

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

Cr1.Rev.Pet.No. 2748 of 2003 ()

AGAINST THE JUDGMENT IN CRA 425/2001 of D.C. & SESSIONS
COURT, THRISSUR DATED 28-07-2003

AGAINST THE JUDGMENT IN CC 838/1997 of J.M.F.C., VADAKKANCHERRY DATED
21-08-2001

REVISION PETITIONER(S) (Appellants/Accused 1 to 4:

1. GANGADHARAN, S/O.VELAYUDHAN
CHELAKODE VILLAGE, THALAPPILLY TALUK
THRISSUR DISTRICT.
2. KOCHU, S/O.GOVINDAN,
CHELAKODE VILLAGE, THALAPPILLY TALUK
THRISSUR DISTRICT.
3. KUMARAN, S/O.VELAYUDHAN
CHELAKODE VILLAGE, THALAPPILLY TALUK
THRISSUR DISTRICT.
4. ABDUL RAHIMAN, S/O.KUNJAPPA
CHELAKODE VILLAGE, THALAPPILLY TALUK
THRISSUR DISTRICT.

BY ADV. SRI.P.V.BABY

RESPONDENT(S) RESPONDENTS/STATE & COMPLAINANT:

1. STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA.
2. FOREST RANGE OFFICER, AKAMALA.

R1 BY ADV. PUBLIC PROSECUTOR SRI N SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 18-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.D.RAJAN, J

.....
Crl.R.P.2748 of 2003
.....

Dated 18th November, 2015

ORDER

'CR'

Revision petitioners and 8 others were charge sheeted in C.C.838 of 1997 before Judicial First Class Magistrate, Wadakkancherry for having committed an offence punishable under Section 4 and 9(a) of the Kerala Preservation of Trees Act, 1986 (hereinafter referred to as the 'Act'). The charge against the accused is that on 30.5.1995, the Range Officer, Machad got information that the accused cut and removed 14 rosewood trees from Keerithadam estate in Asurakundu Atoor Village, Machad Range and thereby committed the offence. When he arrived at the place of occurrence, A1 to A4 were found at the place of occurrence and on the basis of information given by accused 1 to 4, the owner of the estate and others were arrayed as accused and a complaint was filed in the trial court.

2. To prove the allegation, prosecution examined PW1 to PW8 and marked Ext.P1 to P12 in evidence. The

incriminating circumstances brought out in evidence were denied by the accused while questioning them. Ext.D1 and D2 were marked from the side of accused. Trial court convicted A1 to A4 and acquitted accused 5 to 12. Against that A1 to A4 preferred an appeal, which was dismissed by the appellate court. Being aggrieved by that, they preferred this revision petition.

3. Heard both sides. The main contention advanced by the learned counsel appearing for the petitioners is that Government notification in the gazette appointment of authorised officers not below the rank of rangers for the purpose of this act was not produced in the trial court. Moreover complaint was filed without obtaining previous sanction of such officer and the restriction is for the notified trees alone.

4. In reply the learned Public Prosecutor admitted that no notification has been produced in the trial court regarding appointment of authorised officers. But under Section 4 no person shall, without previous sanction in writing of the authorised officer cut, uproot or burn any

species of trees.

5. According to Section 2(b), authorised officer means an officer appointed under sub-section (1) of Section 3. Authorised Officer and appellate authorities are mentioned under Section 3 of the Act. Section 3 reads as under:-

"3. Authorised officers and appellate authorities :- (1) the Government may by notification in the gazette, appoint such officers not below the rank of Ranger as they think fit to be authorised officers for the purpose of this Act, and may assign to them such local limits as the government think fit.
(2) The Government may, by notification in the Gazette, appoint such officers as they think fit to be appellate authorities for the purposes of this Act and may assign to them such local limits as the Government think fit".

According to section 2(e) " tree means any of the following species of trees, namely- Sandalwood (Santalum album), Teak (Tectona grandis), Rosewood (Dalbergia latifolia), Irul (Xylia Xylocarpa), Thempavu (Terminalia tomentosa), Kampakam (Hopea parviflora), Chempakam (Michelia chempaca), Chadachi (Grewia tiliifolia), Chandana vempu (Cedrela toona), cheeni

(Tetrameles nudiflora)". As per the Act, no person shall, without previous permission in writing by the authorised officer, cut, uproot or burn or cause to be cut, uproot or burn any tree mentioned under Section 2(e) of the Act.

