly conducted. In any event, it is open to the accused to file an application before the authorised officer or the District Court during the confiscation proceedings.

5. As the matter is important and a large number of such cases are arising frequently, we requested Sri C. Padmanabha Reddy, senior counsel, to assist us and he has made valuable submissions and we are indeed very much thankful to him. We shall first refer to Section 44 and Section 59 of the Act.

"Section 44 Seizure of property liable to confiscation and procedure there upon:-

(1) Where there is reason to believe that a forest offence has been committed in respect of any timber or forest produce, such timber, or forest produce, together with all tools, ropes, chains, boats, vehicles and cattle used in committing any such offence, may be seized by any forest officer or police officer.

(2) Every officer seizing any property under this section shall place on such property, or the receptacle if any, in which it is contained, a mark indicating that the same has been so seized and shall, except where the offender agrees in writing forthwith to get the offence compounded, without any un-reasonable delay either produce the property seized before an officer not below the rank of an Assistant Conservator of Forests authorised by the Government in this behalf

by notification (hereinafter referred to as the authorised officer) or make a report of such seizure to the magistrate:

Provided that where the timber or forest produce with respect to which such offence is believed to have been committed is the property of the Central or State Government and the offender is not known, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to the Divisional Forest Officer.

(2-A) Where an authorised officer seizes under Sub-section (1) any timber or forest produce or where any such timber or forest produce is produced before him under Sub-section (2) and he is satisfied that a forest offence has been committed, in respect thereof, he may order confiscation of the timber or forest produce so seized or produced together with all tools, ropes, chains, boats or vehicles used in committing such offence.

(2-B) No order confiscating any property shall be made under Sub-section (2-A) unless the person from whom the property is seized is given -

(a) a notice in writing informing him of the grounds on which it is proposed to confiscate such property;

(b) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation and

(c) a reasonable opportunity of being heard in the matter;

(2-C) Without prejudice to the provisions of Sub-section (2-B), no order of confiscation under Sub-section (2-A) of any tool, rope, chain, boat or vehicle shall be made if the owner thereof proves to the satisfaction of the authorised officer that it was used in carrying the property without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of the tool, rope, chain, boat or vehicle in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.

(2-D) Any forest officer not below the rank of a Conservator of Forests empowered by the Government in this behalf by notification, may within thirty days from the date of the order of confiscation by the authorised officer under Sub-section (2-A) either suo motu or on application call for and examine the record of that order and may make such inquiry or cause such inquiry to be made and pass such orders as he may think fit:

Provided that no order prejudicial to any person shall be passed without giving him an opportunity of being heard.

(2-E) Any person aggrieved by an order passed under Sub-section (2-A) or Sub-section (2-D) may within thirty days from the date of communication to him of such order, appeal to the District Court having jurisdiction over the area in which the property has been seized, and the District Court shall after giving an

opportunity to the parties to be heard, pass such order, as it may think fit and the order of the Court so passed shall be final.

Section 59: Power to compound offences:-(I) Any forest officer, specially empowered in this behalf by the Government may accept a compensation from any person who committed or in respect of whom it can be reasonably inferred that he has committed any forest offence, other than an offence u/s 52 or Section 55-

(i) a sum of money not exceeding fifty rupees where such offence is of a trivial nature;

(ii) a sum of money which shall not, in any case, be less than the value of the forest produce, or more than four times such value as estimated by such forest officer, in addition to the value of the forest produce, where such offence involves any forest produce which in the opinion of the forest officer, may be released;

(iii) a sum of money which shall not, in any case, be less than the value of the forest produce or more than four times such value as estimated by such forest officer, where such offence involves forest produce which in the opinion of the forest officer should be retained by the Government.

(2) On receipt of the sum of money referred to in Sub-section (1), by such officer,-

(i) the accused person, if in custody, shall be discharged;

(ii) the property seized shall, if it is not to be so retained, be released, and

(iii) no further proceedings shall be taken against such person or property."

