

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN**

**FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937**

**Crl.Rev.Pet.No. 1732 of 2003 ( )**  
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**AGAINST THE JUDGMENT IN Crl.APPEAL 213/2000 of  
II ADDL. SESSIONS COURT, KOLLAM, DATED 24-10-2002.**

**&**

**AGAINST THE JUDGMENT IN C.C.NO.520/1997 OF THE  
JFCM-II (FOREST OFFENCES), PUNALUR, DTD: 20.10.2000.**

**REVISION PETITIONER(S):**  
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**NAZEER,  
S/O. MOHAMMED HANEEFA,  
MANNOORKALA PUTHEN VEEDU,  
KARIARA, VILAKUDY VILLAGE,  
PATHANAPURAM TALUK.**

**BY ADVS.SRI.K.V.VINODKUMAR  
SRI.S.RAJEEV**

**RESPONDENT(S):**  
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**STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA,  
ERNAKULAM.**

**BY SRI. M.P.MADHAVANKUTTY, SPL. GOVT. PLEADER FOR FOREST.**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON  
26.03.2015 AND THE COURT ON 10-04-2015 PASSED THE FOLLOWING:**

SS

**K. RAMAKRISHNAN, J.**

.....  
Crl. R.P. No.1732 of 2003

.....  
Dated this the 10<sup>th</sup> day of April, 2015

**ORDER**

First accused in C.C.520/1997 on the file of the Judicial First Class Magistrate Court-II (Special Court for Forest Offences), Punaloor, is the revision petitioner herein. The revision petitioner along with two others were charge-sheeted by the Forest Range Officer, Pathanapuram forest range, in O.R.No.16/1997 under Section 27(1)(e)(iii) and (iv) of the Kerala Forest Act.

2. The case of the prosecution in nut shell was that, two or three days prior to 28.08.1997, accused persons trespassed into the forest area and cut rose wood trees from the reserve forest area in Nedumpara motta bhagam and on 28.08.1997 they were found carrying logs of rose wood tree from the reserve forest and thereby they have committed the offence punishable under Section 27(1)(e)

(iii) and (iv) of the Kerala Forest Act. After filing the form-I report and enquiry, form 2 complaint was filed by PW4. After formal enquiry, the case was taken on file as C.C.520/1997 and after the appearance of the accused, PW1 was examined and Exts.P1 to P5 were marked. Thereafter, charge under Section 27(1)(e)(iii) and (iv) of Kerala Forest Act was framed and the same was read over and explained to them and they pleaded not guilty. During pendency of the proceedings, 2<sup>nd</sup> accused absconded and the revision petitioner and third accused alone were proceeded with. In order to prove the case of the prosecution, PWs 1 to 3 were recalled and further examined and PWs 4 and 5 were examined and Exts.P1 to P5 and MO1 were marked on the side of the prosecution. After closure of the prosecution evidence, the revision petitioner and third accused were questioned under Section 313 of the Code of Criminal Procedure and they denied all the incriminating

circumstances brought against them in the prosecution evidence. They have further stated that, they have not committed any offence and they have been falsely implicated in the case and they have been arrested from their house. No defense evidence was adduced on their side.

3. After considering the evidence on record, the court below found the revision petitioner and 3<sup>rd</sup> accused guilty under Section 27(1)(e)(iii) and (iv) of the Kerala Forest Act and convicted them there under and sentenced them to undergo simple imprisonment for one year each and also to pay a fine of ₹1,000/- each, in default to undergo simple imprisonment for three months each under Section 27(1)(e)(iii) of Forest Act and further sentenced to undergo simple imprisonment for one year each under Section 27(1)(e)(iv) of Kerala Forest Act and directed the sentences to run concurrently. The case against the second accused was

refiled as C.C.1060/2000. Aggrieved by the order of conviction and sentence, the revision petitioner filed Crl.Appeal No.213/2000 before the Sessions Court, Kollam, which was made over to Second Additional Sessions Court, Kollam, for disposal and the learned Additional Sessions Judge dismissed the appeal, confirming the order of conviction and sentence passed by the court below. Dissatisfied with the same, the present revision has been filed by the revision petitioner, who is the first accused in the court below.

4. Heard Shri. Vinod Kumar, counsel appearing for the revision petitioner and Shri.M.P.Madhavankutty, Special Government Pleader for Forest and perused the records.

5. The counsel for the revision petitioner argued that, the evidence of PWs 1, 3, 4 and 5 are not sufficient to come to the conclusion that the case against

the revision petitioner was proved beyond reasonable doubt. Further though they have stated that, revision petitioner had escaped from custody and a crime was registered in respect of the same, but no document has been produced regarding the same before the court and that falsifies the case of the prosecution that, he was arrested from the spot, especially when the revision petitioner had a case that, he was not arrested from the spot, but he was taken into custody from his house. Further there is discrepancy in the description of MO1 saw seized on the basis of the alleged confession given by the third accused. No confession statement was obtained from the first accused, that also shows that, he was not arrested as claimed by the prosecution. Further, the material things regarding seizure of MO1, its identity etc., were not put this accused under Section 313 of the Code of Criminal Procedure and thereby serious prejudice has been caused.

