

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

Crl.Rev.Pet.No. 478 of 2005 ()

AGAINST THE JUDGMENT IN CRA 170/2000 of ADDL.SESIONS COURT
(ADHOC)-II, PATHANAMTHITTA DATED 26-11-2004

AGAINST THE JUDGMENT IN CC 409/1997 of J.M.F.C.-
II, PATHANAMTHITTA DATED 30-08-2000

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

1. RAJAN, S/O. KARUNAKARAN,
KALAYIL HOUSE, THALAMANAM, THANNITHODU VILLAGE,
KOZHENCHERRY TALUK.

2. BALAN @ THAMPI, S/O.KITTAN
PARAYIRIKKUNNATHIL VEEDU, THALAMANAM
THANNITHODU VILLAGE, KOZHENCHERRY TALUK.

BY ADVS.SRI.JOHN BRITTO
SRI.C.A.RAJEEV

RESPONDENT(S)/COMPLAINANT::

STATE OF KERALA
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM
REP. BY THE DEPUTY RANGER,
FOREST STATION, KOKKATHODU.

BY M.P. MADHAVANKUTTY, SPL. PUBLIC PROSECUTOR(FOREST)

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 11-0-9-2015, THE COURT ON 19-10-2015 PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Crl.R.P. No. 478 of 2005
.....

Dated this the 19th day of October, 2015

ORDER

The revision petitioners are the accused in C.C. No. 409 of 1997 on the files of the Court of the Judicial Magistrate of First Class-II, Pathanamthitta.

2. The trial Court convicted the revision petitioners under Section 27(1)(e) (iii)(iv) of the Kerala Forest Act, 1961 (for short "the Act") and sentenced them thereunder to rigorous imprisonment for one month each and a fine of Rs. 1000/- each with a default clause for simple imprisonment for three months each. The appeal filed against the said conviction and sentence was dismissed by the Addl. Sessions Court (Adhoc) Fast Track No. II, Pathanamthitta as per judgment in Crl.A.170 of 2000. Aggrieved by the said conviction and sentence, this Revision Petition has been filed.

3. Heard the learned counsel for the petitioners and the learned Special Public Prosecutor.

4. The prosecution allegation is that on 28-10-1996, while PW1 to PW3 were on beat duty in the reserved forest, they found the accused persons coming with one timber each on their head. When intercepted and questioned, it was revealed that the said timber pieces were cut and removed from a teak tree at a distance of 100 mtrs. away from the place at which the accused persons were intercepted. Due to the act of the accused persons, Government sustained a loss to the tune of Rs. 2100/-.

5. Before the trial court, PW1 to PW4 were examined and Exts. P1 to P3 were marked for the prosecution. No evidence was adduced on the side of the defence.

6. PW1 to PW3 were the forest officials who detected the offence. PW1 stated about the incident in tune with the prosecution case. PW2 and PW3 also accompanied PW1 for the beat duty. They corroborated the evidence of PW1 in all material aspects.

7. The learned counsel for the revision petitioners has argued that the prosecution has failed to establish that the offence alleged was committed in a reserved forest as alleged by the prosecution and in the said circumstances, the conviction and sentence passed by the trial court are not sustainable. It is clear from Sec. 27 of the Act that before a person can be held guilty and under Sec. 27 of the Act, the prosecution has to establish that the act complained of was done in a reserved forest. This is a very essential ingredient of the offence under Sec. 27 of the Act. This

Court relied on the decision of the Division Bench of this Court in Chacko Pyli and Others v. State of Kerala [1966 KLT 102] and observed in Jose Uthuppan and Another v. Forest Range Officer [2015 (4) KHC 761] thus:

“It is implicit from the provisions of Section 19 of the Act that the Government has to not only issue notification but the Government has also to publish the same in the Gazette. Therefore, it is duty of the prosecution not only to establish that the notification was issued, but the prosecution has also to establish that the said notification was published in the Gazette. That can be done either by producing the Gazette containing the notification or by producing the certified copy of the notification and adduce evidence of its publication in the Gazette. In view of the above reason, in order to establish that the act complained of was committed in a forest constituted as a reserved forest, the prosecution must either produce the Gazette containing the notification or a certified copy of the notification and adduce evidence of its publication in the Gazette”.

8. In this case, it appears that Ext. P3 is not the certified copy of the notification. Ext. P3 is also not the true copy of the page of the Gazette. Therefore, Ext. P3 is not admissible in

evidence. There is no other material to prove that the logs found with the revision petitioners were the logs cut and removed from the teak tree in the reserved forest. Since there is no material before the Court to establish that the scene of occurrence in this case was part of a reserved forest as notified under the Kerala Forest Act or under any other statute, it has to be held that the prosecution failed to establish that the revision petitioners committed the offence within the reserved forest notified under the Kerala Forest Act or under any other Statute and consequently, the conviction and sentence passed by the courts below cannot be sustained.

In the result, this Revision Petition stands allowed setting aside the conviction and sentence passed by the courts below under Section 27(1)(e) (iii)(iv) of the Kerala Forest Act, 1961, and the revision petitioners are acquitted for the said offence. The bail bonds of the revision petitioners stand cancelled and they are set at liberty.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. To Judge