



Seizure and Confiscation under Wildlife (Protection) Act, 1972: A Case Law

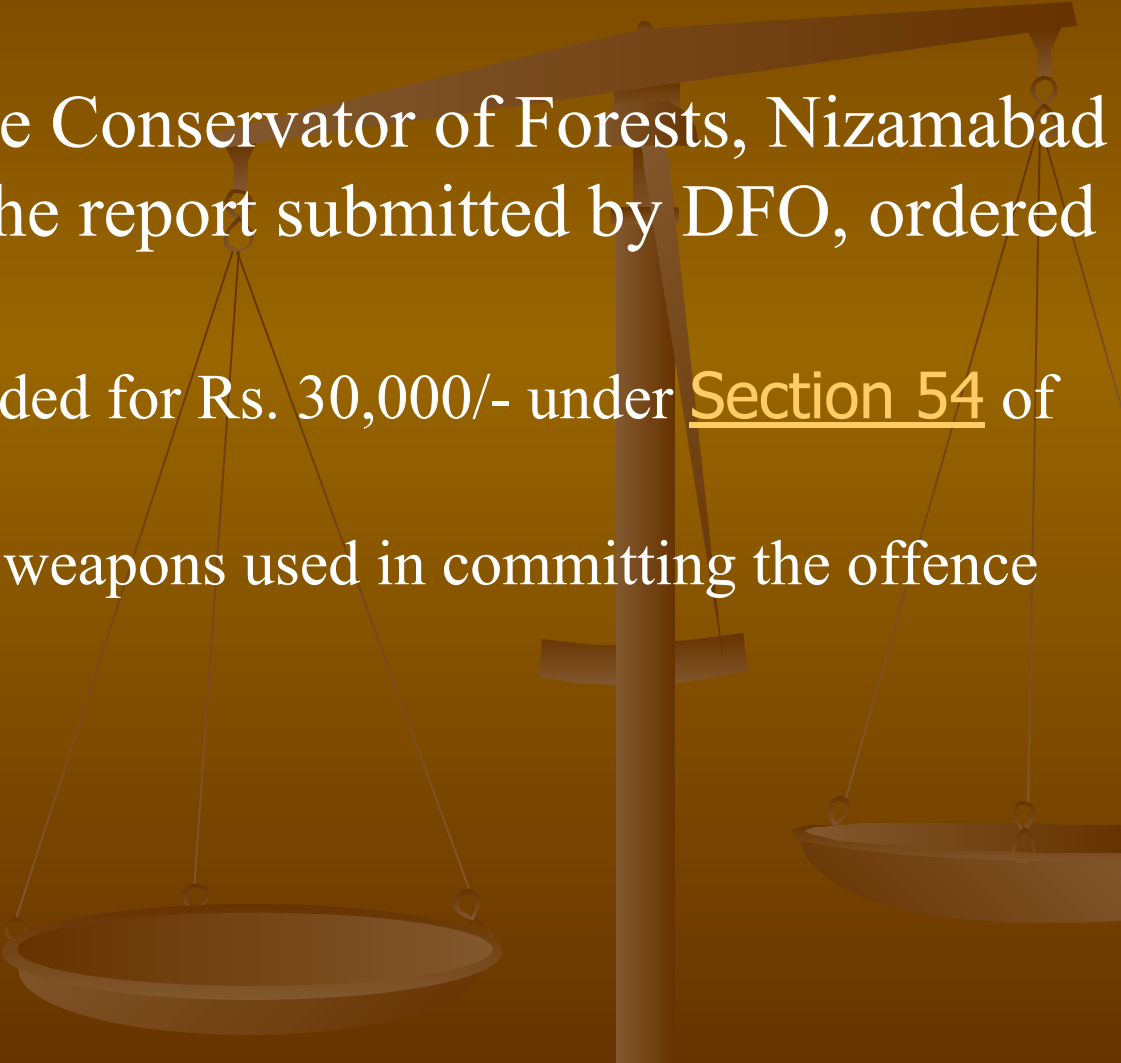
In Hon'ble Supreme Court
PCCF Vs. J. K. Johnson & others (CIVIL
APPEAL NO. 2534 OF 2011, 17 Oct, 2011)

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Case Background...

- During Checking Sub-Inspector of Police, Kulcharam Police Station, District Medak **arrested three persons** with two bags inside; one bag contained a hunted wild boar and the other had three rabbits.
- Offenders 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.

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- Divisional Forest Officer, Medak that the accused persons had offered for compounding the offence and they were willing to pay Compounding amount.
 - On August 10, 2004, the Conservator of Forests, Nizamabad Circle, Nizamabad on the report submitted by DFO, 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.

Case In AP High Court

- Offenders Challenged 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.
- 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.
- High Court dismissed the intra-court appeal filed by PCCF and maintained the order of the Single Judge.

Mutual Consent ??....Compounding

If the offence has been compounded without there being any trial either in the departmental proceedings or in the criminal proceedings the vehicle, rifles etc. cannot be forfeited.

(J. K. Johnson & others Vs. Principal Chief Conservator of Forests, Hyderabad, 2006 CRI.

L.J.1480).