6. According to Section 4 no person shall without previous permission in writing of the authorised officer cut, uproot, burn any species of tree. Section 4 reads thus:-

"Restriction regarding cutting etc, of trees

- (1) No person shall, without the previous permission in writing of the authorised officer, cut, uproot or but, or cause to be cut, uprooted or burnt, any tree.

(2) The permission under sub-section (1) shall not be refused if -

(a) the tree constitutes a danger to life or property; or

(b) the tree is dead, diseased or windfallen:

Provided that where permission to cut a tree is granted on the ground specified in clause (a) or clause (b), the authorised officer shall impose as a condition for the grant of such permission the effective regeneration of an equal number of the same or other suitable species of trees; or

such cutting is to enable the owner of the land in which the tree stands to use the area cleared or the timber cut for the construction of a building for his own use.

(3) No person shall cut or otherwise damage, or cause to be cut or otherwise damaged, the

branch of any tree:

Provided that the provisions of this sub-section shall not be deemed to prevent the pruning of any tree as required by ordinary agricultural or horticultural practices.

(4) No person shall, without the previous permission in writing of the authorised officer, destroy any plant of any tree or do any act which diminishes the value of any such plant.

(5) Nothing contained in sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) shall apply in respect of any tree or plant in the compound of any residential building.

(6) Notwithstanding anything contained in this section or in any judgement, decree or order of any Court, the owner of any land shall have the right to cut or cause to be cut any tree, other than a tree as defined in clause (e) of Section 2, standing on such land, without obtaining a permission under this section.

Provided that where such compound exceeds one hectare in extent, the provisions of this sub-section shall apply only in respect of an extent of one hectare immediately surrounding the residential building”.

7. Section 5 says prohibition of cutting of trees in notified area. But the tree constitute danger to life or property or the tree is dead, diseased or windfallen, it can be cut and removed with permission. Section 5 reads thus:-

" 5. Prohibition of cutting of tree in notified areas - (1) Notwithstanding anything contained in any law for the time being in force, or in any judgment, decree or order of any Court, tribunal or other authority, or in any agreement or other arrangement, the Government may, with a view to preserving the tree growth in private forests or in the Cardamom Hills Reserve or in any other areas cultivated with cardamom, by notification in the Gazette, direct that no tree standing in any such area specified in the notification shall be cut, uprooted, burnt or otherwise destroyed except on the ground that -

(a) the tree constitutes a danger to life or property; or

(b) the tree is dead, diseased or windfallen:

Provided that the provisions of this sub-section shall not be deemed to prevent the pruning of any tree as required by ordinary agricultural or horticultural practices.

(2) No person shall, without the previous permission in writing of the authorised officer, cut, uproot, burn or otherwise destroy or cause to be cut, uprooted, burnt or otherwise destroyed any tree in any area specified in the notification under sub-section (1) on any of the grounds specified therein.

Explanation I - For the purpose of this section, the term "tree" shall include any species of tree. Explanation II- For the purposes of sub-section (1), the expression "private forest" means any land which immediately before the 10th day of May, 1971, was private forest as defined in the Kerala Private Forests (Vesting and Assignment) Act, 1971".

A reading of Explanation I shows that for the purpose of

S.5, the term 'tree' shall include any species of tree, to mean that for the purpose of other Sections the term 'tree' may not include any species of tree. Explanation I also used the expression 'shall include'. Word 'shall' ordinarily means mandatory. Word 'shall' has to be construed in the context in which it is used and the purpose it seeks to serve.

