

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

CRP.No. 154 of 2013 ()

AGAINST THE ORDER/JUDGMENT IN CMA 37/2010 of DISTRICT COURT,
THODUPUZHA DATED 31.10.2011

REVISION PETITIONER(S)/APPELLANT:

MATHAI MICHAEL
PUTHUPARAMBIL HOUSE, CHETTUKUZHI, KOCHARA P.O.
UDUMBANCHOLA TALUK, IDUKKI DISTRICT.

BY ADVS.SRI.S.MANU
SRI.K.SURESH

RESPONDENT(S)/RESPONDENTS :

1. STATE OF KERALA
REPRESENTED BY DISTRICT COLLECTOR, IDUKKI
COLLECTORATE, PYNABU P.O., IDUKKI.
2. THE DIVISIONAL FOREST OFFICER
DIVISIONAL FOREST OFFICE
KOTHAMANGALAM FOREST DIVISION,
KOTHAMANGALAM P.O.

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

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 22-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

CRP 154/13

APPENDIX

PETITIONER'S EXHIBITS

ANNEXURE I : COPY OF ORDER DATED 13.02.2006 IN
CRL.M.C.NO.288/2006 OF THIS HONOURABLE COURT.

ANNEXURE II : COPY OF ORDER DATED 25.08.2009 ISSUED BY R2.

ANNEXURE III : COPY OF JUDGMENT DATED 23.08.2012 IN
C.C.NO.661/2007 OF THE JUDICIAL FIRST CLASS MAGISTRATE'S
COURT-I, THODUPUZHA.

//TRUE COPY//

PA TO JUDGE.

jg-4/11

THOTTATHIL B.RADHAKRISHNAN, J.

CRP No.154 of 2013

Dated this the 22nd day of September, 2015

O R D E R

- 1.This revision under Section 115 of the Code of Civil Procedure is filed challenging a decision rendered in an appeal under Section 61D of the Kerala Forest Act, 1961, 'the Act', for short, confirming a confiscation proceedings of a vehicle which was allegedly utilised to commit forest offence in relation to illegal removal of rosewood logs.
- 2.Heard the learned counsel for the revision petitioner and the learned Special Government Pleader for the Department of Forest.
- 3.During patrol duty in the night, Kanjar Police intercepted two jeeps, one bearing registration No.KL-6C-2273 and the other KRT 1694. This revision is by the owner of the vehicle bearing registration No.KL-6C-2273. The petitioner's son was the

driver of the vehicle at the relevant point of time. On interception, the vehicle bearing registration No.KRT 1694 was found to be loaded with timber. The materials emanating from the files, including the statements of the persons who were apprehended by the Police, go to show that the persons who were driving both the vehicles were familiar to each other and were closely related. The driver of the vehicle KL-6C-2273, which is the petitioner's vehicle, as already noted, was his son. He stated that the logs which he was carrying were abandoned in Koovappilli. He led the Police to that area and those logs were also seized therefrom. The material particulars regarding identity of the land and other factors are well established by the records.

4. A piece of land, which is patta land in the name of a person, had rosewood trees which are reserved to the Government. While the learned counsel for the petitioner points out that the Tahsildar's report shows that two trees are still standing in the land, the said report mentions about felling of one tree and availability of the stump of that tree. Though reference is

made to the provisions of the Kerala Forest (Prohibition of Felling of Trees Standing on Land Temporarily or Permanently Assigned) Rules, 1995 to point out that only trees which are reserved by the terms of the grant would be covered by such reservation, it is clear that such trees as were standing at the time of the grant and also which may grow thereon with passage of time will also stand reserved. However, any tree which is planted and brought up may escape the restriction of such reservation, though with passage of time different rules have come to govern even such trees.

5. The impugned confiscation proceedings have been concluded by the appropriate authority under the Act after adverting to and considering all relevant facts and factors. The appellate authority, the District Judge, in considering the appeal under Section 61D of the Act, has appreciated the materials and has overruled the contentions of the petitioner.

6. One turn of event which has happened with passage of time is that the crime case charged by the Police, ultimately, ended in

acquittal. It is said that the so-called confession statement of the son of the petitioner was not relied on by the learned Magistrate. I have gone through the order of acquittal. With the quality of investigation and prosecution, which led to that criminal case, I am sure that the learned Magistrate could not have done anything better. But what really disturbs the conscience of this Court in relation to those proceedings is the fact that in spite of materials like rosewood being involved in the offence, no occurrence was registered to prosecute the wrong doers under the provisions of the Act. Such exercise has to be carried out only through a complaint by the competent authority in the Forest Department. Technically, it could be argued that registration of a forest occurrence as a criminal case is not necessary for the purpose of sustaining confiscation proceedings, but what looms large is the fact that the forest officials did not do what ought to have been done, in accordance with law, to bring the offenders to book, but had left it to the Police to register a case of theft which, ultimately, fell like a castle of cards since that was attempted to be sustained on the basis of the so-called confession and

statements of Police in connection with recovery. The Directive Principles of State Policy and the other elements of the Constitution of India should be elementary lessons that should be inculcated by those dealing with forest wealth. The primordial constitutional values prick the conscience of this Court to say that all was not well, but managed by the entities concerned; even stage managed! 'Rascal' in English language is indicative of a knave, a wretched one; and, such conduct of a person is to be termed 'rascalism'. It includes calculated or conscious demeaning in performance of due duties, resulting in explicit undue gain to the lawfully undeserving. The situation here is not much different.

7. Be that as it may, acquittal from a criminal case is of no consequence to the matter in issue. This is so, firstly, because registration of a crime or its cognizance is unnecessary to sustain confiscation. Secondly, and more importantly, a judgment of a criminal court has no evidentiary value beyond the fact that it evidences only the fact that there was such a case. The findings therein cannot be utilised, with any

evidentiary value, or, in the realm of superlative application. Thirdly, in the case in hand, the materials which were available with the Police were considered and assimilated by the authority which passed the confiscation order. There was independent consideration of all the relevant materials. Hence, the confiscation proceedings at the hands of the competent authority cannot be faulted on any ground. The learned District Judge was, therefore, justified in affirming the confiscation order.

8. For the aforesaid reasons, this revision fails.

In the result, this revision is dismissed.

(THOTTATHIL B. RADHAKRISHNAN, JUDGE)

jg/23/9