

IN THE HIGH COURT OF KERALAAT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

CRP.No. 671 of 2015

(AGAINST THE ORDER DTD.27.10.2015 IN CMA 4/2013 of ADDL. DISTRICT JUDGE-II,
KALPETTA IN ORDER DATED 20.7.2012 IN W4-2982/2009 OF THE WILD LIFE WARDEN,
WAYANAD WILD LIFE DIVISION)

REVISION PETITIONER/APPELLANT/PLAINTIFF:

P. SELVARAJ, AGED 62 YEARS
S/O. PICHU PILLAI, 3498, SOUTH STREET
SITHALI POST, KUNNAM TALUK, PERAMBALUR
DISTRICT TAMIL NADU, PIN - 621 708.

BY ADV. SMT.CELINE JOSEPH

RESPONDENT/RESPONDENT/DEFENDANT:

STATE- WILD LIFE WARDEN, WAYANAD WILD LIFE DIVISION
SULTHANBATHERY.

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

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON
18-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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K.ABRAHAM MATHEW J.

C.R.P.No.671 of 2015

Dated this the 18th day of December, 2015

JUDGMENT

Petitioner is the owner of the vehicle bearing registration No.TN 46 E 7279. In 2008 forest officers found the vehicle transporting barks of cinnamon. The goods and the vehicle were seized and OR No.16 of 2008 of Sulthan Bathery Forest Range Office was registered. The vehicle was produced before the authorised officer, who ordered confiscation of the vehicle under Section 61A of the Kerala Forest Act. This was challenged before the District Court in CMA No.4 of 2013. By the impugned order the learned District Judge has confirmed the order of confiscation. Its legality is challenged.

2. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the Forests.

3. The district judge found that the petitioner failed to prove that he had taken precautions against the vehicle being used for illegal activities . In this court it is submitted that Section 61A of the Forest Act is not applicable to the facts of the case. The argument is that to attract Section 61A an offence should be believed to have been committed in respect of timber, charcoal, fire wood or ivory belonging to the government.

Section 61A is extracted below:

61A. Confiscation by Forest Officers in certain cases- Notwithstanding anything contained in the foregoing provisions of this chapter, where a forest offence is believed to have been committed in respect of timber, charcoal, firewood or ivory which is the property of the Government, the officer seizing the property under sub-section (1) of Section 52 shall, without any unreasonable delay, produce it, together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence, before an officer authorised by the Government in this behalf by notification in the gazette, not being below the rank of an Assistant Conservator of Forests (hereinafter referred to as the authorised officer).

(2) omitted.

Forest produce is defined in Section 2(f)(i) as follows:

(f)forest produce includes-

(i) the following whether found in, or brought from, a forest or not, that is to say-
timber, charcoal, wood-oil, gum, resin, natural varnish, bark, lac, fibres and roots of sandalwood and rosewood: and

(ii) (a) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees;

(The irrelevant clauses are omitted)

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Timber is defined in Section 2(k):

“timber” includes trees when they have fallen or have been felled, and all wood, whether cut up or fashioned or hollowed out for any purpose or not, and

xxxx xxxx xxxx

Thus bark is forest produce but not timber.

4. Section 61A does not apply to all forest produce, but only to timber, charcoal and fire wood (ivory is not forest produce as held by the Supreme Court in **State of Kerala and another v. P.V.Mathew (AIR 2012 SC 1502)**). If the offence which is believed to have been committed is not in respect of timber, charcoal or firewood proceedings under Section 61A cannot be initiated. Since the article seized in this case is only bark, Section 61A cannot be invoked to confiscate the vehicle in which it was transported.

5. The authorised officer and the learned District Judge failed to notice that bark is not a forest produce mentioned in Section 61A. The order for confiscation is illegal.

In the result, this Civil Revision Petition is allowed. The impugned order and the judgment are set aside. The officer concerned is directed to release the vehicle to the petitioner and if its custody is not necessary in connection with any other case. The bank guarantee furnished by the petitioner will cease to be in force.

Sd/-
K.ABRAHAM MATHEW
JUDGE

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/True copy/

P.S.to Judge