8. In a prosecution under the Act, the authorised officer is competent to give sanction for a prosecution under the Act. Section 18 of the Act says about institution of prosecution. "No prosecution shall be instituted against any person without the sanction of the authorised officer." The grant of sanction for prosecution is not a mere mechanical process but it is intended to safeguard the liberty of the citizen against vexatious prosecution. The law impose a duty by authorising a responsible officer of the government to apply his mind intelligently to satisfy himself about the facts for a prosecution before granting such sanction. The first stage which set the law in motion against an infringer of

law is the grant of sanction. The Supreme Court had occasion to consider the validity of sanction under Prevention of Corruption Act in **Madan Mohan Singh V. State of U.P** (AIR 1954 SC 637) wherein it was held :-

“ the burden of proving that the requisite sanction has been obtained rests on the prosecution and such burden includes proof that the Sanctioning authority had given the sanction in reference to the facts on which the proposed prosecution was to be based; and these facts may appear on the face of the sanction or may be proved by extraneous evidence. Where the facts constituting the offence do not appear on the face of the letter sanctioning prosecution, it is incumbent upon the prosecution to prove by other evidence that the material facts constituting the offence were placed before the sanctioning authority. Where this is not done, the sanction must be held to be defective and an invalid sanction cannot confer jurisdiction upon the Court to try the case”.

Their Lordships of the Privy Council **Yusofalli Mulla Noorbhoy V. King** (AIR 1949 PC 264) approved the view expressed by the Federal Court in **Basdeo Agarwalla V Emperor** (AIR 1945 FC 16) “that a prosecution launched without valid sanction is nullity”. In this context, I have verified whether any sanction has been obtained from the authorised officer. The evidence

of prosecution witnesses show that no sanction had been obtained as provided under the Act.

9. PW1 was the Forest Guard attached to Agamala Forest Station, who deposed that on the basis of information, he arrived at the place of occurrence and saw A1 to A4 carrying the logs from the place of cutting trees. He identified the name and ascertained the measurement of the logs and prepared a mahazar. Ext.P1 and P2 are the mahazars. PW2 and PW3 are also forest officials. Ext.P3 mahazar was marked through PW3. The Forest Officer of Agamala forest station was examined as PW4. On 16.10.1996, he arrived at the place of occurrence and prepared Ext.P3 and P4 mahazars. PW5 registered OR 4/95 of Agamala forest station and he identified the signature in Ext.P1 and recorded the confession statement of A1 to A4. PW5 is the Village Officer, Mulloorkara Village who put his signature in Ext.P3 mahazar. PW7, the Deputy Ranger arrived at the place of occurrence and inspected the scene and as per the direction issued by the Range

Officer, he verified Ext.P3 mahazar and prepared Ext.P5 Form I report. PW8 recorded the confession statement of A1 to A7. On a perusal of the above procedural formalities complied in this case, it is found that there is flagrant violation of the statutory provisions contained in the Act.

10. No scrap of paper had been produced in the trial court to show that the Range Officer was authorised as per Section 3 of the Act. Moreover, no documents were marked in the trial court to show that sanction was given for prosecuting the accused or authorised officer is prosecuting the accused. From Section 18 itself, it is clear that a formal requirement by obtaining sanction is necessary for launching a prosecution against any person. If notification is not produced in the trial court, the prosecution must fail. It is clear that the prosecuting officers failed to understand these mandatory provisions and filed a report in the trial court. Courts below failed to appreciate the procedural formalities provided in the statute. As held by the Supreme Court in **State of UP V.**

Manbodhan Lal (AIR 1957 SC 912) and **State of UP V. Babu Ram** (AIR 1961 SC 751), word "shall raises a presumption that the particular provision is imperative". Therefore the legal infirmities in connection with launching the prosecution shows that cognizance had been taken without producing the notification. This court can invoke the revisional jurisdiction to rectify such illegality. In my view, the absence of sanction prior to the institution of the prosecution cannot be regarded as a mere technical defect. The section in question was obviously enacted for the purpose of protecting the citizen, and in order to give the Government in every case a proper opportunity of considering whether a prosecution should in the circumstances of each particular case be instituted or not. The sanction is not intended to be and should not be an automatic formality and should not so be regarded by forest officials. Therefore the whole proceedings in this case are null and void.

In the result, the conviction and sentence passed by the trial court under Section 4(1) of the Act is set aside.

Accused are acquitted and set at liberty. This revision petition is allowed.

P.D.RAJAN, JUDGE

lgk