

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

Cr1.Rev.Pet.No. 1753 of 2009 ()

JUDGMENT IN CRA 395/2004 OF THE ADDITIONAL DISTRICT AND SESSIONS
COURT, NORTH PARAVUR DATED 29.10.2008
JUDGMENT IN C.C.658/1999 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT, PERUMBAVOOR

PETITIONERS/APPELLANTS/ACCUSED 1 & 2:

1. BENNY, AGED 37,
S/O.SEBASTIAN, KOLLAMAVADIYIL HOUSE, KANJIKUZHI VILLAGE
THODUPUZHA TALUK, IDUKKI DISTRICT.
2. GOPALAN, AGED 53,
S/O.NARAYANAN, MANNAMPARAMBIL HOUSE
KANJIKUZHI VILLAGE, THODUPUZHA TALUK, IDUKKI DISTRICT.

BY ADV. SRI.T.P.SANTHOSH KUMAR

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R, BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 07-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.1753 of 2009

Dated this the 7th day of October, 2015.

ORDER

The revision petitioners are the accused in C.C.No.658 of 2009 on the files of the Court of the Judicial Magistrate of First Class, Perumbavoor.

2. The revision petitioners were convicted by the trial court under Section 27 (1) (e), III and IV of the Kerala Forest Act and sentenced to rigorous imprisonment for one year and a fine of ₹2,000/- each with a default clause for simple imprisonment for three months. The appeal filed against the said conviction and sentence was dismissed. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard both sides.

4. The prosecution case is that on 22.11.1996, the revision petitioners criminally trespassed into the Reserved Forest within Malayattoor Division and cut a teak tree from

there, causing a loss to the tune of ₹1,500/- to the Government.

5. Before the court below, PW1 and PW2 were examined and Exts.P1 to P3 were marked for the prosecution. No evidence was adduced on the side of the revision petitioners.

6. PW1 was the forest guard, who detected the offence. According to PW1, while PW1 and other forest guards were patrolling the forest area, they heard a sound of cutting of trees. When they approached the place, they found two people cutting a tree by using a sword and two other persons assisting them. PW1 immediately approached the revision petitioners and arrested one of them. PW2 was the Forest Range Officer in charge of Kodanad during the relevant time, who verified the records and filed the charge before the court.

7. It is essential that the prosecution must first prove that the place of occurrence was within a reserved forest to attract the offence under Sections 27 (1) (e), III and IV of the Kerala Forest Act. This Court in **Jose Uthuppan and another**

v. Forest Range Officer, Pathanamthitta and another (2015 (4) KHC 761) held that it is the 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 Gazettee. This Court further held in **Chacko Pyli and others v. State of Kerala (1966 KHC 21)** that it 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 this case, Ext.P3 is only a copy of the notification which is not even signed by any person. Therefore, Ext.P2 is not admissible in evidence. Since there is no material before the court below to establish that the scene of offence in this case was a part of the Reserved Forest as notified in the Kerala Forest Act or 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 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 and IV of the Kerala Forest Act and the revision petitioners are acquitted of the said offence. The bail bonds of the revision petitioners stand cancelled and they are set at liberty.

Sd/-
B. SUDHEENDRA KUMAR
JUDGE

Scl.

True Copy

PA to Judge