

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

Crl.MC.No. 6764 of 2015

**C.C.NO.23/2010 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II
(FOREST OFFENCES), PUNALUR**

PETITIONER(S)ACCUSED :

1. ANTONY M.P,
S/O.PAILY, MANIYACHERRY HOUSE, KOOVAPPADY,
VALLOM, PERUMBAVOOR.
2. BENNY JOSEPH,
S/O.JOSEPH, VAZHAKALY HOUSE, ERUMELI KARA,
KUMARAPURAM P.O, PALLIKKARA.
3. JAICE JACOB,
S/O.CHACKO, VADAKKEL MAZHUVANCHERRY HOUSE,
THAMARACHAL, KIZHAKKAMBALAM.
4. GEORGE JACOB,
S/O.CHACKO, VADAKKEL MAZHUVANCHERRY HOUSE,
THAMARACHAL, KIZHAKKAMBALAM.
5. ELSY CHACKO,
W/O.CHACKO, VADAKKEL MAZHUVANCHERRY HOUSE,
THAMARACHAL, KIZHAKKAMBALAM

**BY SRI.S.SREEKUMAR (SENIOR ADVOCATE)
ADVS.SRI.G.G.MANOJ
SRI.P.M.BENZIR**

RESPONDENT(S)/COMPLAINANT & STATE :

1. THE ASSISTANT WILD LIFE WARDEN,
SHENDURENY WILF LIFE SANCTUARY, THENMALA DAM, THENMALA,
PUNALUR- 691 305.
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM- 682 031.

BY SPL.PUBLIC PROSECUTOR SRI.MADHAVANKUTTY (FOREST)

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 04-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE A1:** A CERTIFIED COPY OF THE JUDGMENT OF
THE HONOURABLE FOREST TRIBUNAL, KOLLAM IN
O.A.NO.3/2008.
- ANNEXURE A2:** A TRUE COPY OF THE SKETCH OF THE PROPERTY.
- ANNEXURE A3:** CERTIFIED COPY OF THE SCENE MAHAZAR
DATED 12.07.2008.
- ANNEXURE A4:** CERTIFIED COPY OF THE CHARGE SHEET SUBMITTED BY
THE RESPONDENT NO.1 BEFORE THE HONOURABLE
JUDICIAL FIRST CLASS MAGISTRATE COURT II
(FOREST OFFENCE) PUNALUR.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

B.KEMAL PASHA, J.

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Crl.M.C. No. 6764 of 2015

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Dated this the 4th day of November, 2015

ORDER

The petitioners are the accused in C.C.No.23 of 2010 of the Judicial First Class Magistrate's Court-II (Forest Offences), Punalur.

2. The allegation against the petitioners is that they have maintained a road and carried out repairs to the road by using a JCB, through ecologically fragile land, thereby violating the provisions contained in Section 27, 27(1)(e) etc. of the Kerala Forest (Amendment) Act, 1961 and Section 5 of the Kerala Forest (Vesting and Management of Economically Fragile Lands) Act, 2003 etc. According to the petitioners, no offences can be made out as alleged because of the fact that the portions of the said road on which repairs and maintenance were carried out, are passing through the plantation owned by the petitioners.

3. Heard the learned Senior Counsel Sri.Sreekumar and learned Special Public Prosecutor for Forests Sri.M.P.Madhavankutty.

4. The learned Senior Counsel has pointed out that as per Annexure-A1 order dated 15.11.2010 passed by the Forest (EFL) Tribunal, Kollam in O.A.No.3 of 2008, Bits No.1 and 2 contained therein are declared as private property which does not come within the purview of any forest land or ecologically fragile land. The learned Senior Counsel has pointed out that Annexure-A3 mahazar prepared in the case clearly reveals that, that portions of the road on which repairs and maintenance were carried out are passing through Bit Nos.1 and 2 as the sides of the said roads were seen cultivated with tea plants and oil palm.

5. On going through Annexure-A3 mahazar, it is not discernible as to whether the said road is passing through the ecologically fragile land as declared by the Tribunal in Annexure-A1 or through Bit Nos.1 and 2 as declared by the Tribunal as

private property, which is not a forest or ecologically fragile land. It seems that in Annexure-A3 mahazar, it is noted that some tea plants were seen uprooted on account of the maintenance carried out onto the road by making use of a JCB. In such case, it can give an indication that those portions wherein tea plants were seen uprooted are portions coming under Bit Nos.1 and 2 as contained in Annexure-A1 order. At the same time, it is not discernible as to whether all the portions of the said road on which maintenance and repairs are seen carried out are passing through Bit Nos.1 and 2 alone. In such case, if the prosecution is not able to prove that the portions of the said road on which the repairs and maintenance are carried out, are passing through ecologically fragile land, there cannot be a successful prosecution. Therefore, at the most, the present argument put forwarded by the learned Senior Counsel can be considered as an argument favouring benefit of doubt in the prosecution. Matters being so, it is a matter entirely depends on evidence

forthcoming in the case. The present stage is too premature to consider the merit or otherwise of the allegations levelled against the petitioners. In such case, the proceedings in C.C.No.23 of 2010 of the court below cannot be quashed at present.

In the result, this Crl.M.C. is dismissed.

Sd/-

**B.KEMAL PASHA
JUDGE**

DSV/6/11/15

// True Copy //

P.A. To Judge