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**(1990) 07 KAR CK 0063**  
**In the Karnataka High Court**  
**Case No : W.P. No. 15496/1983**

Mohamed Yaseen and Another

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

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**Date of Decision :** 11-07-1990

**Acts Referred:**

Karnataka Treasure Trove Act, 1962 — Section 4

**Citation :** (1990) 2 KarLJ 247

**Hon'ble Judges :** M. P. Chandrakantharaj Urs, J

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## **Judgement**

Chandrakantharaj Urs, J.-The petitioners have averred that they are the owners in joint possession and enjoyment of the premises bearing No. 5-1-13 situated at Ahmed Bagh, Bidar Town. The petitioners are residents in the said premises. They also run a fuel depot in the said premises. Petitioner No. 2 purchased the property in the name of petitioner No. 1. In about the month of July, 1977 the mud walls of the petitioners' house required some repairs. In that connection one Adamma and Sharanamma were engaged to remove the mud from the open varandha. While so removing the mud the said ladies engaged as coolies, it appears, dug out 2 to 2 1/2 ft. depth of the earth of a length of about 7 to 8 ft. and then they stopped coming for work. The petitioners approached them again and they refused to come back to work. It is further averred, on 30-7-1977 the police came and prepared a mahazar in the premises of the petitioners as the two ladies who had been engaged as coolies earlier had removed some articles from the pit they had dug and even then petitioner No. 2 did not know what those articles were. Some days thereafter petitioner-2 came to know that some treasure had been found from his premises by the said two workers. Thereafter, petitioner No. 2 went to the police station and he was there told that the police had informed the Deputy Commissioner of the District of the finding of the treasure from the premises of the petitioners. Soon thereafter, petitioner No. 2 sent a petition to the Deputy Commissioner. He also learnt at the same time that the police had arrested the two coolies and the criminal prosecution had been launched against them for violations of the provisions of the Karnataka Treasure

Trove Act, 1962 (hereinafter referred to as the Act). It was in that circumstance that he gave intimation to the Deputy Commissioner as at Annexure-B to the petition which is said to be dated 24-6-1978 (only a true copy has been produced). In response to Annexure-B the Deputy Commissioner issued an endorsement dated 30-6-1978 a true copy of which is produced as Annexure-C to the petition. That memo so styled, informs, treasure trove found was 270 gold coins and two rings at Bidar-A/o Sri Mohd. Abdul Rehman alias Abdulla Sab resident of Bidar dated 24-6-1978. He further informed the second petitioner that he may approach the concerned Court as the police had taken action under Sec. 18 of the Act. As evidenced by Annexure-F a true copy of the judgment in Original Case No. 70/3/1978 rendered by the Judicial Magistrate First Class, Bidar. The coolies Adamma and Sharnamma and one other person Shivappa were convicted for an offence under Sec. 18 of the Act and sentenced to under-go simple imprisonment for 30 days with a fine of Rs. 500/- and if fine was not paid to a further 20 days of simple imprisonment. The 3rd accused was convicted under Sec. 255(2) of the Cr.P.C. for the offence charged under Sec. 18 of the Act read with Sec. 109 of the I.P.C. and sentenced to undergo simple imprisonment for one month with a fine of Rs. 500/- and in default he had to undergo simple imprisonment for 20 days and he was released under Sec. 3 of the Probation of Offenders Act on his executing a bond for Rs. 1000/- with one surety for like amount and he shall maintain good behaviour for one year. The properties by the order of the Magistrate were confiscated in favour of the State and was sent to the Director of Treasuries in Karnataka, Bangalore, after the expiry of the appeal period. About seven months after the judgment, the Deputy Commissioner has issued a further memo dated 30-10-1982 to the 2nd petitioner informing him that no action could be taken on his notice as at Annexure-D to the petition as it was given beyond the period of 30 days prescribed under sub-sec. (2) of Sec. 3 of the Act. Aggrieved by the same, petitioner-2 has approached this Court for relief inter alia that the Deputy Commissioner, Bidar, 2nd respondent herein be directed to hold the statutory enquiry as contemplated under Sec. 4 of the Act notwithstanding the fact that the notice issued by him was belated.

2. The facts stated above are not in dispute.

3. The Act defines at Sec. 2(g) to mean anything of any value hidden in the soil or in anything affixed thereto. In Chapter II of the Act under the heading notice, enquiry and declaration regarding treasure, Sec. 3 of the Act provides for notice being issued by the finder of the treasure if the value of the treasure exceeds Rs. 10/-. Sub-sec. (2) of Sec. 3 of the Act provides that the owner of the place in which the treasure is found, if he is not the finder, and the occupier of such place, if he is neither the finder nor the owner, shall also give notice in writing to the Deputy Commissioner within 30 days or before the expiry of one month from the date on which the owner or the occupier as the case may be, became aware of the treasure.

