

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

Crl.Rev.Pet.No. 2206 of 2003 ()

AGAINST THE ORDER IN CC 820/2001 of J.M.F.C.-I MUVATTUPUZHA
DATED 31-07-2003

REVISION PETITIONER/1ST ACCUSED:

C.K.SAINUDHEEN,
S/O. LATE KHADIR KUNHAHAMMED,
SRAMBIKKAL HOUSE, MANIKINAR P.O,
NELLIMATTOM, ERNAKULAM DISTRICT.

BY ADVS.SRI.P.K.MOHAMMED PUZHAKKARA
SRI.T.K.HASSAN

RESPONDENT/COMPLAINANT:

FOREST RANGE OFFICER,
KOTHAMANGALAM.

BY PUBLIC PROSECUTOR MS.V.H.JASMINE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
13-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE- 1: TRUE COPY OF THE SCENE MAHAZAR DATED 13.1.1997.

ANNEXURE-II TRUE COPY OF THE FORM I REPORT DATED 13.1.1997.

ANNEXURE-III: TRUE COPY OF THE LETTER NO.L.DIS.7038/91/A6 DATED 20.6.92 OF THE REVENUE DIVISIONAL OFFICER, MUVATTUPPUZHA.

ANNEXURE-IV TRUE COPY OF THE REPORT DATED 5.2.1997 OF THE ADVOCATE COMMISSIONER IN O.S.NO.67/97.

ANNEXURE-V TRUE COPY OF THE JUDGMENT DATED 30.3.2000 IN OS.67/97 OF THE MUNSIFF'S COURT, MUVATTUPPUZHA.

ANNEXURE-VI TRUE COPY OF THE LETTER DATED 5.5.97 OF THE RDO, MUVATTUPPUZHA ALONG WITH THE COPY OF THE REPORT OF THE TAHASILDAR, KOTHAMANGALAM.

ANNEXURE-VII TRUE COPY OF THE FORM II REPORT DATED 19.5.1997.

ANNEXURE-VIII TRUE COPY OF THE MEMO OF CHARGES DATED 5.5.2003 ISSUED BY THE CHIEF CONSERVATOR OF FORESTS (ADMINISTRATION).

ANNEXURE-IX TRUE COPY OF THE PETITION FILED U/S 245 OF THE CR.P.C

ANNEXURE-X TRUE COPY OF THE ORDER DATED 31.7.2003 IN C.C.NO.820/2002

ANNEXURE-XI TRUE COPY OF THE CHARGE FRAMED AGAINST THE PETITIONER IN C.C.NO.820/2001

ANNEXURE-XII TRUE COPY OF THE JUDGMENT IN AS.NO.248/2005 OF DISTRICT JUDGE, ERNAKULAM.

/TRUE COPY/

P.S. TO JUDGE

K. RAMAKRISHNAN, J.

.....
Crl.R.P.No.2206 of 2003
.....

Dated this the 13th day of February, 2015.

O R D E R

The first accused in C.C.No.820/2001 on the file of the Judicial First Class Magistrate Court-II, Muvattupuzha is the revision petitioner herein.

2. The case was initiated on the basis of a complaint filed by the Forest Range Officer, Kothamangalam when he came to know that an anjili tree supposed to be in the reserved forest had been cut and removed by the accused 2 to 8 with the connivance of the revision petitioner by trespassing into the property and removed the same and thereby they have committed the offences punishable under sections 27(1)(e) and 27(1)(d) of the Kerala Forest Act. The case was originally filed before the Judicial First Class Magistrate Court-II, Muvattupuzha and thereafter it was transferred to Judicial First Class Magistrate Court, Kothamangalam when that court was formed, where it was taken on file as C.C.No.419/1997. Thereafter the case was transferred to Judicial First Class Magistrate Court-II, Muvattupuzha where it was refiled as

C.C.No.820/2001. The present petitioner filed Crl.M.C.No.4129/2003 before this Court for quashing the proceedings. But, this Court disposed of that petition leaving open the right of the petitioner to move the trial court for discharge after complainant's evidence is over. Accordingly, Pws 1 to 5 were examined and Exts.P1 to P8 were marked on the side of the prosecution and while cross examination of the prosecution witnesses, Exts.D1 to D9 were also marked and after evidence, the petitioner filed Crl.M.P.No.8171/2003 for discharge, but the learned magistrate by the impugned order dismissed the discharge petition and decided to frame charge against the accused persons. Aggrieved by the same, the present revision has been filed by the revision petitioner/ first accused before the court below.

