

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

CRP.No. 645 of 2014

AGAINST THE JUDGMENT IN CMA 37/2009 of
ADDL. DISTRICT COURT - 1, KALPETTA

PETITIONER/RESPONDENT:

THE DIVISIONAL FOREST OFFICER,
SOUTH WAYANAD DIVISION, KALPETTA.

BY SRI.M.P.MADHAVANKUTTY, SPL. GOVERNMENT PLEADER -
FORESTS)

RESPONDENT/APPELLANT:

SATHEESH KUMAR,
S/O.SEKHARAN, SANTHI NILAYAM, KOTTANADU POST
MEPPADI, WAYANAD-689615.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 15-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.BHAVADASAN, J.

Civil Revision Petition No.645 OF 2014

Dated this the 15th day of January, 2015.

O R D E R

Aggrieved by the order dated 21.06.2014 in C.M.A.No.37/2009 before the Additional District Court-I, Kalpetta, Wayanad, Divisional Forest Officer has come up before this Court in revision. By the said order, the court below set aside the confiscation proceedings as far as the vehicle of the respondent is concerned.

2. The facts absolutely necessary for the disposal of this petition are as follows:

On 29.08.2008, Forest Officials claimed to have seen five persons loading rose wood timber logs in a Mini Lorry bearing registration No.KL-12-D-2063. On seeing the Forest Officials, those five persons took to their heels. Since the vehicle has been allegedly used for illegal purpose, it was seized so also the logs found in the vehicle and a case was registered as O.R.23/2008 and the vehicle was produced before the Divisional Forest Officer,

South Wayanad. Confiscation proceedings were initiated against the vehicle and the owner of the vehicle. The owner, who is the respondent herein, entered appearance and contended that he had let the vehicle on hire on a specific agreement with the driver of the vehicle that the driver shall not use the vehicle for any illegal purpose. It is pointed out that he had taken all necessary precaution for not using the vehicle for illegal purposes and therefore his vehicle is not liable for confiscation proceedings.

3. The Divisional Forest Officer who dealt with confiscation proceedings has found that the agreement which was made mention of by the owner did not find among the records and therefore he refused to accept the plea made by the owner. Accordingly, confiscation was ordered. Aggrieved by the said order, owner of the vehicle took up the matter in appeal before the Additional District Court-I, Kalpetta.

4. The lower appellate court on two grounds allowed the appeal. One is based on interpretation of Rule 12 of Kerala Forest (Preservation, Reproduction and Disposal of Trees and Timber belonging to Government but Grown on Lands in the

Occupation of Private Persons) Rules, 1975 and the other ground was that there was sufficient materials to show that the owner had taken necessary precaution against the use of vehicle for illegal purposes. Accordingly, the order of the Divisional Forest Officer was set aside.

5. Learned Special Government Pleader appearing for the Forest Department contended that interpretation put to Rule 12 cannot stand scrutiny. It is not the Rule that is taken aid of by the Department but it is the act of using the vehicle for transport of forest produce which is contrary to law and as a result of which the vehicle is liable for confiscation.

6. Learned Special Government Pleader drew the attention of this Court to the definition of 'forest offence' as contained under Section 2(e) of the Kerala Forest Act and contended that the definition contemplates an offence punishable both under the Act and the Rules under the Act. If as per any Rules made in pursuant to the said power granted to the State Government, any offence is made out, according to the learned Government Pleader, certainly it is an offence under the Act and proceedings

can be initiated for confiscation also.

7. As regards the second ground which found favour with the lower appellate court, learned Special Government Pleader relied on the decision in **State of Kerala** vs. **Mathew** (1995 (2) KLT 772) and contended for the position that mere agreement between the owner and the driver will not be sufficient to exonerate the owner of the vehicle from liability.

8. As far as the first ground is concerned, the finding based on Rule 12 by the appellate authority cannot be sustained as it is contrary to the provisions of the Act and that has necessarily to be set aside. However, the situation is different as far as the second ground on which reliance is placed by the lower appellate court to set aside the order of confiscation.

9. It is seen from the order of the court below that in fact there was an agreement produced by the owner before the officials concerned and it was among the records. It so happened that the said document was not made available to the officer who was dealing with confiscation proceedings and that resulted in defence of the owner being overruled by the confiscating

authority. Before the lower appellate court the owner has produced a copy of the agreement and that is marked as Ext.A1. The lower appellate court has observed that on going through the records, it is seen that the agreement was available among the records and it could not be said that it is a concocted document or a cooked up document. In the decision in **State of Kerala vs. Mathew** (1995 (2) KLT 772) it was held as follows:

“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. The idea behind extension of confiscatory provisions to vehicle 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 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”.

10. It is true that in the said decision, responsibility has been cast on the drivers also to take necessary precaution to see that the vehicle is not used for illegal purposes. But that decision has to be understood in the context of the facts of that case.

11. In the case on hand, at the time of hiring of the vehicle, owner was careful enough to execute an agreement with the driver that the vehicle shall not be used for illegal purposes. One cannot expect that owner of the vehicle should accompany

the driver since it may not be possible. There is no allegation that the owner of the vehicle is a privy to the offence.

12. It was under the above circumstances that the court below was inclined to take the view that the owner had taken necessary precaution to see that his vehicle is not used for illegal purposes. In the facts and circumstances of the case, that finding seems to be justified and reasonable.

In the result, there is no merit in the petition. It is accordingly dismissed.

Sd/-

P.BHAVADASAN
JUDGE

smp

// True Copy //

P.A. to Judge.