

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

Cr1.Rev.Pet.No. 868 of 2014 ()

AGAINST THE JUDGMENT IN CC 267/2010 of J.M.F.C-I, RANNI
DATED

AGAINST THE JUDGMENT IN CRA 107/2013 of ADDL. SESSIONS
COURT - IV, PATHANAMTHITTA DATED 7-2-2014

O.R. 7/2010 OF KUCHUKOIKKAL FOREST STATION OFFICE,
PATHANAMTITTA

REVISION PETITIONER(S)/APEELANTS:

1. JOSE UTHUPPAN
AGED 55, S/O. UTHAPPAN KURUILA, KANIYEL HOUSE
GURUNATHANMANNU, CHITTAR P.O. & VILLAGE, KONNI TALUK
PATHANAMTHITTA DISTRICT.

2. P.R. RAJAN
AGED 45 YEARS, S/O. VASU, SURAJ BHAVAN
GURUNATHANMANNU, CHITTAR P.O AND VILLAGE, KONNI TALUK
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.V.SETHUNATH

RESPONDENT(S)/RESPONDENT:

1. FOREST RANGE OFFICER
GOODRICKAL FOREST RANGE
PATHANAMTHITTA DISTRICT - 689 845.

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

BY SPECIAL PUBLIC PROSECUTOR (FOREST) SRI. m.p.
MADHAVANKUTTY
BY PUBLIC PROSECUTOR SRI. V.S. SREEJUITH FOR R2

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 15-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
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.....

Dated this the 15th day of September, 2015

ORDER

The revision petitioners are the accused in C.C. No. 267 of 2010 on the files of the Court of the Judicial Magistrate of First Class, Ranni.

2. The trial court convicted the revision petitioners under Section 27 (1)(e)(v) of the Kerala Forest Act, 1961 (for short “the Act”) and sentenced them thereunder to simple imprisonment for one year each and a fine of Rs. 1000/- 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 Addl. Sessions Court, Pathanamthitta as per judgment in Crl.Appeal No. 107 of 2013. Aggrieved by the said conviction

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and sentence, this revision petition has been filed.

3. Heard the learned counsel for the petitioners and the learned Special Government Pleader.

4. The prosecution allegation is that on 17-3-2010, the revision petitioners blasted stones from the land occupied by the first revision petitioner pending dis-reservation and thereby they caused a loss to the tune of Rs. 3000/- to the State.

5. Before the trial Court, PW1 to PW5 were examined and Exts. P1 to P5 were marked.

6. The learned counsel for the revision petitioners has 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 trial Court are not sustainable. It is clear from Section 27 of the Act that before a person can be held guilty under Section 27 of the Act, the prosecution has to establish

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that the act complained of was done in a reserved forest. This is a very essential ingredient of the offence under Section 27 of the Act.

7. Now the question to be considered is as to whether the prosecution has established that the act complained of was committed in a reserved forest .

8. In order to prove that the offence was committed in a reserved forest, the prosecution produced Ext. P5 notification. Ext. P5 notification produced by the prosecution was only a copy of the certified copy.

9. Section 57 of the Evidence Act provides provisions for taking judicial notice in respect of the matters enumerated therein. A Division Bench of this Court in *Chacko Pyli and Others v. State of Kerala* (1966 KLT 102) held that a Court is not under Section 57 of the Evidence Act entitled to take judicial notice of a notification issued by the Government under Section

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19 of the Act.

10. A Full Bench of this Court in *Executive Officer v. Chalakkudy Panchayat* [1970 KLT 991 (FB)] held that the Court shall take judicial notice of a notification relating to a Statute or a rule made thereunder.

11. Now the question to be considered is as to whether the present notification, namely, Ext. P5 is legislative or executive in character. If it is found that the present notification is executive in character, there can be no doubt that the judicial notice cannot be taken in relation to the same. The Full Bench in *Executive Officer (Supra)* held in paragraph 7 thus:-

“The other decisions of this Court, namely,
Pyli v. State of Kerala 1966 KLT 102,
Chandrasekharan v. State 1966 KLT 638
and *Executive Officer v. Bharathan* (1967
KLT 161) deal with notifications of a

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different kind. The first of these deals with a notification under S. 19 of the Kerala Forests Act, 1961, declaring a particular area to be a reserved forest; the second deals with a notification fixing a maximum price under the Essential commodities Act; and the third with a notification including a trade within the schedule of dangerous traders in the Madras Village Panchayats Act. Whether notifications like these are legislative, or albeit statutory, essentially executive in character is a matter on which two views seem possible and on which we do not feel called upon to pronounce, although it would appear that

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there is much to be said for the view that
the second and third are legislative in
character”.