2. Heard the counsel for the revision petitioner and Sri. MadhavanKutty, Special Government Pleader for forest cases also.

3. When the revision petition came up for hearing today, the counsel for the revision petitioner brought to my notice that additional document has been produced along with Crl.M.A.No.678/2015 which is judgment of the district court

in A.S.No.248/2005, which was filed by the State against the decree and judgment in O.S.No.67/1997 on the file of the Munsiff Court, Muvattupuzha and the appeal filed by the State was dismissed and the counsel for the revision petitioner also submitted that as per Ext.D7 judgment in O.S.67/1997 of Munsiff Court, Muvattupuzha and also the commissioner's reports Exts.D8 and D9, it will be seen that the civil court has found that the anjili tree belongs to the second accused, who was the plaintiff in the civil suit and allegation against the revision petitioner was that he abetted in connivance with the other accused persons and it was on account of his connivance that the anjili tree in the reserved forest was cut and removed. Since the civil court found that it is not the forest property, no offence under the Forest Act will be attracted. The court below had dismissed the petition on the ground that Ext.D7 judgment has not become final as appeal was pending. Now by virtue of the additional document, the appeal was also disposed of in favour of the plaintiff who is the second accused in the case. So he prayed for allowing the application.

4. The special Government Pleader on the other hand submitted that in view of the fact that the civil court has found

that the disputed anjili tree is not the tree cut and removed from the reserved forest as declared by the civil court and a mandatory injunction was granted directing the forest officials to return the anjili tree and that was confirmed by the appellate court, against which, no second appeal has been filed, this Court can consider that and pass appropriate orders.

5. The allegation against the present petitioner in the complaint was that as abetted by the present revision petitioner, accused 2 to 8 trespassed into the reserved forest, cut and removed the disputed anjili tree and it was on that basis that the complaint was filed by the forest officials. The present revision petitioner is one of the forest officials and now retired from service. The accused persons have produced the civil court judgment before the court below and that was admitted by the prosecution witnesses also. But they have stated that, that was pending in appeal before the Sub Court, Muvattupuzha at that time and that was the reason why the court below had come to the conclusion that, that is not a ground for discharge and dismissed the application for discharge filed by the present revision petitioner. Now additional document produced along with Crl.M.A.678/2015 which was allowed and received by this

Court and marked as Annexure-XII shows that civil appeal filed by the State against decree and judgment in O.S.No.67/1997 of Munsiff Court, Muvattupuzha which was originally filed before Sub Court, Muvattupuzha as AS.No.59/2000 and was withdrawn to the District Court, Ernakulam and renumbered as A.S.No.248/2005 by Annexure-XII document was dismissed confirming the decree passed by the court below and no second appeal has been preferred and that finding has become final and binding on the forest officials. Since the civil court has already found that the disputed anjili tree is not standing in the reserved forest, no offence under the Forest Act is attracted against the petitioner even the allegation was that he had abetted the other accused persons to cut and remove the anjili tree allegedly standing in the reserved forest. Once it is declared by the civil court that the tree is not standing in the reserved forest, then there is no question of revision petitioner abetting other accused persons in cutting and removing the tree in the forest area arises and continuing the case will only amount to an abuse of process of court and subsequent development can be taken note of by this Court and the order passed by the court below has to be set aside and the petitioner

has to be discharged.

7. So the revision is allowed and the order passed by the court below dismissing the application for discharge filed by the petitioner is set aside and revision petitioner is discharged under section 245 (1) of the Code of Criminal Procedure.

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

Sd/-

K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

