

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

Crl.Rev.Pet.No. 3177 of 2003 ()

**AGAINST THE JUDGMENT IN CRL.A.NO.27/2003 of ADDITIONAL SESSIONS COURT
(ADHOC I), THODUPUZHA DATED 12-08-2003**

**AGAINST THE JUDGMENT IN C.C.NO.199/1998 of JUDICIAL FIRST CLASS
MAGISTRATE COURT, DEVIKULAM DATED 10-01-2003**

REVISION PETITIONER(S)/APPELLANT NO.1&2/ ACCUSED NO.2 &3:

- 1. VENKITACHALAM, S/O.PALANIYAPPAN, MARAYOOR GRAMAM,
MARAYOOR VILLAGE, DEVIKULAM TALUK.**
- 2. THANKAPPAN, S/O.NARAYANAN, MARAYOOR GRAMAM, MARAYOOR
VILLAGE, DEVIKULAM**

BY ADV. SRI.M.P.KRISHNAN NAIR

RESPONDENT(S)/COMPLAINANT:

**STATE OF KERALA, REPRESENTED BY THE FOREST RANGE OFFICER,
MARAYOOR RANGE.**

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

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09-
04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Bb

K. Ramakrishnan, J.

=====

Crl.R.P.No.3177 of 2003

=====

Dated this, the 09th day of April, 2015.

ORDER

Accused Nos.2 and 3 in C.C.No.199/1998 of Judicial First Class Magistrate Court, Devikulam are the revision petitioners herein. The accused were charge sheeted by the Range Officer, Marayoor Forest Range in O.R.No.15/1995 under Section 27(1)e(iii) and (iv) of Kerala Forest Act.

2. The case of the prosecution in nutshell was that, two days prior to 24.10.1995, the accused persons trespassed into No.2 Nachivayal Sandal Wood Reserve and cut a sandal wood tree and on 24.10.1995 at about 3.pm., they were found in the reserve forest area and removing the three pieces of cut sandal wood without any authorisation and thereby, they have committed the above said offences.

3. After investigation, Form II complaint was filed, on the basis of which, the case was taken on file by Judicial First Class Magistrate, Devikulam as C.C.No.199/1998. After appearance of accused, PW1 was examined and Exts.P1 to P3 and MO1 were marked and 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. Thereafter, PW1 was recalled and further examined and PWs 2 to 5 and Ext.P1(a) and MOs 1 and 2 were marked. After closure of the prosecution evidence, accused were questioned under Section 313 of Code of Criminal Procedure, but, 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 arrested from their houses and thereafter falsely implicated in the case. No defence evidence was adduced on their side to prove their case.

4. After considering the evidence on record, the trial court found the revision petitioners guilty under Section 27(1)e (iii) and (iv) of Kerala Forest Act and convicted them thereunder and sentenced them to undergo simple imprisonment for one year each and also to pay a fine of Rs.1,000/- each for each offence and in default to undergo simple imprisonment for one month each. Aggrieved by the same, they filed Crl.Appeal No.27/2003 before the Sessions Court, Thodupuzha which was made over to Additional Sessions Court (Adhoc I) Thodupuzha for disposal, the learned Additional Sessions Judge, by the impugned judgment,

dismissed the appeal confirming the order of conviction and sentence passed by the court below. Aggrieved by the same, the present revision has been filed by the revision petitioners - accused Nos.2 and 3 before the court below.

5. Heard the Counsel for the revision petitioners Shri.M.P.Krishnan Nair and Shri.M.P.Madhavankutty, Special Government Pleader for Forest Cases, appearing for the respondent.

6. The Counsel for the revision petitioners submitted that the case of the prosecution is not believable or probable. As per the mahazar, the height of the sandal wood tree said to have been cut and removed was shown as 150 meters and as per the materials and research done, it will be seen that the sandal wood tree will not grow more than 15 meters and it will have a maximum girth of 100 to 200 Cms. Further, the evidence of PW3 will go to show that, he had made the verification only on 25.10.1997, after two years of the alleged detection of the crime and there is delay in filing the final complaint also. All these things cumulatively will go to show that innocent persons residing near the forest area have been falsely implicated in the case. He had also submitted that

there is no evidence to show from where exactly the detection was made as well and the evidence of the prosecution witnesses that, on seeing the forest officials, they did not go away from the place or made any attempt to escape also shows that it is improbable that they would have surrendered before the forest officials as claimed by the forest officials. So, under the circumstances, both the courts below have not properly appreciated the evidence and the conviction entered is not proper.