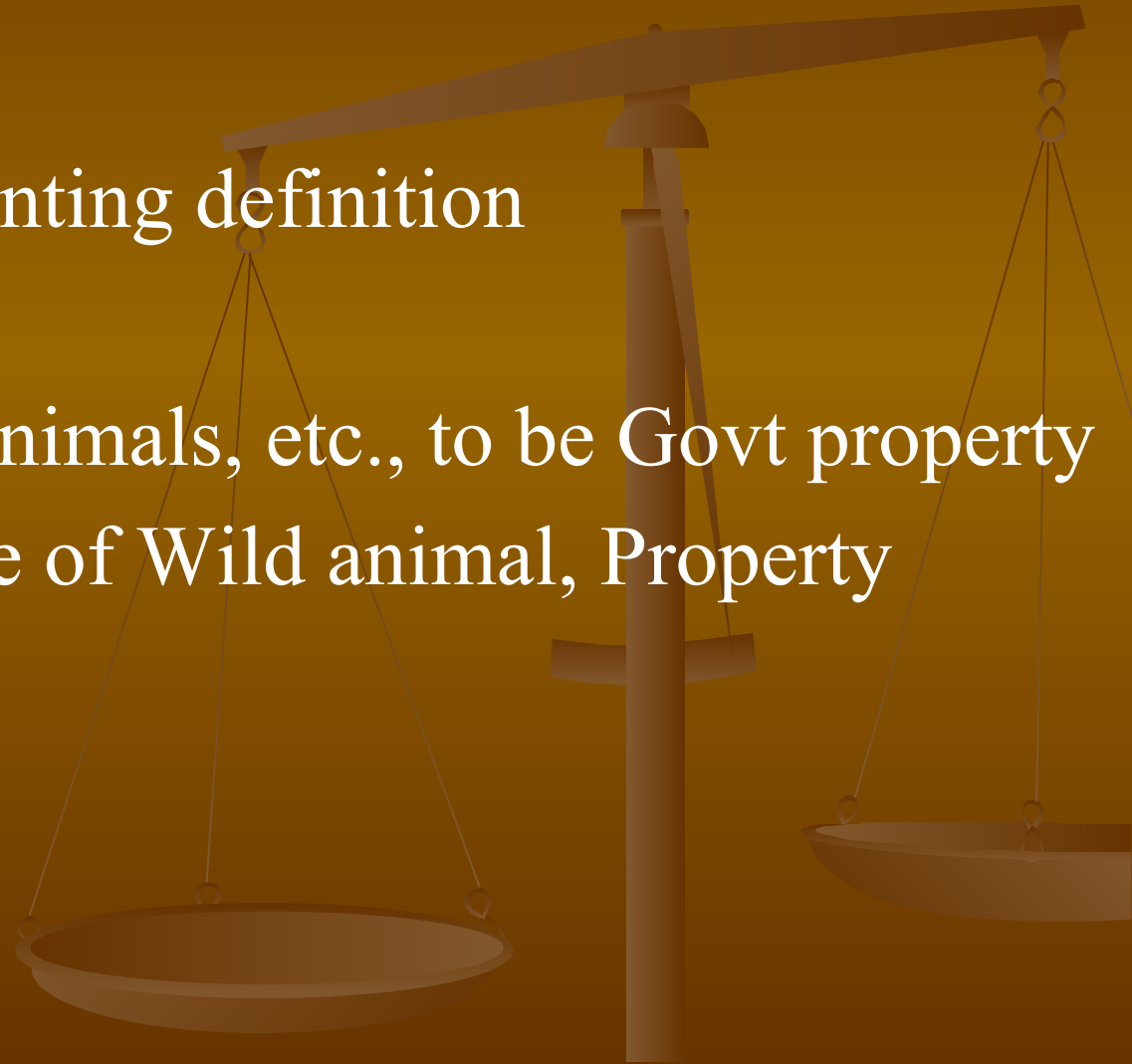
Questions..

