

IN THE HIGH COURT OF KERALA AT ERNAKULAM

[C.R.]

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

Crl.Rev.Pet.No. 1632 of 2006 ()

REVISION PETITIONER(S):

KUNHAMMED
S/O.MOOSA, VADAKKEKARA HOUSE, PALERI P.O.,
KOYILANDI.

BY ADVS.SRI. L.RAM MOHAN
SRI. K.J.MANU RAJ

RESPONDENT(S):

FOREST RANGE OFFICER,
KUTTIYADY REPRESENTED BY PROSECUTION OF THE STATE.

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

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
10-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

:2:

Crl.Rev.Pet.No. 1632 of 2006

APPENDIX

PETITIONER'S EXHIBITS :

ANNEXURE-A1 : JUDGMENT DATED 12.01.2006 IN CRL.APPEAL NO.5/2004 ON THE FILE OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FAST TRACK (ADHOC-II) KOZHIKODE.

ANNEXURE-A2 : JUDGMENT DATED 10.12.2003 OF THE JUDICIAL IST CLASS MAGISTRATE, NADAPURAM IN C.C.596/2001.

RESPONDENT'S EXHIBITS : NIL

//True Copy//

P.A. to Judge

SS

K. RAMAKRISHNAN, J.

[C.R.]

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Crl. R.P. No.1632 of 2006

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Dated this the 10th day of March, 2015

ORDER

First accused in C.C.596/2001 on the file of the Judicial First Class Magistrate Court, Nadapuram, is the revision petitioner herein. The case was taken on file on the basis of Form-II report, filed by the Forest Range Officer, Kuttiyadi Range, against the revision petitioner and another under Section 4 read with Section 9 of the Kerala Preservation of Trees Act, 1986 (hereinafter called 'the Act').

2. The case of the prosecution in nut shell was that, 9 irul trees stood in the property in Survey No.37/1C (New R.S.No.424/3N) in Maruthonkara Village, having an extent of 1.65 acres owned by the revision petitioner were cut and removed with the help of 2nd accused, in violation of the Provisions of the Kerala Preservation of Trees Act,

without sanction of the authorities and thereby they have committed the above said offence. On the basis of Form-II report, the case was taken on file as C.C.596/2001 on the file of the Judicial First Class Magistrate Court, Nadapuram. When the accused appeared, the particulars of offence were read over and explained to them and they pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 4 were examined and Exts. P1 to P5 and C1 were marked on their side. After closure of the prosecution evidence, 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 are innocent of the same. No defence evidence was adduced on their side. After considering the evidence on record, the trial court found the second accused not guilty for the offence alleged and he was acquitted of the charge leveled against him, but the present petitioner was found guilty under Section 4 read

with Section 9 of the Kerala Preservation of Trees Act and he was convicted thereunder and sentenced to undergo simple imprisonment for six months and also to pay a fine of ₹500/-, in default to undergo, simple imprisonment for one month. Though he filed Crl. Appeal 5/2004 before the Sessions Court, Kozhikode, which was made over to Additional Sessions Court, (Adhoc-II), Kozhikode, for disposal and the learned Additional Sessions Judge by the impugned judgment dismissed the appeal, confirming the order of conviction and sentence passed. Aggrieved by the same, the present revision has been filed.

3. Heard the counsel for the revision petitioner, learned Public Prosecutor and Adv. Sri.Madhavankutty, Special Government Pleader for Forest cases.

4. The counsel for the revision petitioner submitted that, absolutely there is no evidence to show that, it is the property belonging to or in the possession of the revision petitioner, so as to convict him for the commission of the offence. Further the property is only having an

extent less than one hector and the provision of Section 4(1) to (3) of the Act will not be applicable in respect of that area and it was admitted by PW2 that there is a residential building. Further there is contradictory evidence regarding the place from where the articles were seized and the property has not been properly identified as well. Further he had also argued that, no report under Section 13(2) has been sent and the complaint was not filed by an authorized officer.

5. On the other hand, Sri. Madhavankutty, Special Government Pleader for Forest cases argued that, there is no evidence to show that it is a residential property, so as to get the exemption under Section 4(6) of the Act. Further the evidence of the contemporary documents prepared and produced will go to show that, the property from where the trees cut is from the property of the revision petitioner and in the absence of any defence evidence adduced on the side of the revision petitioner to rebut that presumption, that can be relied by the courts to convict the

revision petitioner. So the courts below were perfectly justified in convicting the revision petitioner for the offence alleged.

6. The case of the prosecution as emerged from the prosecution witness was that, on 21.02.2001, PW1 got information that trees were unauthorizedly cut from the private property and accordingly they went to the place and saw some trees were cut and stored in the property on the side of the road and among the trees, there were nine Irul trees and on examination of the property, it was revealed that these trees were cut from that property. On enquiry it was revealed that, it belongs to the first accused and it was cut and stored by the second accused as sold by the first accused to him and they seized the same as per Ext.P1 mahazar. Thereafter a report has been sent, on the basis of which Ext.P2 form-I report was filed before the court. The investigation was conducted by PW4. He obtained Ext.P3 sanction and recorded Ext.C1 confession statement of the second accused and then submitted Form-II report, on the

basis of which the case was taken on file.