7. On the other hand, the learned Special Government Pleader for Forest submitted that, as per Section 468(2)(c) of Code of Criminal procedure, if the punishment is more than three years, the complaint can be filed within three years and this complaint was filed within three years and mere delay in filing the complaint is not sufficient to doubt the case of the prosecution especially when Form I report reached the court on 02.11.1995 itself and the name of the accused persons were mentioned therein. Further, the discrepancy in the date of inspection as stated by PW3 also is not much relevant especially when the endorsement in Ext.P1 shows that the verification was done on the next day and the Form I report

itself was given by PW3 signed by him on 24.10.1995 and it reached the court on 02.11.1995. The discrepancy in the height of the tree is also not much relevant especially when the evidence will go to show that they were carrying the sandal wood pieces through the Reserve Forest area and there was no explanation forthcoming from them as to why they came to that place at that time. So, under the circumstances, the prosecution has proved their case beyond reasonable doubt and concurrent findings of the courts below on the quantum of conviction entered on appreciation of facts do not call for any interference.

8. The case of the prosecution as emerged from the prosecution witnesses was as follows:

On 24.10.1995 at about 3 p.m., while PW1 - Forest Guard along with PW2 another Forest Guard and PW5 Forester were doing beat duty and when they reached No.2 Nachivayal Reserve Forest Area, they found the accused persons coming carrying each log on their head and they were intercepted by them and on verification, it was found that it was sandal wood pieces. When questioned them, it was revealed that it was cut from the sandal wood forest area within two days prior to that

detection and they took them to the place where it was cut and it was situated about 400 meters from the place where they have seen them and it was near the canal as well. Thereafter, they found another 12 pieces of sandal wood cut and removed from a sandal wood tree there and the third accused had produced MO1 belt saw and MO2 chopper as the weapon used for cutting the tree and PW1 had seized the same as per Ext.P1 mahazar in the presence of PW2 and PW5 and arrested the accused persons and produced the documents along with the contraband article seized from the possession of the accused before PW3 - the Deputy Range Officer who prepared Ext.P2 Form I report and sent to court. Thereafter, on the next day, the accused were released on bail and PW3 had inspected the place and verified the same and made Ext.P1(a) endorsement regarding the verification. Thereafter, the complaint was filed by PW4 before the court.

9. It is true that as per the evidence, the date of detection was 24.10.1995 and the complaint was filed only on 19.04.1998 and it is seen from the endorsement of the court that the case was posted for appearance after taking cognizance to 15.10.1998. As per Section 468(2)(c) of the

Code of Criminal Procedure, the period of limitation for filing complaint is three years if the offence is punishable with imprisonment for a term exceeding one year, but, not exceeding three years. In this case, at the time when the offence was committed, the minimum punishment provided is one year and the maximum punishment is five years. So, it was filed within the time provided under Section 468(2)(c) of Code of Criminal Procedure and as such, the mere delay in filing the complaint or mere delay in completing the investigation alone is not a ground to acquit the accused especially when it was in the nature of a complaint and the complaint was filed within time. Further, it will be seen from Ext.P2 that Form I report was prepared showing the name of the accused persons and the nature of contraband articles seized and it reached the court on 02.11.1995. So, it cannot be said that the documents were manipulated for the purpose of falsely implicating the accused persons as contended by the Counsel for the revision petitioners.

10. It is true that in Ext.P1 mahazar, the height of the tree was shown as 150 meters and going by the description of the logs seized and pieces found, it will be seen that it could

only be a mistake as it is highly improbable that a sandal wood tree will grow up to a height of 150 meters and even if such a description is made, that could only be treated as a mistake and that cannot be a ground for acquitting the accused.

11. It is true that in the evidence, PW3 had stated that he was the Forest Range Officer on 24.10.1997 and he verified and made the endorsement on 25.10.1997. But, it may be mentioned here that in Ext.P2 Form I report, the name of PW3 was shown. Further, in Ext.P1 mahazar, PW3 had endorsed with date as 24.10.1995. Further, Ext.P1(a) endorsement will go to show that it was made on 25.10.1995 and no cross examination has been made on that aspect when he was examined before the court. So, any mistake committed by a witness by a slip of tongue against the documentary evidence has to be eschewed as a mistake and that cannot be taken as a ground for acquittal of the accused.