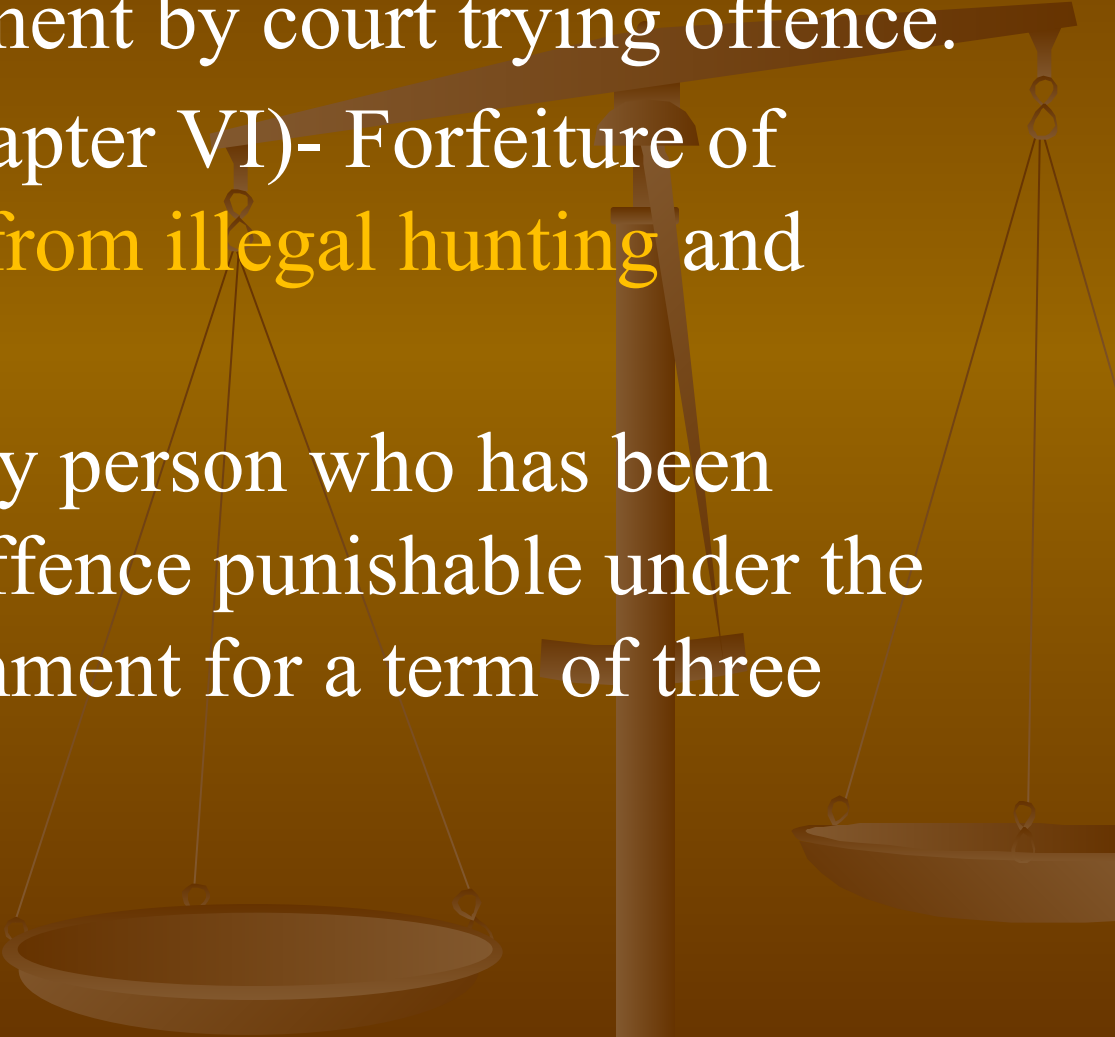


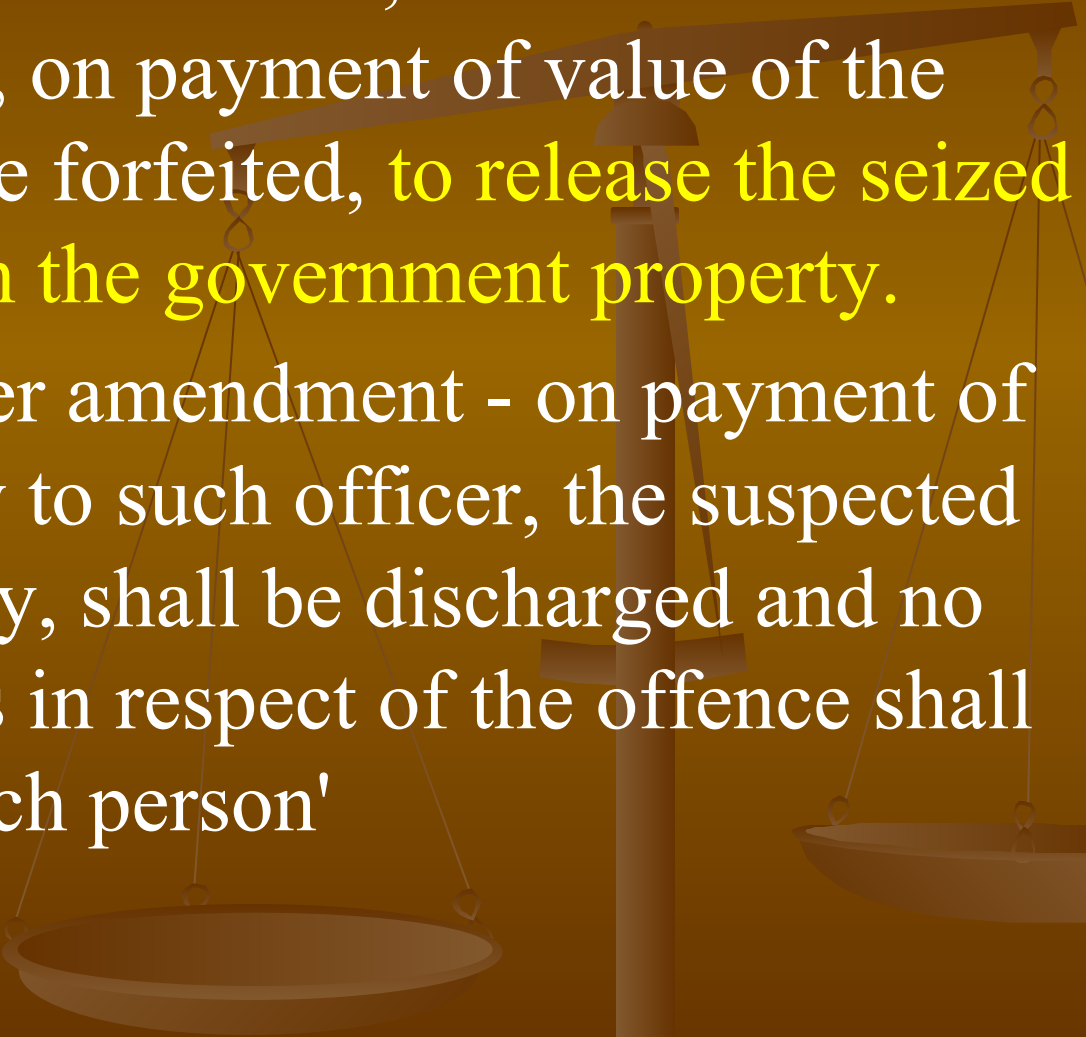
- Whether a specified officer empowered under Section 54(1) of the Wild Life (Protection) Act, 1972 as amended by 2002 (Act 16 of 2003) to compound.
- Confiscation/forfeiture of seized items.
- Amount of Compounding..?
- Who can release the seized Property.
- Power of authorised court.
- Validity of Hon'ble High Court Order

Relevant Provisions of wildlife (Protection) Act, 1972

- Section -2(16)- Hunting definition
- Section-9 Hunting
- Section 39- Wild animals, etc., to be Govt property
- Section 50- Seizure of Wild animal, Property



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- Section 51- seized property used in commission of the said offence be forfeited to the State Government by court trying offence.
 - Section 58 A (Chapter VI)- Forfeiture of **property derived from illegal hunting and trade.**
 - applicable to every person who has been convicted of an offence punishable under the Act with imprisonment for a term of three years or more;

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- 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.**
 - Section 54(2) after amendment - 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'

Relevant Provisions of CrPC



Order for custody and disposal of property by court.....

- **Pending trial in certain cases (Sec.451)**
- **Order for disposal of property at conclusion of trial (Sec.452)**

Relevant Case Laws..

□ Seizure and confiscation [Sec. 52 IFA, Sec 50(1)(c) WPA]

“ so long as the competent Court does not find that the vehicle had been used for the purpose of the commission of the offence , the vehicle does not become the property of the state government “ *(Bai Kuntha Bihari Mohapatra Vs. state of Orissa 2001 Cr. L.J. 4151 (Ori)) .*

□ Custody of wild animal /Article by ACF-50(3)

