

## **The Principal Chief Conservator of Forests and Tulja Bhavan, M.J. Road, Hyderabad and another Vs J.K. Johnson and others**

**Court:** Andhra Pradesh High Court

**Date of Decision:** Jan. 22, 2010

**Acts Referred:** Forest Rules, 1927 " Rule 30

Wild Life (Protection) Act, 1972 " Section 39(1), 51(2), 54, 59, 59(2)

**Hon'ble Judges:** T. Meena Kumari, J; Sanjay Kumar, J

**Bench:** Division Bench

**Final Decision:** Dismissed

### **Judgement**

the Hon"ble Smt. Justice T. Meena Kumari

1. This writ appeal is filed by the Forest Department aggrieved by the order dated 29.03.2005 passed by a learned Single Judge in W.P. No.

22052 of 2004 allowing the same and directing the appellants herein to release the vehicle jeep bearing registration No. AP-12/D-703 and two

rifles belonging to the unofficial respondents herein, seized pursuant to the registration of Cr. No. 43 of 2004 of P.S. Kolcharan for the offence

under Sec. 9 of the Wild Life (Protection) Act, 1972(for brevity the Act).

2. The unofficial respondents herein filed the above writ petition seeking a writ of certiorari to quash the order dated 10.8.2004 passed by the 2nd

appellant herein which was confirmed by the first appellant on appeal by the respondents 1 to 3 herein through order dated 4.10.2004, whereby a

compounding fee of Rs. 25,000/- was imposed apart from forfeiture of the vehicle jeep bearing No. AP-12/D-703 and two rifles in favour of the

State, under Sec. 39(1)(d) of Act. The case against the respondents 1 to 3 herein is that on the intervening night of 24/25.7.2004 at

Pothamsettipally, Cross Roads, they were found carrying in their jeep gunny bags, which on verification were found to be containing one hunted

and killed forest pig and three rabbits and the carcass of the said pig and the rabbits along with two rifles were seized under cover of panchanama.

Thereafter the 4th respondent herein registered a case in Cr. No. 43 of 2004 under Sec. 9 of the Act. The case of the writ petitioners -

respondents 1 to 3 herein is that they went to Sangareddy town for attending Telangana meeting and in the return journey, they purchased the said

animals from two persons who possessed the same, but they did not hunt the animals. It is their further case that the weapons, which they were

holding are licensed weapons and are meant for their self defence. It is further pleaded that their vehicle was not at all seized under the

panchanama. In such circumstances, they offered for compounding the offence. Pursuant thereto, the offence was compounded by the proceedings

dated 10.8.2004 directing payment of compensation of Rs. 25,000/- apart from seizure and forfeiture of the vehicle and two riffles in favour of the

State under Sec. 39(1)(d) of the Act.

3. The learned Single Judge, on extensive consideration of the rival contentions, advertent to Sec. 54, 39(1)(d) and Sec. 51(2) of the Act,

observed that since there was no trial or conviction made in the case and since the appellants have liberally compounded the offence without there

being any trial either in the departmental proceedings or a criminal case, the vehicle and the riffles cannot be forfeited and thus, allowed the writ

petition directing the appellants herein to release the vehicle and the riffles in favour of the respondents 1 to 3 herein. Aggrieved thereby, the

present writ appeal is filed by the Forest Department.

4. A contention was raised before the learned Single Judge and before us by the learned Government Pleader for Forests contending that pursuant

to the amendment to Sec. 39(1)(d) of the Act, which came into force in the year 2002, any vehicle, vessel, weapon, trap or tool that has been

used for committing the offence and has been seized under the provisions of the Act cannot be released to the offender and shall be the property of

the Government. It is further contended that the composition is only with regard to the offence and not the vehicle or the riffles used in the

commission of offence and, therefore, Section 54 of the Act applies only to the offenders and not the property seized and, as such, the appellants

are perfectly justified in proceeding against the articles under Sec. 39(1)(d) of the Act and not the accused persons - respondents 1 to 3 herein.

5. Since the lis revolves round Sections 54 and Sec. 39(1)(d) of the Act, it is apposite to reproduce the same, which reads:

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.

(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....

Section 39(1)(d) of the Act reads thus:

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

(a).....

(b).....

(c).....

(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 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.

6. As can be seen from the order impugned herein, the learned Single Judge observed that there is no procedure contemplated for the forfeiture of

the vehicle, vessel, weapon, tool etc. and the only procedure contemplated under Sec. 51(2) of the Act is that when any person is convicted of an

offence against the Act, the court trying the offence may order for forfeiture of the vehicle, vessel, weapon, trap or tool that has been used in

connection with the commission of the said offence to the State, but since there is no trial or conviction, as such, the vehicle and the rifles cannot

be forfeited. The learned counsel for the respondents 1 to 3 further places reliance on a Division Bench judgment of this court in Divisional Forest

Officer, Karimnagar East and two others v. B. Lachi Reddy 1979 (1) An. W.R. 193) to contend that on compounding the offence, no

proceedings can be taken either against the offender or against his property. Paragraph (8) of the judgment reads thus:

...The object behind Sec. 59(2)(iii) appears to be that the order of composition effaces the offence and the same set of facts shall not give rise to

any other or further action either against the person or property of the party compounding the offence. If the offence is a serious or a grave one, the

authorities need not compound it and they can take action under Rule 30 of the Forest Rules and further prosecute the offending person in a Court

of law; but once compounding has been done and compensation has been accepted u/s 59, it would not be open to the department to proceed

against him under Rule 30. That intention the legislature is manifest from the special provision in clause (iii) of Section 59(2) , that no further

proceeding shall be taken against the accused person or his property. Since this is a peculiar provision contained in the Andhra Pradesh Forest

Act, providing for receiving compensation for forest offence, it must be given due weight. Therefore, the cancellation of the contract is contrary to

the provisions contained in Section 59(2) since the offence had already been compounded by accepting the appropriate compensation...

7. It is not in dispute that amendment to Section 39 of the Act came into effect in the year 2002. Pursuant to the amendment to Sec. 54, after

payment of compensation amount 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. Admittedly, in this case neither there is trial as such nor any finding of conviction or acquittal is

recorded. The vehicle and the rifles are subject matter of Cr. No. 43 of 2004 of P.S. Kolcharan, Medak District. As there is no trial and the

offence had been compounded at the initial stages, we are of the considered view that the authorities cannot seize the property. At the cost of

repetition, it has to be observed that neither there is finding with regard to conviction of the respondents 1 to 3 herein nor there is any evidence as

to the alleged involved of the jeep, muchless about its seizure under panchanama, and so also in regard to the rifles in the commission of crime by

them. For these reasons and having regard to the decision in B.Lachi Reddy's case, we do not find any reason to interfere with the well-

considered judgment of the learned Single Judge. Consequently, the Writ Appeal fails and is accordingly dismissed. No order as to costs.