4. In the petition averments, the petitioners have stated that they acquired

knowledge as to the discovery of treasure in their property only after they learnt about the prosecution being launched against Adamma and two others. In any event, their notice or intimation given by them was kept in cold storage with the endorsement that the 2nd petitioner may approach the Court where the police had launched the prosecution. It is only thereafter, after the judgment in the criminal Court, endorsement or memo is issued to the effect that no action may be taken as their notice or intimation was beyond the period of one month. That appears to this Court to be highly irregular and shows total want of due application of mind to the provisions of the Act and its administration.

5. Sec. 4 of the Act reads as follows:

"4. Notification by Deputy Commissioner.-The Deputy Commissioner shall, on receipt of a notice under Sec. 3, and may, on receipt of Information in any other manner that treasure has been found in any place, take the following steps after making such enquiry, if any, as he thinks fit, namely:- (a) he shall send a report to the State Government, the Director and the prescribed officer, stating as far as possible, (i) the name and other particulars of the finder;

(ii) the name and other particulars of the owner and occupier of the land in which (sic) was found.

(iii) The nature and details of the treasure;

(iv) the approximate value of the treasure;

(v) the place in which and the date on which the treasure was found;

(vi) the origin and surrounds of the treasure;

(b) he shall publish a notification in the prescribed manner specifying the nature, amount and approximate value of the treasure and the date on which and the place at which such treasure was found and requiring all persons claiming the treasure, or any part thereof, to appear personally or by agent before the Deputy Commissioner at such time and place on such day as shall be specified in such notification, such day not being earlier than four months, or later than six months, after the date of publication of such notification;

(c) when the place in which the treasure appears to the Deputy Commissioner to have been found was at the date of the finding in the possession of, or belonged to, some person other than the finder, the Deputy Commissioner shall serve on such person and on the finder, a copy of the notification referred to in clause(b) as soon as may be, after its issue." (Emphasis supplied)

From the language of Sec. 4(a) of the Act, it is clear that the Deputy Commissioner is required to take action under that section in accordance with the provisions made in clauses (a), (b) and (c) irrespective of who issues the notice under Sec. 3 of the Act when he comes to know or has received the information in any other manner than by notice under Sec. 3(2) of the Act.

6. From the contents of the first memo as at Annexure-C to the petition, it is clear that he had information from the police even before the notice by the owner of the premises was given as at Annexure-B. The Deputy Commissioner does not appear to have acted on the information received from the police in accordance with Sec. 4 of the Act and called upon the petitioners to appear before him for purposes of the enquiry as contemplated under clause (b) of Sec. 4 of the Act. It is thereafter when the enquiry under Sec. 4 of the Act is concluded he has the power to exercise the right to forfeiture in respect of the treasure.

7. On the facts of this case it is seen that the order of forfeiture is made by the Magistrate in criminal proceedings which is not contemplated under the Act. Annexure-B must be considered as a demand in writing for action under Sec. 4 of the Act. Even otherwise on the earlier information furnished by the police, respondent-2 was bound to pursue an enquiry as contemplated under Sec. 4 of the Act. Having failed to do that, despite the demand, this Court must direct the 2nd respondent to hold such an enquiry in respect of the treasure trove discovered in the premises of the petitioners.

8. Mr. Ramesh, learned High Court Government Pleader appearing for the respondents, has stated that it may not be possible to hold the enquiry as the order of the Magistrate directing confiscation of the gold coins to the State Treasury has not been set aside by any authority competent to do so. I do not see how that comes in the way of enquiry as contemplated under Sec. 4 of the Act. After all the order of the Magistrate directs the custody of the treasure trove in question to be in the custody of the 1st respondent State of Karnataka. Therefore, undue advantage of the judgment of the Magistrate convicting the finders in regard to treasure trove in question for an offence under Sec. 18 of the Act, cannot be taken as the treasure is still identifiable and is in the custody of the 1st respondent. The petitioners are entitled to a mandamus.

9. Therefore, a mandamus will issue to the 2nd respondent to hold an enquiry in accordance with the provision made in Sec. 4 of the Act and pass such appropriate orders as may be necessary in the circumstances of the case depending on the findings recorded at the enquiry.

10. In the result, the writ petition is allowed. Rule issued is made absolute. The enquiry shall be commenced within 45 days from the date of receipt of this order by the 2nd respondent. In the circumstances of the case, there will be no order as to costs.

Writ petition allowed.