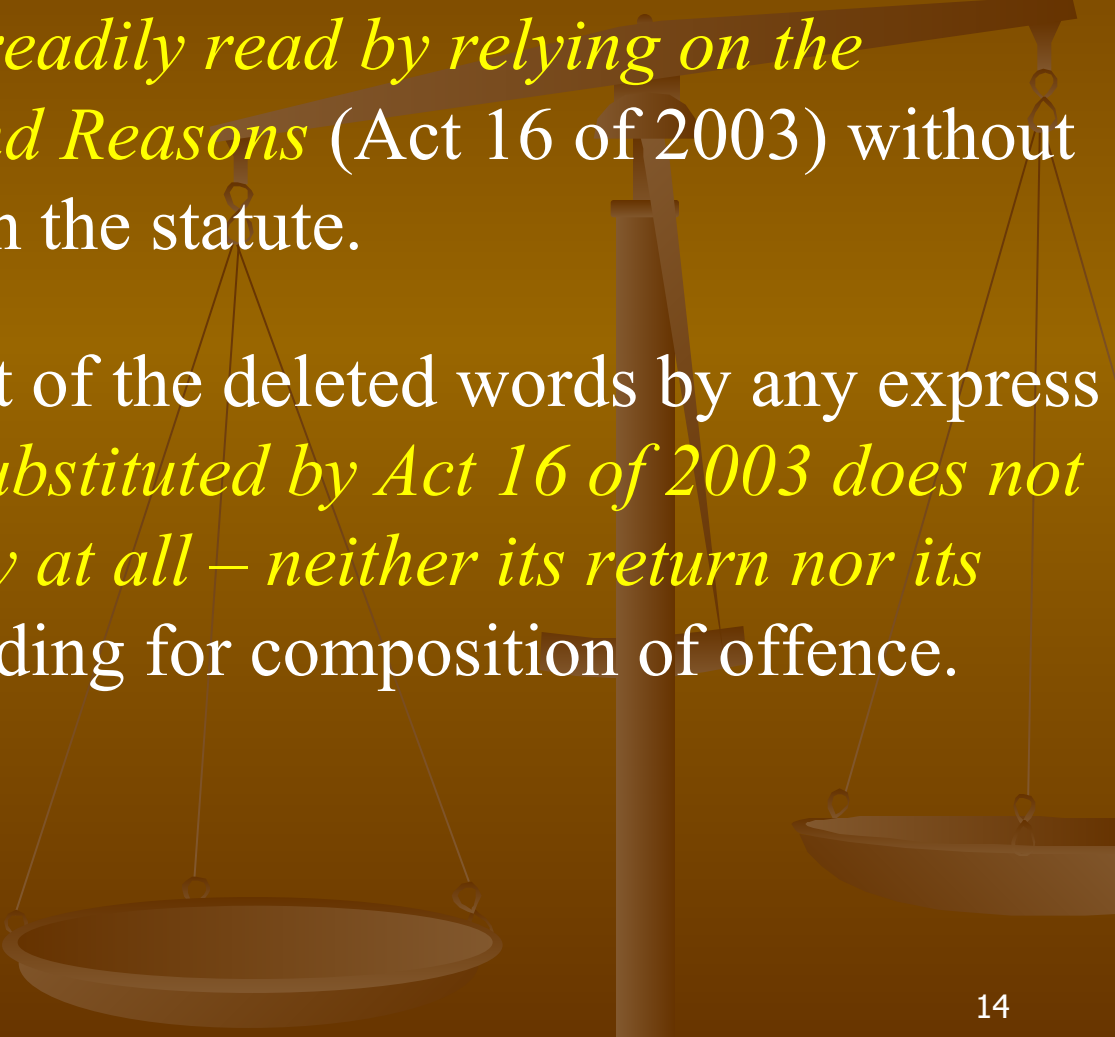
“The forest officer can give only the captive animal or wild animals and not vehicle for custody” *(Ayyub Vs. State of Rajasthan, 2003 CRI. L. J. 2954)*