12. The evidence of PWs 1, 2 and 5 will go to show that they have seen the accused persons coming with three logs each carrying one log on their head. It is true that these witnesses have stated that the accused persons did not try to go away from the place. But, that alone is not sufficient to

come to the conclusion that the prosecution case is not believable. It is not necessary always that a person committed the crime should run away from the place. Further, though they were cross examined at length, nothing was brought out to discredit their evidence on this aspect. The suggestion given was that, they were arrested from their house and thereafter, released on bail. But, no evidence has been adduced on the side of the defence to prove that they were arrested from their house as claimed by them which they could have established by adducing cogent evidence by examining the neighbours who witnessed the arrest etc. That was not done in their case. Mere suggestion of false implication without any material is not sufficient to come to the conclusion that they have been falsely implicated as the burden is on them to prove that fact. Mere suggestion given is not sufficient to come to the conclusion of false implication as claimed by the revision petitioners.

13. Ext.P3 notification will go to show that, this area is a Reserve Forest. Further, in the mahazar, the place of cutting of the tree has been specifically mentioned as;

“കൃത്യസ്ഥലം മറയൂർ റേഞ്ചിൽ, മറയൂർ ഫോറസ്റ്റ് സ്റ്റേഷൻ അതിർത്തിയിൽപ്പെട്ട നാച്ചിവയൽ II ചന്ദന റിസർവ്വിന്റെ വടക്കുഭാഗം കനാലിന് സമീപം

പവും മറയൂർ ഫോറസ്റ്റ് സ്റ്റേഷനിൽ നിന്നും ഉദ്ദേശം 4 കി. മീറ്റർ പടിഞ്ഞാറും
റിസർവ്വേഷനുകൾ ആകുന്നു.”

So, it is clear from this that, it was within the Reserve Forest that the tree has been cut. Further, as regards the sandal wood tree is concerned, unless it is proved by the accused as to how they came in to possession of the same, the presumption is that, it was cut from the forest area, especially when they were arrested from the forest area. It is also seen from Ext.P1 mahazar and also on the basis of the evidence of PWs 1, 2 and 5 that MO1 belt saw and MO2 chopper were seized as pointed out by the third accused after describing the same in the mahazar. Once it is proved by the prosecution that the sandal wood tree cut from the Reserve Forest was found to be in the possession of the accused, then, the presumption under Section 69 of the Forest Act will be attracted and the burden is on the accused to rebut the same which has not been done in this case. So, under the circumstances, courts below were perfectly justified in coming to the conclusion that the revision petitioners have trespassed into the forest area and cut the sandal wood tree and removed the pieces so as to attract the offence under Section 27(1)e(iii)

of the Act.

14. In the decision reported in **Kareem Vs. Deputy Ranger [2014 (4) KLT 597]**, this court has held that, a person cannot be convicted for the offences under Section 27(1)e(iii) and (iv) of the Forest Act simultaneously as they represent two independent offences. For the purpose of conviction under Section 27(1)e(iv), it must be proved by the prosecution that the trespass was made for the purpose mentioned under that Section. Even for the purpose of committing the offence under Section 27(1)e(iii), the accused has to trespass into the Reserve Forest. So, under the circumstances, the accused cannot be convicted and sentenced for both the offences simultaneously unless ingredients of each independent offences were established by the prosecution. So, under the circumstances, the conviction and sentence entered by the court below against the revision petitioners for the offence under Section 27(1)e(iv) of the Kerala Forest Act is unsustainable in law in view of the dictum laid down in the decision reported in **Kareem's case** (cited supra) and the same is liable to be set aside and they are entitled to get acquittal of that charge giving them the benefit of that

decision.

15. As regards the sentence imposed for the offence under Section 27(1)e(iii) of the Act is concerned, only minimum punishment has been provided which cannot be said to be excessive considering the nature of offence committed which does not require any interference at the hands of this court.

16. In view of the discussions made above, the revision is allowed in part. The order of conviction and sentence passed by the court below against the revision petitioners for the offence under Section 27(1)e(iv) of the Kerala Forest Act are set aside and they are acquitted of that charge giving them the benefit of the dictum in **Kareem's case** (supra). But, the order of conviction and sentence passed by the court below and confirmed by the appellate court against the revision petitioners under Section 27(1)e(iii) of the Kerala Forest Act is hereby confirmed.

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

Sd/-
K.Ramakrishnan, Judge.

Bb

[True copy]

P.A to Judge