

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

CRP.No. 428 of 2014

**AGAINST THE JUDGMENT DATED 31-10-2011 IN CMA 90/2008 OF DISTRICT COURT,
THRISSUR**

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PETITIONER(S)/RESPONDENTS:

- 1. THE DIVISIONAL FOREST OFFICER, THRISSUR.**
- 2. THE CONSERVATOR OF FORESTS,
CENTRAL CIRCLE, THRISSUR-5.**
- 3. THE RANGE FOREST OFFICER,
MACHAD.**
- 4. STATE OF KERALA,
REPRESENTED BY DISTRICT COLLECTOR, THRISSUR.**

BY SPECIAL GOVERNMENT PLEADER SRI.M.P.MADHAVANKUTTY

RESPONDENT(S)/APPELLANT:

**SMT. LATHA YOHANNAN,
KUMBALAPUZHAYIL HOUSE, KALIYA ROAD, CHELAKKARA,
PIN - 680 586, REPRESENTED BY HER POWER OF ATTORNEY HOLDER
AND HUSBAND MR.YOHANNAN.**

**BY ADVS. SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA
SRI.K.D.SREEVISAKH**

**THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON
06-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

P.BHAVADASAN, J.

C.R.P. No. 428 of 2014

Dated this the 06th day of January, 2015

ORDER

Under challenge is the order dated 31.10.2011 in C.M.A.No.90/2008 which is directed against the order No. TO-6118/04 and order No. A3-8400/04 of the Division Forest Officer, whereby the confiscation proceedings against the respondent were finalized by the authorized officer.

2. To cut the long story short, the vehicle in which the alleged forest produce said to have been transported belongs to the respondent herein. The driver of the vehicle was one Suresh.

3. The case of the forest official is that they received a petition alleging that one Reji had cut and removed a teakwood tree standing in the forest and on inspection, they were able to seize the logs. During investigation, it was revealed that the timber so collected by Reji were transported to a sawmill in the vehicle belonging to the

respondent herein which was driven by the driver Suresh from the house of Reji. The authorized officer was of the view that the driver and the owner ought to have taken sufficient precaution and ought to have known that the logs that have been transported were forest produce. The forest officer relies on the confession statement of the driver to fasten liability on the driver as well as the owner of the vehicle.

4. From the confession statement extracted in the order justifying confiscation, this Court finds no elements of any confession by the driver which would indicate that he was aware of the fact that the logs that was being transported were forest produce. However, the authorized officer on the basis of the presumptions available under Section 69 of the Forest Act, confirmed the confiscation of the vehicle.

5. The aggrieved owner of the vehicle carried the matter in C.M.A.No. 90/2008. The lower appellate court on

the basis that there was no evidence to show that the driver had the necessary *mens rea* to transport the alleged forest produce and reversed the confiscation proceedings as against the owner of the vehicle.

6. The learned Government Pleader for Forest Department very vehemently contended that the element of *mens rea* as found by the lower appellate court is totally irrelevant in a case covered by Section 52 and Section 61A of the Forest Act. For the above proposition, he relied on the decision reported in **State of Kerala v. Mathew** [1995 (2) KLT 772]. The learned Government Pleader went on to point out that once it is shown that the article is a forest produce, then the entire burden shift to the person who alleged that they had bonafide participated in the transport of materials without knowing that it was a forest produce or that they had taken sufficient precautions to show that they are not transporting forest produce.

7. True in the decision reported in **State of Kerala v. Mathew** [1995 (2) KLT 772], it was held as follows:

5. The restriction against confiscation contained in sub-section (2) can operate only on the combination of three postulates. First is that the owner or his agent was totally unaware of the illicit use. Second is that he had taken all reasonable and necessary precautions against such use. Third is, the person in charge of the vehicle had also taken reasonable and necessary precaution against such use. If the owner succeeds in satisfying only the first two postulates, he would not get the benefit of the restriction against confiscation. The third condition is as important as the other two and unless that also is established no advantage would practically enure to the owner of the, vehicle. Sub-section (2) would remain at bay if the third condition remains unsatisfied.

6. The contention that such a strict view would adversely affect an innocent vehicle owner cannot be countenanced since any narrow or liberal interpretation of confiscatory provisions in the Act can eventually lead to disastrous consequences for forest wealth which is a very endangered bounty of nature. The idea behind extension of confiscatory provisions to vehicles etc., is to convey a peremptory and explicit message to the vehicle owners not to allow their vehicles to be used for depletion of forest wealth. If any vehicle is caught in the nefarious act of carrying illicit forest produce, it is not enough that the owner establishes his innocence alone. If he wants to retrieve his vehicle he must show further that the person who was in charge of the vehicle has taken reasonable and necessary precautionary measures against such user of the vehicle. The owner cannot rest with establishing his innocence in the matter. It may be that having succeeded in showing his innocence his failure to establish the next limb might

lead to hard consequences to him. Legislature intended, by providing such stringent conditions, to prevent harder consequences for the society and for the posterity.

8. Even accepting the principle laid down in the above decision, one fails to understand how it can apply to the facts of the present case. In the case on hand, admittedly, the teakwood logs were seized 10 years after the alleged cutting from forest. That was kept in the house of one Reji. The respondent herein owned a vehicle in which it is alleged that those logs were transported to a sawmill by the driver Suresh who was under the employment of the respondent.

9. The authorized officer relies on the so called confession statement of Suresh to come to the conclusion that he as well as the owner of the vehicle were aware of the fact that the articles that was being transported was a forest produce.

10. From the portions extracted in the order of the authorized officer termed as confession statement of Suresh,

this Court is unable to find any element of confession as contemplated under law to come to the conclusion that either Suresh or the owner of the vehicle was aware of the fact that they were participating in an illegal activity. On the other hand, the statement of Suresh extracted would clearly show that he had been given specific instructions by the owner of the vehicle not to transfer any other type of wood other than jack wood tree and other indigenous trees. He would also say that he when taken to the place from where the logs had been transported, verified the logs and he was of the prima facie impression that it was not a forest produce. One ought to remember here that the trees were seized after 10 years of the alleged removal from the forest area.

11. To mulct the owner and the driver of the vehicle with knowledge that the logs that was being transported were a forest produce is far fetched. As already noticed, there is nothing in the statement of Suresh which enables

the authorized officer or the Forest Department to come to the conclusion that there was any element of knowledge as far as the driver Suresh or the respondent herein is concerned that they were indulging in any illegal activity. They had no idea or no clue that the timber that was sought to be transported by Reji to the sawmill was the tree that was removed from the forest ten years ago. Even though the learned Government Pleader may be justified in his submissions regarding the concept of *mens rea* relied on by the learned District Judge, that does not make much of a difference.

12. In fact, the materials on record would show that the owner was careful enough to caution the driver that he shall not transport any other wood other than jack wood or indigenous wood and the statement of the driver relied on by the authorized officer also show that he had verified the article and to his view, it appeared to be an indigenous thing.

13. Under the above circumstances, even though one may not be able to fully concur with the view taken by the lower appellate court, the fact remains that there is absolute want of materials to show that the driver or the respondent herein was the privy to the crime alleged to have been committed with regard to the logs which was seized by the authorized officer.

For the above reasons, this Court finds no ground to interfere with the order of the court below. This revision petition is without merits and it is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

ds

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P.A. to Judge