Highlights of Hon'ble Supreme Court Judgement

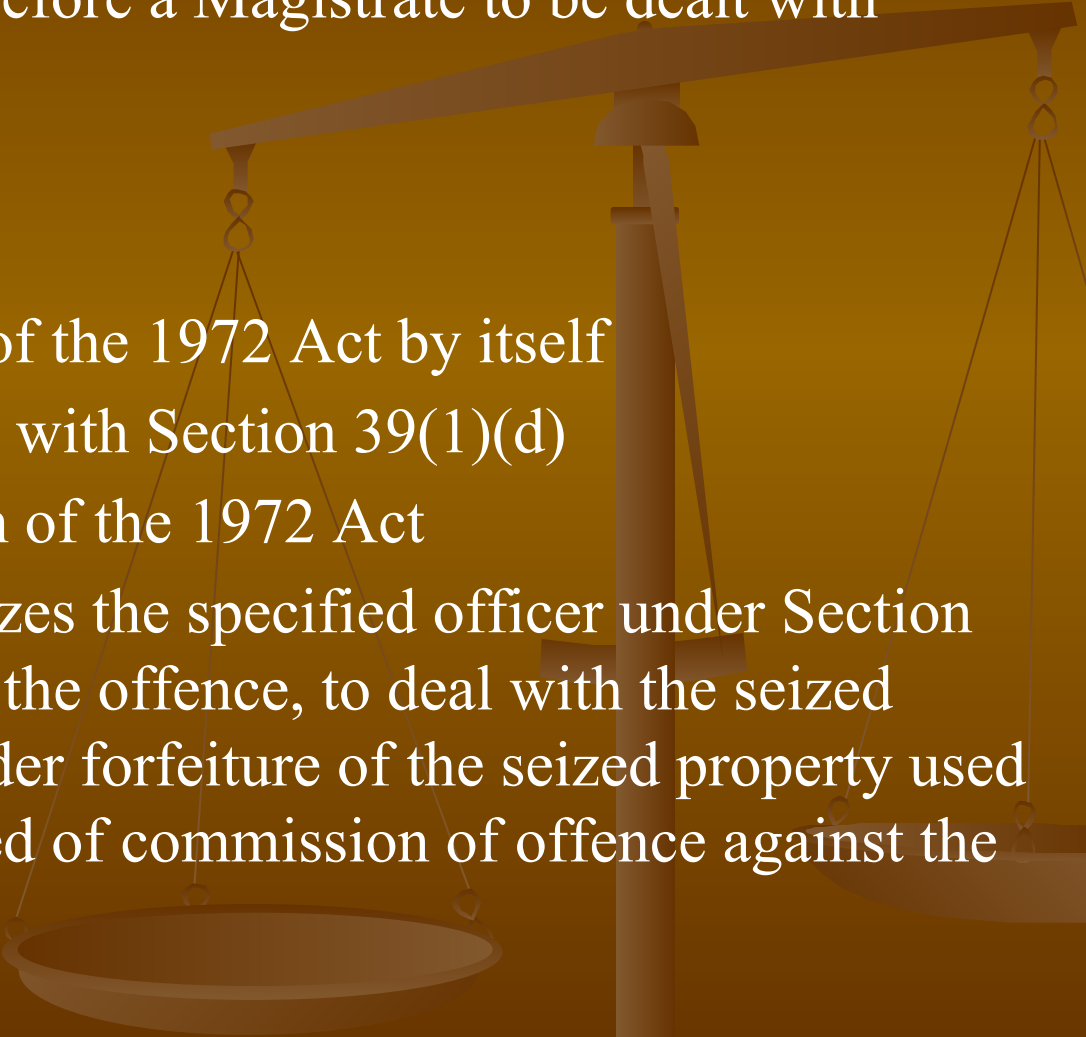


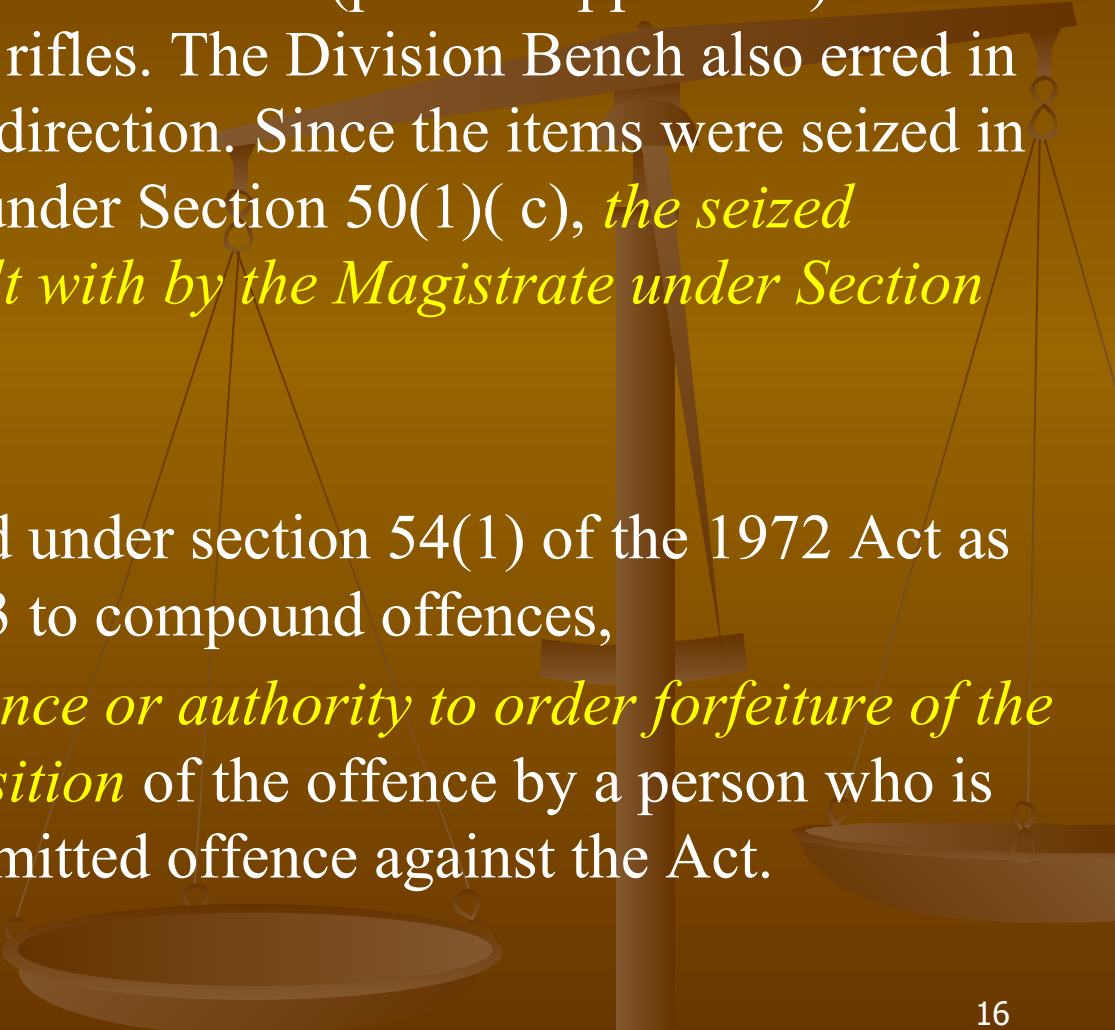
■ Does the provision in new Sec. 54(2) of WPA authorize the empowered officer to order forfeiture of the seized property to the state government?

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*. Such conferment of power of penalty upon the specified officer cannot be read by implication in Section 54(2).

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- ❖ 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.*
 - ❖ 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.*

