

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2015

Coram

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

Criminal Revision Case No.1098 of 2010
and M.P.No. 1 of 2010

Dhakshnamoorthy

.. Petitioner/Appellant/
Accused

vs

State rep. by
The Forest Range Officer
Polur Range
(STOR No.35/1997)

.. Respondent/Respondent/
Complainant

Criminal Revision Case filed under Section 397 read with 401 (1) of Cr.P.C. against the judgment dated 13.04.2010 passed by the Principal Sessions Judge, Vellore District, in CrI.A.No.42 of 2009, confirming the conviction and modifying the sentence by judgment dated 01.06.2009 by the Special Judicial Magistrate, Thirupattur, in C.C.No.537 of 1998.

For Petitioner : Mr.M.Krishnamoorthy

For Respondent : Mr.V.Arul
Government Advocate
(Criminal Side)

ORDER

The petitioner along with two others were arrayed as accused in C.C. No. 537 of 1998 on the file of the learned Special Judicial Magistrate, Thirupattur, Vellore District. The accused were tried for the offence punishable under Section 21 (d), (e), (f) and 35 and 36 (A) r/w.(E) of Tamil Nadu Forest Act (Act V of 1982) and after trial, they were convicted for the offence punishable under Section 36 (A) r/w. (E) of the Tamil Nadu Forest Act and sentenced to undergo rigorous imprisonment for two years and also to pay a fine of Rs.7,500/- each, failing which, to undergo simple imprisonment for a period of two months. On appeal, such conviction passed against the accused was confirmed by the Appellate Court and the sentence alone is modified directing the accused to undergo rigorous imprisonment for one year and also to pay a fine of Rs.3,000/- each in default to undergo simple imprisonment for two months for the offence under Section 36(A) r/w.(E) of Tamil Nadu

Forest Act. As against the aforesaid decision of the Court below, the present Criminal Revision Case is filed by only one accused viz., Dhakshnamoorthy.

2. The case of the prosecution is that on 05.08.1997, under the leadership of P.W.1, Foresters went for a raid. When they were inspecting in Valasamalai Reserve Forest near Mullakadu, they saw the accused trespassed into the forest and damaged the forest produce viz., Sandal Wood and were in possession of 551 kgs of sandal wood and its value was estimated to be around Rs.2,47,950/-. The accused gave a voluntary confession relating to the occurrence and based on such confession, the case in S.T.O.R. No. 35 of 1997 came to be filed against three persons, including the petitioner. On the same day, the officials of the respondent have prepared Form 'H' (Ex.P.1) as well as Form '95' (Ex.P.6). Immediately after the occurrence, the sandal wood logs were produced before the Authorised Officer along with Form 'H' and Form '95' prepared by the respondent and the Authorised Officer also acknowledged it. The seized sandalwood logs were also assigned with a number for identity. Then the accused was sent to the Court and was remanded to judicial custody.

3. Assailing the judgment of the Courts below, Mr.M.Krishnamoorthy, learned counsel appearing for the petitioner would contend that the prosecution failed to prove that the occurrence took place in the reserved forest area. In other words, according to the counsel for the petitioner, the occurrence took place in an area which was not notified as a reserved forest and therefore, the respondent has no jurisdiction to either register a case or to proceed further in the case. The Courts below has failed to take note of this important aspect which led to miscarriage of justice. The learned counsel for the petitioner would further contend that the seized wooden logs, alleged to be sandalwood, have not been produced before the trial court soon after its seizure. Mere production of Form 'H' or Form '95' will not be an evidence to show that the respondent has only seized sandalwood from the possession of the petitioner. It is further contended that the driver has not been examined on the side of the prosecution and similarly, the two attesting witnesses were not examined and therefore, the non-examination of witnesses is fatal to the case projected by the prosecution. He would further add that the mere confession given to the Forest Officer is inadmissible evidence.

4. In support of his contention, the learned counsel for the petitioner relied on the decision of this Court in the case of (Seerangan vs. Forest Range Officer, Salem) 2005 Criminal Law Journal 987 and also the decision of the Honourable Supreme Court rendered in (Ashok @ Dangra Jaiswal vs. State of Madhya Pradesh) (2011) 5 Supreme Court Cases 123 to drive home the point that non-production of the seized goods before the court below is fatal to the case of the prosecution.

