

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

Crl.Rev.Pet.No. 1801 of 2014 ()

CRL.A 191/2013 of ADDL. D.C. & SESSIONS COURT - IV, PATHANAMTHITTA
CC 164/2006 of J.M.F.C.-1,RANNI

REVISION PETITIONER/APPELANT/3RD ACCUSED:-

REJU JOSEPH @ REJI,
S/O.JOSEPH, ELAMTHURUTHIL HOSUE, EARATTUPETTA
MEENACHIL TALUK, KOTTAYAM DISTRICT.

BY ADV. SRI.DENIZEN KOMATH

RESPONDENT/RESPONDENT/COMPLAINANT:-

STATE OF KERALA,
REPRESENTED BY THE FOREST RANGE OFFICER
RANNI (KANAMALA FOREST STATION
OR 5/02) THROUGH PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

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

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
5-10-2015, THE COURT ON 19-10-2015 PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1801 of 2014

Dated this the 5th day of October 2015

O R D E R

The revision petitioner is the third accused in C.C. No.164 of 2006 on the files of the Court of the Judicial Magistrate of First Class-1, Ranny.

2. The trial court convicted the revision petitioner under Section 27(1)(e)(iii) of the Kerala Forest Act (in short 'the Act') and sentenced him thereunder to simple imprisonment for one year and a fine of Rs.1,000/- with a default clause for simple imprisonment for two weeks. The appeal filed against the said conviction and sentence was dismissed. Aggrieved by the said conviction and sentence,

this revision petition has been filed.

3. Heard.

4. The prosecution allegation is that on 6.8.2002 and 8.8.2002, the revision petitioner and the other accused trespassed into Mlavettupara Ottakkal Forest, which forms part of Konni reserved forest and cut and removed a dried rosewood tree from there. They also set fire the stumps of the tree. Thereafter, on 5.11.2002, they again trespassed into the forest and removed a portion of the said timber, causing a loss of Rs.2,500/- to the Government.

5. Before the trial court, PW1 to PW11 were examined and Exts.P1 to P4(a) were marked for the prosecution. No evidence was adduced from the side of the revision petitioner.

6. PW1 was the Forest Guard. He stated that on 6.8.2002, while he was on patrol duty, he saw smoke from inside the forest. He saw accused Nos.1 and 2 setting fire the stump of a tree. On seeing PW1, they escaped from the area. The fire was extinguished. The timber severed from the stump was found there. There were four pieces. He prepared Ext.P1 mahazar at the spot.

7. PW2 is another forest Guard, who also had given evidence corroborating with the evidence of PW1 in all material aspects. PW2 was the Forest Guard, who stated that on 8.8.2002, while he was engaged on beat duty, he could understand that a portion of the wood seized in the above crime was removed from the spot. He prepared Ext.P4 mahazar in connection with the same. While so, on

9.11.2002, he got information that the said timber was removed to Elite Saw Mill, Earattupetta. Then PW2 and party proceeded to the Saw Mill. The revision petitioner was there in the Saw Mill.

8. PW3, was a Forest Guard, who also supported the evidence of PW1 in all material aspects. PW4 was also a Forest Guard, who also supported the evidence of PW1 in all material aspects.

9. The learned counsel for the revision petitioner 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.

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

11. This Court relying on the decision of a Division Bench of this Court in **Chacko Pyli and others v. State of Kerala**(1966 KLT 102) held in **Jose Uthappan v. Forest Range Officer** [2015(4) KHC 761] thus:

“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. 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”

12. In this case, PW1 produced photocopy of the notification. No evidence was adduced by the prosecution to establish that Ext.P3 notification was published in the gazette. In the said circumstances, it cannot be said that the prosecution succeeded in establishing that the offence

alleged in this case was committed within a reserved forest. Since there is no other material before the court to establish that the scene of offence in this case was a part of a reserved forest as notified under Kerala Forest Act or under any other statute, it has to be held that the prosecution has failed to establish that the revision petitioner has committed the offence within the reserved forest notified under the Kerala Forest Act or any other statute and consequently, the conviction and sentence passed by the courts below cannot be sustained.

In the result, this revision petition stands allowed setting aside the conviction and sentence passed by the courts below under Section 27(1)(e)(iii) of the Kerala Forest Act and the revision petitioner is acquitted for the said

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offence. The bail bond of the revision petitioner stands cancelled and he is set at liberty.

SD/

**B.SUDHEENDRA KUMAR,
JUDGE**

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PA to Judge