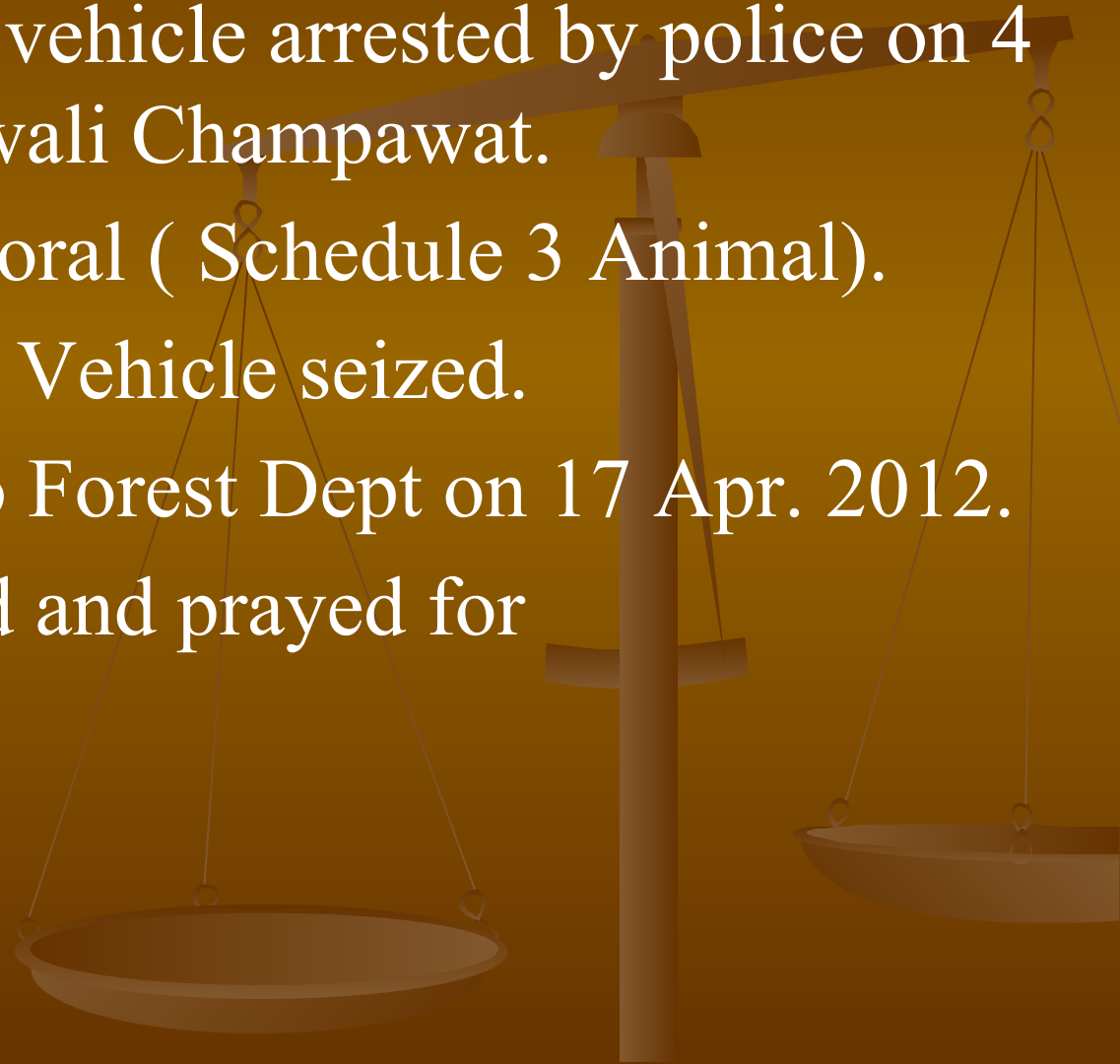
- The property seized under Section 50(1)(c) and Section 50(3A) has to be dealt with by the Magistrate according to law.
 - This is made clear by Section 50(4) which provides that things seized shall be taken before a Magistrate to be dealt with according to law.

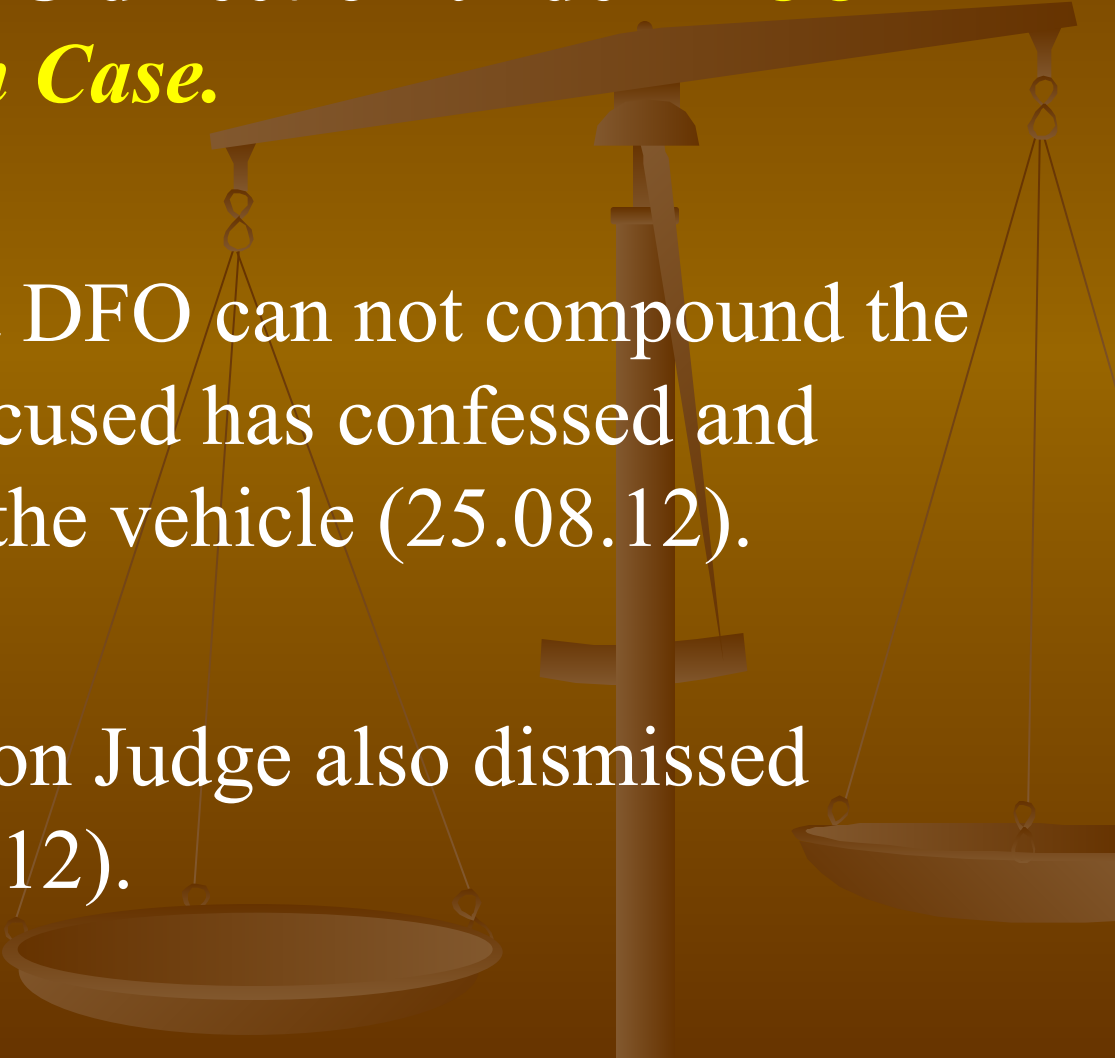
 - In our view,
 - neither Section 54(2) of the 1972 Act by itself
 - nor Section 54(2) read with Section 39(1)(d)
 - or any other provision of the 1972 Act
 - empowers and authorizes the specified officer under Section 54, on composition of the offence, to deal with the seized property much less order forfeiture of the seized property used by the person suspected of commission of offence against the Act.
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- ❖ 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 has to be dealt with by the Magistrate under Section 50(4) of the 1972 Act.*
 - ❖ 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.