5. Notwithstanding the above submission, the learned counsel for the petitioner would contend that if this Honourable Court concludes that the judgment of conviction passed by the courts below need no interference, still, the petitioner can be released by extending the provisions of Probation of Offenders Act inasmuch as the petitioner's involvement in this case is the first of its kind and he is exhibiting exemplary behaviour and character all these years. Further, the petitioner is the sole bread winner in his family. The occurrence took place in the year 1997 and the criminal prosecution launched against the petitioner is yet to reach a finality, with the result, the petitioner had suffered a lot due to the pendency of the criminal proceedings against him all these years. The petitioner is also repenting for his misdeeds and therefore, the learned counsel for the petitioner prayed this Court to extend the provisions of Probation of Offenders Act to the petitioner as well. In support of his submissions, the learned counsel for the petitioner relied on the decision in (Kumar and others vs. State represented by Forest Range Officer, Vellore District) (2011) 1 MLJ (Cr1) 197 wherein this Court, in an identical circumstances, extended the provisions of Probation of Offenders Act to release the petitioners therein on good conduct.

6. Mr.V.Arul, learned Government Advocate (Criminal Side) appearing for the respondent vehemently opposed the Criminal Revision Case on the ground that the prosecution has established the offence committed by the petitioner beyond reasonable doubt. Both the Courts below have appreciated the oral and documentary evidence produced by the prosecution to hold that the guilt of the accused has been proved in a manner known to law. In fact, the Appellate Court has imposed minimum punishment on the petitioner and it needs no interference by this Court. Further, in the present case, a raid was conducted during which the petitioner was apprehended and he has also admitted in his confession as regards the possession of sandalwood. The respondent had drawn the attention of this Court to Form 'H' as well as Form '95' to show that after the registration of the First Information Report, the petitioner was produced before the Court concerned on the same day. There is no delay on the part of the respondent in either registering the case or to produce the petitioner for remand before the Special Judicial Magistrate. The prosecution also examined witnesses and also produced documentary evidence to strengthen their case. The examination of driver is not necessary, especially when voluntary confession is made by all the three accused before the Forester.

7. As regards non-production of the seized sandalwood logs is concerned, the learned Government Advocate would rely upon the decision of the Honourable Supreme Court in the case of Kashmiri Lal vs. State of Haryana reported in 2013 6 Supreme Court Cases 595. In that case before the Honourable Supreme Court arising out of a Narcotic Drugs and Psychotropic Substances Act, 1985, the prosecution failed to produce the Scooter in which the narcotic

substance was allegedly transported. The Honourable Supreme Court held that mere non-production of Scooter will not vitiate the case of the prosecution especially when it was established that the scooter belonged to the appellant/accused. Relying on this decision, the learned Government Advocate would contend that the seizure of sandalwood logs was duly recorded by preparing Form 'H' and Form '95' and it was duly attested by the official witnesses present at the time of occurrence. The petitioner also did not dispute the manner in which the Form 'H' and Form '95' were prepared. The seized sandalwood logs were produced before the Authorised Officer along with Form 'H' and Form '95' prepared by the respondent and the Authorised Officer also acknowledged it and the number was assigned. The Form 'H' was also produced before the trial Court immediately without any delay. Therefore, the learned Government Advocate would contend that the prosecution had established the seizure in a manner known to law and it will not vitiate the case of the prosecution.

8. I heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondent. I had carefully examined the argument of the counsel for both sides, the judgment of conviction passed by the Courts below and other material evidence placed on record.

9. The petitioner was arrested for having trespassed into the forest land along with two others and for possession of sandalwood weighing 551 kilograms without any authorisation or licence. The petitioner was apprehended by the officials of the Forest Department and obtained his confession. The First Information Report in this case was registered on the same day and the petitioner was also produced before the jurisdictional Magistrate for remand on the same day. Even at the time of his arrest, the sandalwood seized from the petitioner were produced before the Authorised Officer along with Form 'H' and Form '95' prepared by the respondent and the Authorised Officer also acknowledged it and assigned number.

10. As per amendments brought to Section 41 and 49 of the Tamil Nadu Forest Act, when the prohibited forest wealth has been seized, it has to be brought to the Authorised Officer immediately. This obligation has been imposed on the officials of the Forest Department to identify the seized property which would prevent the offenders from taking a different stand as regards seizure of the forest wealth. In this context, it is contended on behalf of the petitioner that the seized sandalwood were not produced before the Trial Court. According to the respondent, the seized wooden log is nothing but sandalwood and it has been identified easily by its smell when it was cut. Further, the identity of the sandalwood has been proved by preparing Form 'H' and Form '95' immediately after the occurrence and it was also produced before the Authorised Officer along with Form 'H' and Form '95' prepared by the respondent and the Authorised Officer

also acknowledged it and the respondent in turn produced it before the learned Judicial Magistrate at the time of remand of the petitioner.