Their Lordships have considered three notifications in the above decision. The first notification was a notification issued under Section 19 of “the Act”, declaring a particular area to be a reserved forest. The 2nd notification was a notification fixing a maximum price under the Essential Commodities Act and the third notification was a notification including a trade within the schedule of Dangerous Trades in the Madras Village Panchayats Act. It is clear from the above passage that the notification fixing a maximum price under the Essential commodities Act and the notification under the Madras Village Panchayats Act were held to be legislative in character by the Court in *Executive Officer v. Chalakkudy Panchayath* (Supra). It is explicit from the above passage in *Executive Officer* (supra) that the notification

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issued under Section 19 of “the Act” declaring a particular area to be a reserved forest was not held to be legislative in character.

12. It is implicit that the notification under the Essential Commodities Act fixing a maximum price under the Essential Commodities Act and the notification including a trade within the schedule of Dangerous Trades in the Madras Village Panchayats Act relate to the notification regarding the laws in force in the territory of India. Therefore, the Court shall take judicial notice of the same under Section 57 of the Evidence Act. However, the notification under Section 19 of “the Act” declaring a particular area to be a reserved forest is executive in character and hence, the court is not entitled to take judicial notice of the same under Section 57 of the Evidence Act.

13. A learned Single Judge of this Court in A.M. Antony v. Forest Range Officer (1977 KLT 691) relied on the decision in Executive Officer (supra) and held that a notification of the

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nature issued under Section 19 of the Kerala Forest Act is executive in character and hence the courts cannot take judicial notice under Section 57 of the Evidence Act.

14. Now the question to be considered is as to how the prosecution has to prove the notification under Section 19 of the Act. Eventhough a court is not under Section 57 of the Evidence Act entitled to take judicial notice of a notification issued under Section 19 of the Act, such a notification is a public document within the meaning of Section 74 of the Evidence Act. Section 78 of the Evidence Act prescribes the method of proving the contents of various official documents. So far as a notification issued by a State Government is concerned, it can be proved by producing a copy certified by the Head of the Department as per Section 78 (1) of the Evidence Act. Section 63 of the Evidence Act provides the definition of secondary evidence. The contents of a public document can be proved by secondary evidence. Section

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63 (1) of the Evidence Act provides that the certified copy given under the provisions of the Evidence Act includes secondary evidence. Section 65 (e) of the Evidence Act permits secondary evidence being given if the original document is a public document within the meaning of Section 74 of the Evidence Act. Section 65 (f) allows secondary evidence when the original is a document of which a certified copy is permitted by the Evidence Act or by any other law in force in India to be given in evidence. It is clearly evident from Section 65 of the Evidence Act that only the certified copy and no other kind of secondary evidence is admissible when the original is a document referred to under Clause (e) or (f) of Section 65 of the Evidence Act mentioned above. From the above discussion, it is implicit that a notification of the kind issued under Section 19 of the Kerala Forest Act, being a public document, only the certified copy of the said document and no other kind of secondary evidence is admissible

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under Section 65 of the Evidence Act. Therefore, the photocopies of the certified copy of the notification under Section 19 of the Act is not admissible under Section 65 of the Evidence Act. In the said circumstances, it is the duty of the prosecution to produce certified copy of the notification before Court to prove the notification by secondary evidence. The mere production of the certified copy of the notification alone is not sufficient in proof of its publication in the Gazette. Section 81 of the Evidence Act provides presumption relating to Gazettes, newspapers, private Acts of Parliament and other documents. Section 81 of the Act provides that if the official Gazette containing the notification under the Act is produced before the Court, the court shall presume its genuineness.

15. In this context, it is profitable to read Section 19 of the Act, which is extracted hereunder:-

“Notification declaring forests reserved:- When the

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proceedings prescribed in the preceding sections have been taken, the Government may publish a notification in the Gazette specifying the limits of the forests which it is intended to reserve and declaring the same to be reserved from a date to be fixed by such notification.

Copies of the notification shall also be published at the headquarters of each taluk in which any portion of the land included in such notification is situate, and in every town, village and headquarters of Panchayats in the neighbourhood of such land”.

From the date so fixed, the forest shall be deemed to be a “Reserved Forest”.

16. 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.

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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. The above view is supported by the decision of a Division Bench of this Court in *Chacko Pyli and Others v. State of kerala* (1966 KLT 102) . In *Chacko Pyli*, the Court held thus:-

“In view of these provisions of the Evidence Act, it was the duty of the prosecution to have

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established one of the ingredients of the offence viz., that the act complained of was done in a Forest constituted as a Reserved Forest by the issue of a notification under S. 19 of the Act and by the publication of the same in the Gazette, either by the production of the Gazette or by a certified copy of the notification and adduce evidence of the publication of the same in the Gazette. No other evidence is admissible in the case”.

17. In this case, Ext. P5 is only a copy of a certified copy of notification and hence the same is not admissible in evidence. Since there is no 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 under any other statute, it has to be held that the prosecution failed to establish that the

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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.

18. In the result, this Revision Petition stands allowed setting aside the conviction and sentence passed by the courts below under Section 27(1)(e)(v) of the Kerala Forest Act, 1961 and the revision petitioners are acquitted of the said offence.

The bail bond of the revision petitioners stand cancelled and they are set at liberty.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. to Judge