
(1995) 09 CAL CK 0019
In the Calcutta High Court
Case No : F.M.A.T. No. 5 of 1995

Range Officer and Another

APPELLANT

Vs

Sukumar Mirdha

RESPONDENT

Date of Decision : 13-09-1995

Acts Referred:

Forest Act, 1927 — Section 26, 26(1), 62, 63, 68

Citation : (1996) 1 CALLT 211

Hon'ble Judges : Satyabrata Sinha, J;Devendra Kumar Jain, J

Bench : Division Bench

Advocate : T.S. Saroop, for the Appellant;V.K. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Satyabrata Sinha, J.—This appeal arises out of a judgment and order passed by a learned single Judge of this Court dated 21st December 1994. in CO. No. 71 (W) of 1994, whereby and whereunder a writ petition filed by the respondent questioning imposition of damages to the extent of Rs. 10,253/as also for issuance of a writ in the nature of Mandamus directing the respondents therein to refund a sum of Rs. 8,000/- was allowed.

2. The fact of the matter lies in a very narrow compass.

On or about 5.1.94 the authorities of the Forest Department arrested 4 persons for the offence of felling of trees illegally. The petitioner, who admittedly is a former employee of the Forest Department, allegedly appeared and confessed that the said 4 persons had been sent by him. The petitioner offered to pay compensation, whereupon the value of the tree was assessed as Rs. 10,253/-. The writ petitioner paid a sum of Rs. 8,000/-, but he had been granted a receipt on 29. 4. 94. It is the case of the appellants that the writ petitioner undertook to pay balance amount. It appears from a letter which is at page 59 of the paper Book, being Annexure "H", whereby and whereunder he stated that although he deposited earlier the amount, the cash receipt was granted to him only on 29th

April 1994, stating that the balance amount could not be collected and the same would be deposited later on. The writ petitioner at this stage filed a writ application. Before the learned trial Judge, the writ petitioner contended that he had asked for copies of the documents in connection with the offence, such as, first information report, seizure memo, panchanama, arrest report and others and in answer thereto, by a letter dated 11.5. 94, the appellant No. 1 directed him to pay the balance amount of Rs: 2,253/-. It was further the contention of the writ petitioner that no document was, however, supplied. By another letter dated 9.5.94, the petitioner wrote to the appellant No 2 asking for copies of documents, but there was no response thereto, whereafter, allegedly the petitioner made the aforementioned deposit of Rs. 8,000/-. The ground taken in the writ application was that the confession was obtained from him by the respondents upon putting threat and/or coercion. It was further contended that no proceeding as such was initiated, nor any action was taken in terms of Sub-section (2) of Section 52, nor any complaint was filed in terms of the provisions of the Indian Forest Act, and thus the entire proceedings must be held to be wholly illegal.

3. It is, however, admitted that the appellants filed an affidavit in opposition stating the facts as noticed hereinbefore. The learned single Judge allowed the writ application, inter alia, on two grounds, namely, (i) the petitioner has not asked for release of the seized property to him in terms of Section 68 of the said Act and (ii) u/s 68(3), the respondents cannot accept compensation under Clause(i) of Sub-section (3), exceeding the sum of Rs. 50/-.

4. Mr. Saroop, learned counsel appearing on behalf of the appellants, has raised a short question in support of this appeal. Learned counsel submits that a bare perusal of the provision of Section 68 would demonstrate that no proceeding is required to be initiated before the writ petitioner could apply for composition of the offence. According to the learned counsel, the offer for compounding the offence was accepted by the respondents, and thus only because a fine of Rs; 50/- was also imposed, the entire proceedings cannot be stated to be vitiated in law. Learned counsel submits that wrong imposition of fine does not vitiate the proceedings.

5. On the other hand, Mr. Gupta, learned counsel for the respondent submits that as the statement made by the writ petitioner was not voluntary, and as the basis of valuation was also questioned, and further in view of the fact that no report was sent to the Magistrate concerned in terms of Sub-section (2) of Section 52 of the Act, the entire proceedings was vitiated in law.

6. In our opinion, it is not necessary to go into the rival contentions raised in this appeal, inasmuch as, we are of the opinion that the question as to whether any proceedings was required to be initiated u/s 68 of the Act before assessment of damages or whether such compensation can be directed to be paid before taking any action under Sub-section (2) of Section 52 are not required to be decided in the instant case.

7. Felling of a tree by a person is an offence within the meaning of Section 26 of the Indian Forest Act. Four persons were found cutting trees and/ or other persons who had aided and/or abetted the same could be prosecuted in terms of Section 26(1)(I) of the said Act. Section 68, however, provides for an exception, in terms whereof a forest officer duly empowered by the State Government has been authorised to accept from any person against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in Section 62 or Section 63, a sum of money by way of compensation for the offence which such person is suspected to have committed. When such an offer for payment of compensation is made and accepted, no penal action in terms of Section 26 of the Act is required to be taken against the guilty person, the property seized are also liable to be released. Sub-section (3) of Section 68 postulates that a Forest Officer shall not be empowered thereunder unless he is a Forest Officer of a rank not inferior to that of a Ranger and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under Clause (a) of Sub-section (1) shall in no case exceed the sum of fifty rupees.

8. In the instant case, there has been a violation of Sub-section (3) of Section 68 in so far as the valuation of the tree in question has been made to the extent of Rs. 10,253/-. The writ petitioner was also directed to pay a sum of Rs. 50/- by way of fine. Compensation and fine are two different concepts. Fine can be imposed only in a proceeding in terms of Section 26(1)(f) of the Act and not in terms of Section 68 thereof. Moreover, it is now well settled that the proceeding u/s 68 of the Act becomes complete if and when the offender deposits the entire amount of compensation. In the instant case, the writ petitioner has declined to deposit the said amount of compensation. In that view of the matter, the proceedings for composition of offence was, therefore, not: complete. Unless a proceeding for composition of an offence is complete, the offence does not stand compounded and it is open to the State to proceed as against the offender in accordance with law. Reference in this connection may be made to the case reported in *Keshar Singh Vs. State of M.P.*, we are further of the opinion that Section 68 does not contemplate imposition of any penalty.

9. In this view of the matter, we are of the view that it is also not necessary to decide as to whether the statement made by the writ petitioner before the authorities of the Forest Department was voluntary, and whether he had questioned the payment of valuation of the trees allegedly felled by the aforementioned 4 persons.

10. For the reasons aforementioned, there is no merit in this appeal, which is accordingly dismissed, but we may observe that it is open to the appellants to proceed as against the writ petitioner in accordance with law. The appellants may, however, refund the aforementioned amount of Rs. 8,000/- to the writ petitioner/respondent at an early date and preferably within a period of 6 weeks from the date of communication of this order. In the facts and circumstances of

this case, there will be no order as to costs.

Devendra Kumar Jain, J.

11. I agree.