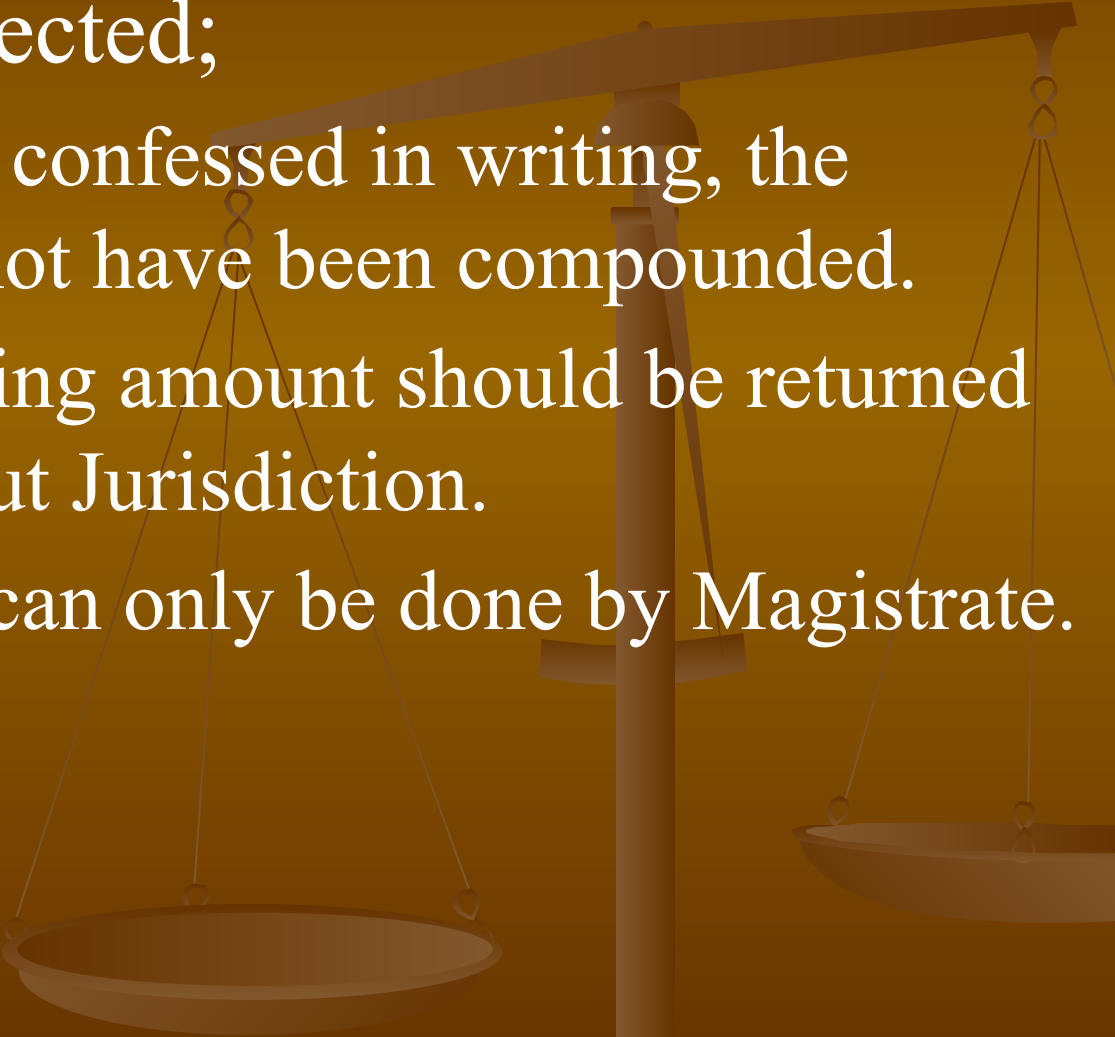
A Subsequent Case...

- Two accused with vehicle arrested by police on 4 Apr. 2012 by Kotwali Champawat.
- For hunting two Goral (Schedule 3 Animal).
- A Gun , Knife and Vehicle seized.
- Case transferred to Forest Dept on 17 Apr. 2012.
- Accused confessed and prayed for Compounding.



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- **Compounded the case in Rs. 1,50,000 and referred the matter to CJM for release of vehicle view of SC direction under *PCCF Vs. J. K. Johnson Case.***
 - CJM directed that DFO can not compound the case, when the accused has confessed and denied to release the vehicle (25.08.12).
 - District and Session Judge also dismissed Revision. (03.09.12).

Appellant filed WP (Cr) No. 855/2012 in Nainital HC.