6. A reading of the provisions of the Act shows that (i) the seizure proceedings (ii) the confiscation proceedings and (iii) the compounding proceedings are all different. The officers or authorities who are empowered to deal with these proceedings are also different. Proceedings before the magistrate are again different. If this distinction is borne in mind, there will be no difficulty in arriving at the proper solution to the problem posed before us. While Section 44 (1) and (2) deal with the seizure of goods, vehicles etc. by a forest officer or police officer, Section 44 (2A) deals with the confiscation proceedings before the authorised officer (who is not below the rank of an Assistant Conservator of Forests) and it is open to the Conservator of Forests, u/s 44 (2D) to suo motu (or otherwise) set aside or modify the order of the authorised officer. Against the orders of the authorised officer u/s 44 (2-A) or that of the Conservator of Forests u/s 44 (2D), an appeal lies to the District Court u/s 44 (2E), which will be final. While, therefore, Section 44 thus deals with seizure and the confiscation proceedings, the subject of compounding is dealt with separately u/s 59, such compounding being permitted to be done by the Forest Officer, empowered in that behalf by the Government. The Rules, called the A.P Forest Offences (Compounding and Prosecution) Rules, 1969 (hereinafter called the Rules) state

that the officers empowered to compound are the Divisional Forest Officer and the Sub-Divisional Forest Officer generally and, in cases where the value of the forest produce is below Rs. 100/-, the Ranger (vide Rule 8).

7. Interlinked with the above said procedure is the question as to when the compounding is to be done and by whom and whether the accused should himself ask for compounding or whether he is to be given the option.

8. Sub-clause (2) of Section 44, it will be noticed, states that the forest officer who has seized the property, should place a mark on the same and, shall except where the offender "agrees" in writing "forthwith" to get the offence compounded, produce the property before the authorised officer (an officer not below [he rank of an Asst. Conservator of Forests), who decides the question whether the property is to be confiscated or not. u/s 59 of the Act, any forest officer, specially empowered in that behalf by the Government may accept a compensation from any one who has committed any forest offence (other than one u/s 52 or Section 55). If u/s 59(1) compounding is accepted by the forest officer than u/s 59(2) the accused will have to be discharged, and the property which is seized, if it is not to be retained, is to be released and no further proceedings shall be taken against such person or property.

9. The rules also lay down the procedure for compounding.

"Rule 3 :-When a forest offence is booked it shall be dealt with in the manner hereinafter provided.

Rule 4 : An enquiry into a forest offence shall be held by an officer not below the rank of a Ranger.

Rule 5 : -Every accused who expresses his willingness to have the offence compounded as provided in Rule 4 shall forthwith give a written undertaking in that regard in Form "A".

Rule 6 :-If, immediately after the offence is detected or at the time of enquiry, the accused is willing to pay in advance any amount towards compensation to be fixed u/s 59 of the Act, any Forest Officer not below the rank of a Forester, may accept such amount and shall issue a receipt duly signed by him for the amount so received :

Provided that the acceptance of any amount as aforesaid shall be without prejudice to any decision that may be taken by the competent authority under these rules in regard to the quantum of compensation or the necessity or otherwise to compound the offence.

Rule 8:-Where the accused gives an undertaking as specified in Rule 5, in the case of-----

(i) all the forest offences, the Divisional Forest Officer or the Sub-Divisional Forest Officer;

(ii) all the forest offences where the value of the forest produce involved does not exceed Rs. 50/-, the Ranger

shall be competent to compound the offence u/s 59 by passing an order in this behalf. Every order so passed shall be in Form "B" and shall be communicated to the accused immediately on such passing.

