

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

Crl.Rev.Pet.No. 279 of 2010 ()

CRA 293/2008 of ADDL.S.C.-IV, EKM
CC 1638/2003 of JUDL. MAGISTRATE OF FIRST CLASS, KOTHAMANGALAM

REVISION PETITIONER/APPELLANT/ACCUSED:

SURENDRAN, AGED 42 YEARS
S/O.SREEDHARAN, OLLOPPILLIL HOUSE
THALAKKODE ALUMCHUVADU BHAGAM, NERIAMANGALAM
KOTHAMANGALAM.

BY ADV. DR.GEORGE ABRAHAM

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 15-10-2015, ALONG WITH CRRP. 280/2010, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. Nos.279 of 2010 and 280 of 2010

Dated this the 15th day of October 2015

O R D E R

The revision petitioner in Cr.R.P. No.279 of 2010 is the first accused and the revision petitioner in Crl.R.P. No.280 of 2010 is the second accused in C.C.No.1638 of 2003 on the files of the court of the Judicial Magistrate of First Class, Kothamangalam.

2. The trial court convicted the revision petitioners under Section 27(1)(e)(iii) of Kerala Forest Act and sentenced them thereunder to rigorous imprisonment for one year each and to pay a fine of Rs.1,000/- each with a default clause for simple imprisonment for one month

each. The appeal filed against the said conviction and sentence was dismissed by the appellate court. Aggrieved by the said conviction and sentence, this Revision Petition has been filed.

3. Heard.

4. The prosecution allegation is that on 18.12.1997, the members of Kothamangalam Flying Squad conducted an inspection in Kollamvettiypadavu part of reserved forest and detected 3 teak stumps, from which some part of timber had been removed. The mahazar was prepared. The loss was assessed at Rs.1,25,000/-. While so, the revision petitioners were found carrying timber on their head. It is alleged that the said timber belonged to the stumps, which were detected by the Forest Officers.

5. Before the trial court, PW1 to PW8 were examined and Exts.P1 to P7 were marked for the prospection. DW1 was examined for the revision petitioners.

6. PW1, PW2, PW4 and PW5 were the members of the Flying Squad who on 8.12.2009 detected three teak stumps, from which some part of the timber had been removed. Ext.P1 mahazar was prepared in connection with the same. Thereafter, on 2.1.1998, the revision petitioners were found carrying timber. When arrested and questioned, the involvement of the revision petitioners in the commission of the offence was revealed. PW2, PW6 and PW8 were the Forest Officers, who were on beat duty on 2.1.1998. They found accused Nos.1 and 2 carrying timber on their head on that day. When questioned, they

led the witnesses to the stumps referred to in Ext.P1.

7. The learned counsel for the revision petitioners, relying on the decision of this Court in **Jose Uthuppan v. Forest Range Officer, Pathanamthitta** [2015(4) KLT 761], 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 courts below cannot be sustained.

8. It is clear from 27 of the Forest Act that before a person to be held guilty under Section 27 of the said Act, the prosecution has to establish that the act complained of had been done in a reserved forest. This is a very essential ingredient for the offence under Section 27 of the Act. This

court relied on the decision of the Division Bench in **Chacko Pyli v. State of Kerala** (1966 KLT 102) and held in **Jose Uthuppan** (supra) 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 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 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.”

9. In this case, Ext.P7 is the photocopy of the notification which is not admissible in evidence. There is no other material before the court to establish that the scene of offence in this case was part of a Reserved Forest as notified under Kerala Forest Act or any other statute. Therefore, 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, these revision petitions stand allowed setting aside the conviction and sentence passed by the courts below under Section 27(1)(e)(iii) of the Kerala

CrI.R.P.279 & 280/2010

: 7 :

Forest Act 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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PA to Judge