7. The first contention taken by the counsel for the revision petitioner is that, the Act does not say, who has to take permission and as such the owner of the property cannot be proceeded with. Section 4 says that “no person shall without the previous sanction in writing of the authorized officer, cut, uproot and burn or caused to be cut or uprooted or burn any tree”. That makes a total prohibition of any person, which includes the owner of the property as well. Merely because the second accused was acquitted is not a ground to come to the conclusion that, the revision petitioner has not committed any offence and if the prosecution was able to prove that, he was the owner of the property and it is his connivance that the trees were cut, he can be convicted for the offence alleged.

8. Further sub Section 5 of Section 4 says that, 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 a residential building. Further

sub Section 6 of section 4 says that, that will apply only in respect of area which is less than one hector and even it is more than one hector, the exemption will apply only if the trees cut fall in within one hector surrounding the residential building and not to the area beyond that extent. However in this case, the property is having only 1.65 acres, which is less than one hector.

9. Then the next question is whether it is a residential compound, so as to apply the exemption. It is true that, in the seizure mahazar, it was mentioned that, there was no residential building, but in the evidence of PW2, it was mentioned that, there is a building in which none were residing at that time. So there is contradiction in the oral evidence and documentary evidence produced regarding the existence of the building or not in the property. If there is omission in the document regarding the existence of the building, then the oral evidence will have to be taken into account regarding the property from where the alleged seizure was affected. The prosecution

had no case that, the building is not fit for residence, what is stated is that none was seen residing in the building at that time. He had not given any evidence regarding the condition of the building as well. If that be the case, sub Section 5 of Section 4 will apply in such cases. If there is a residential building, though it was not occupied at the time when the seizure was effected, will not take away the character of the property as a residential property, unless it is proved by the prosecution that, the building found in the property is not fit for occupation and it is in a dilapidated condition as well. Such an evidence is lacking in this case. Further the evidence of PWs1 to 3 will go to show that, they have not seen any document to prove that the revision petitioner was either the owner of the property or in legal possession of the property as defined under Section 2(c) of the Act, which says, owner in relation to any land includes the mortgagee, lessee or other person having right to possession and endowment of the land.

10. It is true that, Ext.P4 ownership certificate

prepared by the Village Officer was proved and marked through PW4, but PW4 had no idea about the property and he had not seen any document by which the revision petitioner had come into possession of the property or nature of possession of the property which he was said to be held as well. The Village Officer, who issued Ext.P4 was not examined. Even in Ext.P4, what is mentioned is only that, on the basis of the enquiry conducted by him, he was satisfied that, it was in the possession of the revision petitioner. The nature of enquiry conducted by him and the documents verified by him were not mentioned in the certificate as well. The courts below have relied on Ext.P4 to come to the conclusion that, unless the contrary is proved by the revision petitioner, there is a presumption under Section 114(e) of the Evidence Act and the official things are done in the proper manner. It is true that, such a presumption will be available provided all the necessary enquiries as contemplated were conducted and the nature of enquiry conducted and nature of documents verified before coming

to such conclusion are mentioned in the document so as to satisfy that the enquiry was properly conducted, but such details are lacking in Ext.P4 ownership certificate said to have been given by the Village Officer. Similarly, Ext.P5 sketch plan is also not helpful to prove the ownership or possession of the property. At the most, it may be helpful to locate the property and nothing more. So the courts below were not justified in relying on Ext.P4 without examine the Village Officer who issued the same to come to the conclusion that the prosecution has proved that the petitioner is the owner of the property from where the trees were said to have been cut and removed.

11. So under the circumstances, there is some force in the submission made by the counsel for the revision petitioner that, unless the prosecution is able to establish that, he is the person in possession of the property, either as an owner or as the person defined under Section 2(c) of the Act, it cannot be said that prosecution has proved beyond reasonable doubt that he had committed the offence

as mentioned as observed by the court below and in the absence of such evidence, the courts below were not justified in convicting the revision petitioner for the offence under this Act and he is entitled to get acquittal of the charge leveled against him giving him the benefit of doubt. So the courts below were erred in coming to the conclusion that the prosecution has proved beyond reasonable doubt that the revision petitioner is the owner in possession of the property from where the trees were cut and removed and consequently conviction and sentence entered against the revision petitioner for the offence under Section 4 read with Section 9 of the Act are unsustainable in law and the same is liable to be set aside and the revision petitioner is entitled to get acquittal of the charge levelled against him, giving him the benefit of doubt and I do so.

So the revision is allowed and the order of conviction and sentence passed by the Judicial First Class Magistrate Court, Nadapuram, in C.C.596/2001 and confirmed in Crl.Appeal 5/2004 of Additional Sessions

Court, (Fast Track-II), Kozhikode, against the revision petitioner under Section 4 read with Section 9 of the Act are set aside and he is acquitted of the charge leveled against him, giving him the benefit of doubt. He is set at liberty. The bail bond executed by him will stand cancelled. The fine amount if any remitted by him is directed to be returned to him.

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

Sd/-

K. Ramakrishnan, Judge

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P.A. to Judge