Further, the exact place of occurrence or the time of occurrence were not stated. Further according to the prosecution, the accused persons have stated that, they have cut the trees from 400 meters north from the place they were seen, but in fact, they went to southern side and saw the stump. So under the circumstances, the prosecution has not proved the case against the revision petitioner beyond reasonable doubt. He had relied on the decisions reported in **Nar Singh v. State of Haryana (2014 KHC 4711)**; **Sukhjit Singh v. State of Punjab (2014(10) SCC 270)**; **Nagaraj v. State Rep. by Inspector of Police, Salem Town, Tamil Nadu (Criminal Appeal No.1311/2006 of S.C.)**; **Shaikh Maqsood v. State of Maharashtra (2009(6) SCC 583)**; **Ranvir Yadav v. State of Bihar (2009(6) SCC 595)**; **Inspector of Customs, Akhnoor, Jammu and Kashmir v. Yashpal and another (2009(4) SCC 769)**; **Sivadasan**

**v. State of Kerala (2007(3) KHC 739); Hate Singh Bhagat Singh v. State of Madhya Bharat [AIR 1953 (S.C.) 468]; Kareem v. Deputy Ranger (2014(4) KLT 597)** and unreported decisions reported in Crl.R.P.No.1937/2011 (Joy v. State of Kerala) and Crl.R.P.396/2002 (Narayanan Chettiyar and another v. State of Kerala and another).

6. On the other hand, learned Special Government Pleader for Forest submitted that, the evidence of PWs 1 to 5 will go to show that, the accused persons were arrested from the reserve forest area and no evidence has been adduced on their side to prove their false implication. Further the discrepancies in the description of the saw that has been seized is not much material and relevant incriminating the circumstances as against the petitioner brought out in the prosecution evidence has been put to him. So there is no prejudice caused to him and

causing any prejudice has not been established as well. Further, once it is proved by the prosecution that, the accused were found to be in possession of forest produce, then the presumption under Section 69 of the Kerala Forest Act will be attracted, the burden is on the accused to rebut the same. But no such evidence has been adduced on the side of the revision petitioner to rebut the presumption. So according to him, the concurrent findings of the court below on this aspect do not call for any interference.

7. He had further argued that, in Kareem's case (supra), not squarely laid down the decision and each offence is separate offence and as such, the courts below were perfectly justified in convicting the revision petitioner for both the offences mentioned.

8. The case of the prosecution as emerged from the prosecution witnesses was that, on 28.08.1997, and one day prior to this the accused persons trespassed into the

Achankovil reserve forest area and cut a dried rose wood tree and tried to remove the same from the forest area causing a loss of ₹15,057/- to the Government and thereby they have committed the offence punishable under Section 27(1)(e)(iii) and (iv) of the Kerala Forest Act. After investigation Form-II complaint was filed and it was taken on file as C.C.No.520/1997 on the file of the Judicial First Class Magistrate Court for Forest offences, Punaloor. According to the prosecution, while PWs 1, 3, 4 and 5 were conducting beat duty in the reserve forest area covered by Ext.P5 notification, they saw three accused persons including the revision petitioner coming with logs and immediately they stopped them and when they questioned them, it was revealed that they entered the forest on the previous day and cut the fallen rose wood tree and they told that they have cut it from a distance of 400 meters north from that place. One of the accused tried to go away from

the place, but they caught hold of him and thereafter when they questioned, they disclosed their names and showed the place from where the tree was cut and they found the place which is 400 meters south from the place and not as stated by the accused persons, as they were proceeding towards north from south and the third accused had taken and produced MO1 saw and they arrested the accused persons and seized MO1 and other pieces of the wood as per Ext.P1 mahazar. Thereafter they came to the range office and produced the accused persons and the documents prepared before PW2, who prepared Ext.P2 form and report and sent to court. He had entrusted the forest staff to produce accused persons before court while they were taken by PW1 for that purpose, first accused who is the revision petitioner herein jumped from custody and on the basis of the report given, a crime was registered and later he was arrested. The confession statement of accused Nos. 2 and 3 were

recorded, which was marked as Exts.P3 and P4. The case of the revision petitioner was one of total denial.

9. It is true that, there is some discrepancy regarding the number of ridges for the saw seized. It was categorically stated by all the witnesses that, it contains 61 ridges and two of them were found broken. So any mistake made in Ext.P1 regarding the number of ridges of the saw is not material in this case. Further it was categorically stated by them that, the place of occurrence was reserve forest covered by Ext.P5 notification. There is no case for the accused that it was not a reserve forest, but their case was that, they were not arrested from there. So the dictum laid down in the decision reported in **Crl.R.P.396/2002 (Narayanan Chettiyyar and another v. State of Kerala and another)** is not applicable to the facts of this case.

