

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

Crl.Rev.Pet.No. 946 of 2014 ()

CRA 248/2009 of I SESSIONS COURT.,KOLLAM
CC 37/2006 of J.M.F.C.-II(FOREST OFFENCES),PUNALUR

REVISION PETITIONER/1ST APPELLANT/1ST ACCUSED::

JEESAR, AGED 36 YEARS
S/O.MANOCHARAN, G.K.BHAVAN
NIRAPPIL, VILAKKUPARA PO
AYILARA, KOLLAM DISTRICT - 691 312.

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA THROUGH FOREST RANGE OFFICER
ANCHAL, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR, SHRI.P.MADHAVANKUTTY (SPL.G.P.)

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 14-09-2015, ALONG WITH CRL.R.P.2455/2013. THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P.No.946 of 2014 and
Crl.R.P.No.2455 of 2013

Dated this the 14th day of September 2015

ORDER

The revision petitioner in Crl.R.P.No. 946 of 2014 is the first accused and the revision petitioners in Crl.R.P. No.2455 of 2014 are accused Nos.2 to 4 in C.C. No.37 of 2006 on the files of the Court of the Judicial Magistrate of First Class– II, Punalur.

2. The trial court convicted the revision petitioners under Section 27(1)(e)(iv) and 27(1)(e)(v) of Kerala Forest Act (for short 'the Act')and sentenced each of them to

simple imprisonment for one year each and a fine of Rs.1,000/- each with a default clause for simple imprisonment for one month each under Section 27(1)(e) (iv) of the Act and simple imprisonment for one year each and a fine of Rs.1,000/- each with a default clause for simple imprisonment for one month each under Section 27 (1)(e)(iv) of the Act. The appeal filed against the said conviction and sentence was dismissed by the appellate court as per judgment in CrI.Appeal No.248 of 2009.

2. Heard both sides.

3. The prosecution allegation is that on 4.9.2005, the revision petitioners unlawfully trespassed into the reserve area in Oil Palm India Limited (C) Division Field No.III, collected sand from Karimpanchal thodu and attempted to

remove the sand, causing a loss of Rs.500/- to the Government.

4. Before the court below PW1 to PW4 were examined and Exts.P1 to P8 were marked for the prosecution, besides identifying MO1 series and MO2.

5. PW1 and PW3 are the witnesses for the occurrence. PW1 stated that on 4.9.2005, PW1 and party proceeded towards Karimanchal on getting information that somebody collected sand from Karimanchal thodu and attempting to remove the same in a vehicle. When they reached the place, they found the revision petitioners collecting sand and loading the same in the lorry. When PW1 and party tried to apprehend the revision petitioners, they ran away from there. PW3 also had given evidence in

support of the evidence of PW1.

6. The learned counsel for the revision petitioners has argued that even though it was stated by PW1 and PW3 that the revision petitioners were found collecting sand in the lorry, they did not state about the time at which they found the revision petitioners collecting the sand and loading the same into the lorry and in the said circumstances, the prosecution case is doubtful. In the charge, the time at which PW1 and party saw the revision petitioners loading the sand into the lorry is not mentioned. Ext.P1 mahazar is also silent about the time at which the revision petitioners were seen loading the sand in the lorry. The Apex Court in **Chittaranjan Das v. State of West Bengal** (A.I.R. 1963 S.C. 1696) held in paragraph 8

thus:-

“Where it is possible to specify precisely the necessary particulars required by Section 222(1), the prosecution ought to mention the said particulars in the charge, but where the said particulars cannot be precisely specified in the charge having regard to the nature of the information available to the prosecution, failure to mention such particulars may not invalidate the charge.”

In this case, PW1 and PW3 were examined before the court to prove the occurrence. They did not mention about the time at which they saw the revision petitioners loading the sand into the lorry. PW1 and PW3 also did not state as to whether they had seen the revision petitioners in the morning or in the evening or during the noon time. It is not discernible as to

why the prosecution could not state about the probable time at which the revision petitioners were intercepted by PW1 and party. This would probablise the contention of the revision petitioners that the revision petitioners were not present at the spot and that they were made as accused in the case on the basis of mere suspicion. Since the probable time at which the revision petitioners were intercepted by PW1 and party could not be stated or established by the prosecution, the identity of the revision petitioners made by PW1 and PW2 cannot also be accepted, particularly when PW1 stated that PW1 had seen the revision petitioners at a distance of nearly 100 mtrs from the place of occurrence. PW2 has stated that nearly more than 1000 persons are working in Oil Palm India

Limited and in the rehabilitation plantation. The offence in this case had allegedly taken place inside the area in Oil Palm India Limited (C) Division. Even then, no independent witness was cited or examined by the prosecution to prove the occurrence. The sand allegedly filled in the lorry by the revision petitioners was also not seized by PW1 and party. It is not discernible as to why the sand was not seized by PW1 and party. It is true that Ext.P4 to P6 are confession statements of A1 to A3 respectively. However, the said statements also do not disclose the time at which the offence was committed. The said statements are only replication of Ext.P1 mahazar. Normally, this court would not re-appreciate the evidence when two courts concurrently found in favour of the

prosecution. However, in this case, in view of the above said reasons, this court has been impelled to re-appreciate the evidence as the evidence appreciated by the courts below was not correct. The forest sustained a loss to the tune of Rs.500/- as per the charge. It is true that it is immaterial to consider the actual loss sustained to the forest due to the acts of the revision petitioners to convict them. The offence alleged against the revision petitioners is punishable with a minimum sentence of imprisonment for one year. Therefore, strict proof is necessary to convict the accused. In view of the above discussion, the conviction and sentence passed by the courts below against the revision petitioners are not sustainable and consequently, I set aside the same.

In the result, these revision petitions stand allowed setting aside the conviction and sentence passed by the courts below under Sections 27(1)(e)(iv) and 27(1)(e)(v) of Kerala Forest Act and the revision petitioners are acquitted for the said offences. The bail bonds of the revision petitiones stand cancelled and they are set at liberty.

Sd//

**B.SUDHEENDRA KUMAR,
JUDGE.**

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/ True copy /

PA to Judge