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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 800 OF 2001

The State of Maharashtra
(Through the Forester,
Kankeshwar Range, Alibag)

.. Appellant

Vs.

Krishna Ramchandra Gawand
Age 55 yrs. R/o Kolgaon,
Tal. Alibag, Dist. Raigad.

.. Respondent

Mr. A. S. Shitole, APP for appellant-State.
None for the respondent.

CORAM: S. B. SHUKRE, J.

AUGUST 25, 2015.

ORAL JUDGMENT:

1. This is an appeal preferred against the Judgment and Order dated 28/2/2001 passed by the learned Chief Judicial Magistrate, Raigad – Alibag in Summary Criminal Case No. 583 of 1991, thereby acquitting respondent of the offence punishable under Section 33(1)(c) of the Indian Forest Act, 1927.

2. Briefly stated facts of the case are as under:-

On a complaint filed by a Forest Officer, Kankeshwar, Raigad-Alibag, the respondent was prosecuted on a charge that sometime prior to 23/9/1990, the respondent, by making unauthorized construction, encroached upon a forest land bearing Survey No. 12-A situated at Kolgaon, Taluka – Alibag, District – Raigad and thus committed an offence punishable under Section 33(1)(c) of the Indian Forest Act, 1927. Initially, after recording plea of the respondent on 21/9/1991, the respondent had pleaded guilty to the said charge and had been convicted by sentencing him to pay fine of Rs.100/-, in default to suffer RI for 15 days. A Revision Application that was filed by the respondent against the said order of conviction was, however, allowed by the concerned Sessions Court and the matter was remanded back to the court of the learned Chief Judicial Magistrate for trial of the respondent for the said offence in accordance with law. Accordingly, the respondent was tried afresh and found to be innocent in the case.

3. I have heard Mr. Shitole, learned APP for appellant – State. None has appeared on behalf of the respondent-accused. I have carefully gone through the record of the case and the impugned Judgment and Order.

4. It is seen from the impugned Judgment and Order that the learned Magistrate has based his finding of innocence of respondent on two facts which glaringly appear on record from the evidence of prosecution. First relates to non proving of the land in question to be the forest land and the second pertains to absence of any evidence establishing that unauthorized construction was made in the forest land by the respondent before 27/2/1980, the day on which the land in question was handed over to the Forest Department vide Mutation Entry No. 1222.

5. The aforesaid reasons given by the learned Magistrate, on careful scrutiny of the evidence brought on record by the prosecution, appear to be wholly based upon the evidence and cannot be said to be so illogical as not arising therefrom. The learned Magistrate has not considered any extraneous material while appreciating the evidence and reaching his conclusions in the case. The evidence shows that PW 1 - Shrirang Dhere, the complainant and Round Forest Officer does not know exactly as to in what manner and how the Government Gazette dated 28/2/1907 was published, which fact ought to have been proved by the prosecution. In the case of State of Bihar vs. Munshi Kahar [**AIR 1963 Patna 195**], the Patna High Court has taken a view that the notification

issued under Section 30 of the Forest Act, as the notification involved in the present case, has to be proved not merely by production of gazette containing the notification but also by proving that it had been published in accordance with the provisions contained in Section 31 of the Act. Having regard to the provisions of Section 31 of the Act, I have no reason to take a different view than the one taken by the Patna High Court in the said case of Munshi Kahar. In fact, ratio of this case being applicable to the facts of the instant case, I must say, has been rightly followed by the learned Magistrate. Then there is also no evidence brought on record by the prosecution that encroachment of respondent on the forest land was made by clearing up/breaking up the forest land after its possession was handed over to the Forest Department. It is an admitted fact that the possession of the forest land was made over to the Forest Department on 27/2/1980 vide Mutation Entry No. 1222. It is the requirement of Section 33(1)(c) of the Indian Forest Act, 1927 that breaking up or clearing up for cultivation or any other purpose, any land in any protected forest, must have taken place before the issuance of the notification in accordance with law. In the instant case, there is no evidence either about issuance of the notification in accordance with law or making of encroachment after handing over of the land in question to the Forest Department on 27/2/1980.

6. Learned APP for the State has submitted that in the statement recorded under Section 313 of Cr. P.C., the respondent has admitted about construction of a house by encroaching on the forest land and, therefore, he further submits that the offence punishable under Section 33(1)(c) can be said to be proved by own admission of the respondent. In fact, such an argument appears to have been made even before the learned Magistrate. The learned Magistrate, while rejecting the argument, has distinguished between an admission of fact and proof of guilt of the accused by the prosecution beyond reasonable doubt and observed that in the instant case, the aforesaid admission amounted to only admission of fact of existence of a pakka construction on a forest land but did not amount to admission of an offence, which has a few more ingredients bundled into it, apart from clearing up the forest land for cultivation or any other purpose. Such a distinction made by the learned Magistrate, in my considered view, cannot be faulted with. The offence punishable under Section 33(1)(c), apart from existence of the fact showing encroachment upon the forest land, has also additional ingredients to be proved by the prosecution. They relate to proving of the fact that the encroachment or clearing up took place after issuing of the notification or after the land declared as a protected forest

land came into possession of the Forest Department. Such additional requirements of the said section have not been proved by the prosecution by leading cogent evidence. Therefore, the argument that the admission of encroachment in the forest land by the respondent by itself would be sufficient to prove the offence alleged against him, cannot be accepted and is accordingly rejected.

7. In the circumstances, I find that the impugned Judgment and Order is neither perverse nor illogical. No interference with the impugned Judgment and Order is called for. The appeal deserves to be dismissed.

8. The appeal stands dismissed.

(S. B. SHUKRE, J.)