10. It is true that, no document has been produced by the prosecution to prove that a case was

registered in respect of jumping of custody by the first accused, but when the witnesses deposed about this fact, that was not seriously challenged, except giving suggestion that, he was not arrested from the place and he was taken into custody from the house.

11. Further in the decisions reported in **Crl.R.P.No.1937/2011 (Joy v. State of Kerala)**, relied on by the counsel for the revision petitioner, is not applicable to the facts of this case, because that was a case where the accused was tried for the offence under Section 225(B) of the Indian Penal Code and there was no document produced by the prosecution to prove that he was arrested in O.R.No.3/2003 and unless it is proved, it cannot be said that, he jumped from custody so as to convict him for the offence under Section 225(B) of the Indian Penal Code. But here that was not a case. So the dictum laid down in the above decision is also not applicable to the facts of this

case.

12. There is no dispute regarding the propositions laid down in the decisions reported in **Sivadasan v. State of Kerala (2007(3) KHC 739); Hate Singh Bhagat Singh v. State of Madhya Bharat [AIR 1953 (S.C.) 468]; Shaikh Maqsood v. State of Maharashtra (2009(6) SCC 583); Ranvir Yadav v. State of Bihar (2009(6) SCC 595); Inspector of Customs, Akhnoor, Jammu and Kashmir v. Yashpal and another (2009(4) SCC 769); Nar Singh v. State of Haryana (2014 KHC 4711); Sukhjit Singh v. State of Punjab (2014(10) SCC 270); Umakant and another v. State of Chhattisgarh (2014(7) SCC 405);** and unreported decision in **Nagaraj v. State Rep. by Inspector of Police, Salem Town, Tamil Nadu [Criminal Appeal No.1311/2006 of (SC)]**, regarding the importance of 313 examination and the duty of the court to put the questions

to accused regarding the incriminating circumstances to give him an opportunity to explain the same. In all these cases, it has been observed that, it is not always necessary, unless prejudice is established, merely because some questions were not put will not entitle acquittal of the accused for the offence alleged.

13. In this case, on going through the 313 examination, I find that, necessary questions required to be put were put to him, as regards the jumping from custody was also put to him. But it is true that, he had denied the same and that alone is not sufficient to come to the conclusion that such a thing had not happened. Further recovery of MO1 was effected at the instance of third accused. So, merely because a question relating to the same was not put to first accused is not fatal in this case. Further he did not adduce any evidence to show that he was arrested from his house. So under the circumstances, there

is no merit in the submission made by the counsel for the revision petitioner that the prosecution has failed to prove that he was arrested from the forest area along with logs. Further the evidence of prosecution witnesses will go to show that, they have arrested all the accused persons including the revision petitioner from the reserve forest area covered by the notification and Ext.P2 report will go to show that, the name of the revision petitioner was also mentioned as one of the accused, that was the contemporary document prepared immediately after the incident and Ext.P1 mahazar also contains his name. So under the circumstances, the case of false implication of the petitioner as claimed by the counsel for the revision petitioner is not acceptable and the same is liable to be rejected. So from the evidence, it is clear that, the prosecution has proved beyond reasonable doubt that the revision petitioner had trespassed into the reserve forest

area and cut a fallen rose wood tree and tried to remove the same and at that time he was arrested by the forest officials and thereby he had committed the offence punishable under Section 27(1)(e)(iii) of the Kerala Forest Act and that finding does not call for any interference.

14. In the decision reported in **Kareem v. Deputy Ranger (2014(4) KLT 597)**, this court has held that, in order to attract the offence under Section 27(1)(e)(iv) of the Kerala Forest Act, the prosecution must prove the ingredients mentioned therein and the trespass must be for the purpose mentioned in that section, as even for committing the offence under Section 27(1)(e)(iii) of the Act, trespass has to be committed. So for the purpose of simple trespass, no conviction is required and the same accused cannot be convicted for both the offences simultaneously, if the trespass was committed for only those purposes mentioned in any one of the Section alone. So

under the circumstances, the finding of the court below that the revision petitioner had committed the offence punishable under Section 27(1)(e)(iv) of the Act is unsustainable in law and the same is liable to be set aside and he is entitled to get acquittal of that charge giving him the benefit of the decisions mentioned above.

15. As regards the sentence for the offence under Section 27(1)(e)(iii) of the Act is concerned, the court below had only imposed a minimum sentence, which cannot be said to be excessive, considering the nature of offence committed, which requires interference at the hands of this court.

So the revision is allowed in part and the order of conviction and sentence passed against the revision petitioner under Section 27(1)(e)(iv) of the Kerala Forest Act is set aside and he is acquitted of that charge giving him the benefit of doubt. But the order of conviction and

sentence passed against the revision petitioner for the offence under Section 27(1)(e)(iii) of the trial court and confirmed by the appellate court are hereby confirmed.

Office is directed to communicate this order to the concerned court, immediately.

Sd/-

**K. Ramakrishnan, Judge**

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P.A. to Judge

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