Rule 9 :-Every Officer competent to compound the offence may refuse to compound an offence in any particular case without assigning any reasons :

Provided that where the competent officer refuses to compound an offence the amount that has been received towards advance compensation from the accused under Rule 6 shall be arranged to be refunded to him by such officer by passing a suitable order in this behalf "

Thus Rule 3 states that when a forest offence is booked, it shall be dealt with in the manner provided in the rules. Under Rule 4, an "inquiry" into a forest offence shall be held by an officer not below the rank of a Ranger. Rule 5 states that every accused who "expresses his willingness" to have the offence compounded, shall "forthwith" give a written undertaking in that regard in Form A. Again Rule 6 states that if, immediately after the offence is detected or at the time of inquiry, the accused is willing to pay in advance any amount towards compensation to be fixed u/s 59, any Forest Officer not below the rank of a Forester, may accept such amount and issue a receipt duly signed by him. Rule 8 states that the compounding is to be done by the Divisional Forest Officer or the Sub-Divisional Forest Officer or the Ranger as stated therein. The order is to be in Form B. Rule 9 deals with refusal to compound and states that no reasons need be assigned therefore. Rule 10 grants a right of appeal to "any person aggrieved by an order passed by an officer under Rule 8," before the Sub-Divisional Forest Officer, or the Divisional Forest Officer or the Conservator of Forests. Rule 12 states that if compounding is not "opted" for and accepted, prosecution proceedings may be launched.

10. The first question to be decided is whether it is for the accused to ask for compounding at the time of seizure or at the inquiry referred to in Rule 6 or whether it is for the officer to ask the accused if he is willing for the compounding of the offence.

11. The answer to the above question turns upon the meaning of the words "offender agrees" in Section 44 (2), the words "accused who expresses his willingness to have the offence compounded" used in Rule 5 as also the words "accused does not opt" used in Rule 12. It is significant that Section 59 (2) does not say "offender requests" but says the "offender agrees". No question of a person "agreeing" or "expressing willingness" can arise unless somebody else gives a choice or gives an opportunity to the person to agree or express willingness. It is therefore clear that it is for the forest officer concerned to put the accused or the offender on notice regarding the provision for compounding. This obligation arises particularly because of the fact that once this stage is

crossed and the authorised officer takes up the case for purposes of the confiscation proceedings, there is no question, as we shall presently show, of compounding the offence at that stage. The provision for compounding is in itself a beneficial provision and therefore the party has to be put on notice in that behalf. Further the effect of compounding u/s 59 (2) would be to put an end to the proceedings for confiscation as also the proceedings on the criminal side and therefore the accused or the offender must necessarily be asked whether he is prepared to have the offence compounded. It is however to be noted that merely because the affected person is so put on notice, it is not incumbent upon the authorities to compound the offence. Even after the affected party exercises an option or agrees to compound, it is open to the competent authority not to compound or, accept compounding on such conditions which the competent authority deems fit.

12. The next question is as to the stage at which the above said option is to be exercised. u/s 44(2), the offender is to agree in writing "forthwith" at the time of the seizure, to have the offence compounded. Again under Rule 6, the accused or offender could express his willingness "immediately" after the offence is detected or at the time of the inquiry. The "inquiry" mentioned in Rule 6 should not be confused with the inquiry before the confiscation authority (authorised officer) u/s 44(2A) & (2B). This is clear from a reading of Rule 4 which states that after the seizure, the inquiry will be before an officer not below the rank of a Ranger. On the other hand, the inquiry u/s 44(2A) & (2B) in regard to confiscation is before an officer not below the rank of Assistant Conservator. Therefore the accused or offender is to express his willingness at the time of detection or at the inquiry before the said officer, who is not below the rank of a Ranger. The inquiry is for the purpose of receiving the compensation as a preliminary stage anterior to the actual compounding by the specified competent authority u/s 59(1) read with Rule 8. The Act and the Rules do not therefore contemplate any expression of willingness to be made or application for compounding being filed either before the authorised officer dealing with the question of compounding u/s 44(2A) & (2B) or before the District Court.