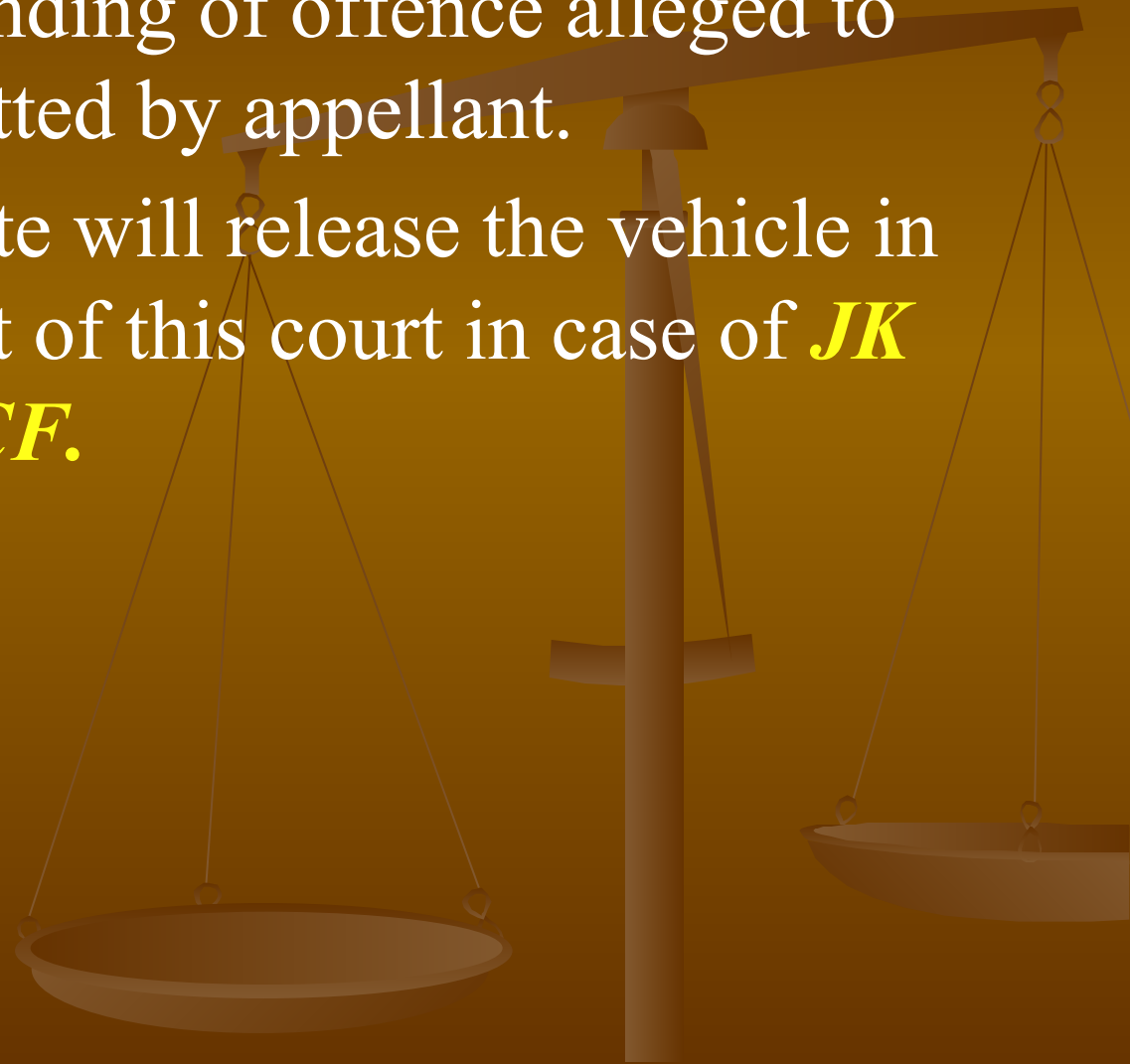
- Hon'ble HC directed;
 - When accused confessed in writing, the offence could not have been compounded.
 - The compounding amount should be returned as it was without Jurisdiction.
 - Compounding can only be done by Magistrate.
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Cr. Appeal No. 1212 of 2013 (Arising out of SLP(CrI) N0. 8948 of 2012

Hon'ble SC directed ;

- ❑ Sec 54(2) is clear about compounding under Act.
- ❑ No further proceeding and vehicle to be released.
- ❑ Once compounding is done the suspected person is saved from criminal proceeding.
- ❑ No provision of sec. 54 prohibits compounding of offence, when accused has confessed the guilt or compounding is done only by Magistrate not by Forest Officer.

- For the aforesaid reasons, we set aside the impugned order of HC to the extent it has set aside the compounding of offence alleged to have been committed by appellant.
- Learned Magistrate will release the vehicle in terms of judgment of this court in case of ***JK Johnson Vs. PCCF.***

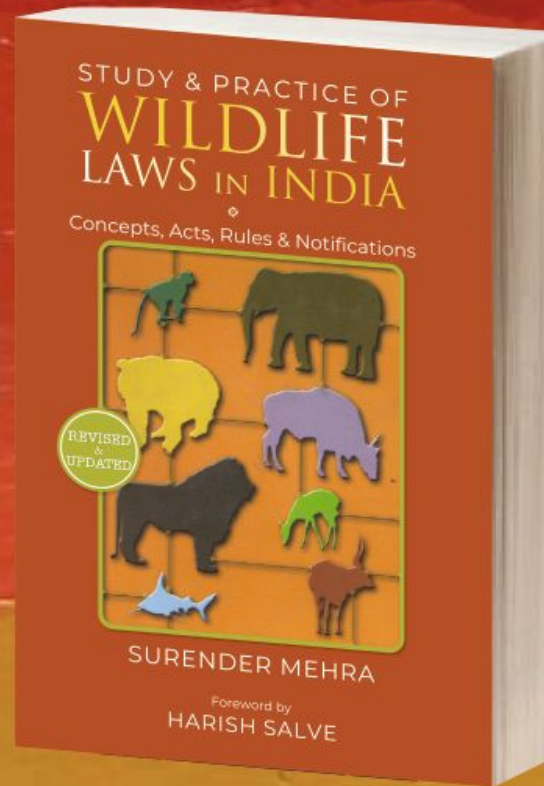


REVISED & UPDATED

The history of conservation in India dates back several centuries — it carries utmost importance in the shastras, epics and other social codes. However the first ever comprehensive legal code was formulated as the Wild Life (Protection) Act, in 1972. The laws related to wildlife enforcement are thus still at an evolving stage.

We urgently need strong wild life law enforcement in India as the laws exist but poor implementation and systemic deterrents restrict effective pro-action. This book delves into a detailed analysis of the laws in place in India – while it explains the laws, the book also provides extensive case studies.

Thanks...



The book will be very useful for Forest officials and staff dealing with various issues in wild life management in the field, forest authorities dealing with various issues in captive management such as Zoo Keeping, transportation and immobilization of animals in distress. This book will further help wild life enforcement agencies, police personnel dealing with prevention, detection, investigation and trial of wild life crimes, customs and other enforcement agencies dealing with enforcement of regulations under international conventions and protocols, individuals, NGOs and other authorities dealing in litigations and with petitions in the High Courts and the Supreme Court.

Study & Practice of Wildlife Laws in India

CONCEPTS, ACTS, RULES & NOTIFICATIONS

SURENDER MEHRA

Foreword by HARISH SALVE

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