13. u/s 320, Cr.P.C. the statute specifically permits compounding by the complainant or such other person with the permission of the Court. The statute also expressly empowers the Sessions Court and the High Court to sanction such compounding. On the other hand, the A.P. Forest Act, 1967 states in Section 59(1) that the compounding cannot be done by any forest officer other than the officer specified by the Government. Rule 8 states that the Divisional Officer, the Sub-Divisional Officer or the Ranger may compound as stated therein. Neither the Act nor the Rules contemplate any sanction to be given by the authorised officer acting u/s 44(2A) & (2B) nor by the Conservator of Forests acting u/s 44(2D) nor by the District Court on appeal u/s 44(2E). It may be that the authorised officer dealing with confiscation u/s 44 (2A) & (2B) (as per G.O. 32 (Forest Department) Dt. 21-1-1976) is the Sub-Divisional Forest Officer or the Divisional Forest Officer, and the same officers may be competent to compound

the offences under Rule 8. But the said officers, while acting u/s 44(2A) and (2B) act as the "authorised officers" empowered to deal with confiscation of the property; and again, while acting u/s 59(1) read with Rule 8, act as the compounding authorities. But the stage for filing the application for compounding under Form A is the stage of detection of the offence by the officer seizing the goods. The application is to be filed before the officer, not below the rank of Ranger, who may be the officer seizing or before whom the goods are immediately produced; or he may even, in view of the language of Section 44(2A), be the authorised officer who has seized the goods or vehicle. In either case, the application in Form A is to be filed by the offender or the accused person at the time of detection of the offence or immediately thereafter at the time of the inquiry under Rules 4 and 6 and well before the matter is referred to the authorised officer or if the seizure is by the authorised officer, before the latter takes up the matter for purpose of decision as to confiscation. The said application is to be so filed upon the officer asking the offender or accused to exercise his choice or option for having the matter compounded. Once that stage is crossed, there is no question of being asked to compound or to seek compounding-either before the authorised officer or the District Court. In fact,- unlike Section 320, Cr.P.C.-no permission of the authorised officer or the District Court is envisaged because no compounding is contemplated at the stage when the matter is before the authorised officer or the District Court. In this behalf, we agree with the reasoning of Ramachandra Raju, J. in *Public Prosecutor v. K. Mahboob* 1982(1) APU 20. We also agree that the decision of Punnaiah, J. in *Ponnolu Lakshmaiah v. State of A.P.* 1979 (1), A.L.T. 201 is distinguishable inasmuch as in that case, an application was filed immediately after detection of the offence in Form A. Punnaiah, J. in our view, did not lay down any proposition that compounding could be done at later stages. Of course, the above decisions are subject to the principle laid down by us earlier that the officer contemplated by Section 44(1) seizing the goods or property, or the officer contemplated by Rules 4, 5, 6 is to give a choice or option to the offender or accused before referring the matter to the authorised officer for confiscation, as stated above. If such a choice or opportunity has not been given, the confiscation proceedings are liable to be set aside and the matter being remanded back to the anterior stage for giving the offender or accused such an opportunity.

14. It is true that forests are national wealth and trees in forests cannot be permitted to be illegally cut but at the same time, the offender or accused must be given the benefit of the beneficial provisions as contemplated by Section 59(1) and Rules 4 to 8. If such an opportunity is not given, the confiscation proceedings are liable to be set aside and the anterior stage at which the offender or accused is to be given the option or choice, revived.

15. It has been argued that u/s 44(2E), the District Court is empowered to pass "such order as it may think fit" and that these words are to be construed widely so as to include an order permitting compounding. In our view, this contention cannot be accepted. The above words, no doubt, empower a wide discretion but,

they are limited to the questions relating to confiscation arising out of the order of the authorised officer u/s 44(2)(A), (B) and do not concern the question of compounding. Once the anterior stage referred to in Section 44(2) and Rules 4 to 6 is passed, there is no question of compounding. Even if it is a case of choice or option to compound not having been given at the anterior stage, the latter proceedings are to be set aside and the case remitted to the anterior stage. That infirmity cannot be cured by sending the matter to the authorised officer or to the District Court.

16. A question has also arisen as to the remedy of the offender or accused, once an order is passed in Form B refusing to compound. In this behalf, it is clear that Rule 10 which contemplates an appeal, only provides for an appeal against an order of compounding made under Rule 8 i.e., in regard to the conditions. There is no appeal under Rule 10 against an order refusing to compound passed by the competent authority. The only remedy would therefore be by way of a writ petition. It may be that if the party files a writ petition, there are chances of the confiscation proceedings being stayed. But on that ground, we cannot say that the appeal to the District Court against the order of the authorised officer u/s 44(2E) must necessarily include the right to question the anterior order refusing to compound. It is true that the District Court while deciding the appeal, would also have powers to deal with the correctness of interlocutory orders passed by the authorised officer. But as pointed out above, the authorised officer u/s 44(2A), (2B) does not deal with any question of compounding. Even if the officer dealing with confiscation (as per G.O. 32 Dt. 21-1-76, i.e. the authorised officer) and the officer dealing with compounding are the same, the order refusing compounding (passed by the delegated authority specified in Rule 8) cannot be treated as an order passed by the officer in his capacity as the authorised officer dealing with confiscation. The authorised officer qua his powers as authorised officer does not deal with compounding or the question of sanctioning compounding. As such the District Court on appeal, cannot extend its arm to correct the orders of refusal to compound passed by the competent authority under Rule 8, even if the officer concerned is factually having the powers to act as the authorised officer. 17. One other contention of the learned Government Pleader requires mention. He says that under Rule 9, the competent authority might refuse compounding without assigning any reason. We cannot agree. In our view, if such a broad contention is to be accepted, it will amount to giving an arbitrary power to that authority. The competent authority must act fairly and reasonably and his opinion, if it is to be final and amenable to writ jurisdiction as stated earlier, it will be necessary for him to record the reasons in his file as to why he is not inclined to compound the offence. Giving him an arbitrary discretion in this behalf might indeed lead to an unfair procedure being adopted by denying compounding in simple cases where the offence is trivial and accepting to compound grave and serious offences, thus enabling shielding the arbitrariness from the reach of the Court. We are therefore of the view that Rule 9 has to be read down accordingly and it must be declared that if compounding

is refused, the reasons therefore must be recorded. Consistent with the said procedure, it must also be stated that the said reasons must also be communicated to the offender or accused person. The above procedure laid down by us would effectively subserve procedural fairness consistent with principles of natural justice.

18. Inasmuch as the writ petitioner has not been given any option to express his willingness for compounding, the confiscation proceedings are, in our view, vitiated and are therefore quashed and the matter is relegated to the stage of seizure by the officer seizing the goods and the vehicle. The direction of the learned single Judge for filing an application for compounding before the District Court is, however, set aside.

19. It is represented that consequent to the orders of the learned single Judge, the District Court has passed an order subsequently permitting compounding subject to the condition that the writ-petitioner deposits a sum of Rs. 25,000/- before the Divisional Forest Officer. It is stated that the writ petitioner has accordingly deposited such amount.

20. For the reasons stated above, the order passed by the learned District Judge, being consequential to the order of the learned single Judge is also set aside, and we give a further direction to the Forest authorities to pay back the said sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) to the writ petitioner pending further action as proposed hereunder.

21. It will now be for the officer who has seized the goods, or any other competent officer, to give an option to the writ-petitioner in writing as to whether the writ petitioner is willing to have the offence compounded. After getting a reply from the writ petitioner, the forest authorities can proceed further in accordance with the procedure stated above.

22. The appeal is partly allowed and the matter is remitted back to the Deputy Range Officer, Adilabad, to take action as stated above. No costs.