11. As per the amendment brought to Section 41 of The Tamil Nadu Forest Act, sub-section (3) of Section 41 imposes an obligation on the officer of the Forest Department to place a mark, indicating over the product seized by him. In the present case, admittedly, in compliance with Section 41 (3) of the Act, a mark has been placed over the seized sandalwood logs and it was assigned with a number. Further, the respondent has produced Form 'H' as well as Form '95' to prove the nature of contraband seized viz., sandalwood. Such forms produced before the concerned Judicial Magistrate has been duly signed by the Authorised Officer. Further, the petitioner also in his confession has stated that the seized logs are that of sandalwood. The Forest Officials are trained in identifying the forest wealth especially sandalwood by cutting a piece of it. It cannot be said that the officials of the forest department lacks in such a skill. Further, the petitioner also did not produce any contra evidence to disprove that the seized contraband is not sandalwood. In this context, useful reference can be made to the decision of the Honourable Supreme Court in the case of (Assistant Collector of Central Excise, Calicut vs. V.P. Sayed Mohammed) AIR 1983 SC 168, which was also relied on by the trial Court, wherein it was held as follows:-

"In the instant case the doubt entertained by the High Court about the nature of the metallic bars cannot be considered to be a reasonable doubt. It is well known that persons who are goldsmiths by profession are able to find out whether a piece of metal is gold or not by the colour of the streak produced by rubbing it on a touch-stone used by them even though their assessment of its purity may not be exact. Further, the respondent did not dispute that gold had been recovered from his box. Reading his answer to the question put under s. 342, Cr. P.C. as a whole, it means that he knew that when his steel trunk was opened and searched there was gold in it but he had no knowledge that the packet contained gold when it was handed over to him by Mammu. The High Court erred in holding that the statement of the respondent that the gold was seized from him could not be used against him on the ground that it would result in the splitting up of the statement which was on the whole exculpatory."

12. In the decision rendered by this Court in the case of (Seerangan vs. Forest Range Officer, Salem) 2005 Criminal Law Journal 987 relied on by the learned counsel appearing for the petitioner, this Court had an occasion to consider the identical case arising out of Tamil Nadu Forest Act. In that case, this

Court, by following the decision of the Honourable Supreme Court in *Jitendera vs. State of Madhya Pradesh* (2004) 1 Madras Law Weekly (Criminal) 433 = 2003 Criminal Law Journal 4985 held that non-production of sandal wood and the ambassador Car in which it was transported is fatal to the case of the prosecution. This decision relied on by the petitioner is factually distinguishable and it will not be applicable to the facts of the present case. In that case, sandalwood was transported in an Ambassador Car and the quantum of the sandalwood log was estimated to be 196.5 kilogram. In that case, the properties seized were not produced during the course of trial. However, at the time of remand of the accused on 29.03.1992, the properties were produced. Since it was night, it was directed to be produced on some other day. Pursuant to such direction, the seized goods were produced on 02.04.1992 before the Judicial Magistrate, Omalur, which were received in Case Property No. 156 of 1996. Again the property was returned for safe custody to be kept in the Forest Range Office. The learned Judicial Magistrate, while passing a judgment of conviction held that the Forest Range Officer is empowered to confiscate the property and therefore, non-production of the properties seized is not fatal to the case of the prosecution. This Court, having regard to the above facts, held that the seized goods which were directed to be kept in safe custody ought to have been produced by the respondent at the time of trial. Therefore, this Court in the above decision held that the non-production of the seized goods is fatal to the case of the prosecution. This decision was rendered by this Court prior to the amendment of Section 49 of the Act. Whereas, in the present case on hand, the occurrence took place on 05.08.1997 at 6.30 a.m., and the seized goods were produced before the Authorised Officer as contemplated under Section 49-A of the Act. Section 49-A of the Tamil Nadu Forest Act, reads as follows:-

"(1) Notwithstanding anything contained in the foregoing provisions of this Chapter or in any other law for the time being in force, where a forest offence is believed to have been committed in respect of any scheduled timber which is the property of the Government, the officer seizing the property under sub-section (1) of Section 41 shall, without any unreasonable delay, produce it together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence, before an officer not below the rank of an Assistant Conservator of Forests authorised by the Government in this behalf by notification in the Tamil Nadu Government Gazette (hereinafter referred to as the authorised officer).

13. Thus, in the present case, in compliance with Section 49 (A) of the Tamil Nadu Forest Act, the seized goods have been produced before the authorised officer by the respondent. Further, as required under Section 41 (3) of the Act, the seized goods have been marked and numbers were assigned. The respondent also prepared Form "H" and "Form 95" and produced it before the trial court to prove the seizure of the sandal wood. Therefore, it

has to be held that the seizure of the goods and the consequential procedures followed by the respondent are proper and valid. Further, even during trial, in the cross-examination, it was not suggested on behalf of the petitioner that what was seized is not sandalwood. In such circumstances, I hold that non-production of the sandalwood by the respondent before the trial court will not vitiate the case put forward by the prosecution.

14. The Honourable Supreme Court had an occasion to consider whether non-production of a scooter involved in transporting narcotic substances will affect the case of the prosecution in the case of (Kashmiri Lal vs. State of Haryana) (2013) 6 Supreme Court Cases 595. In this case, the Honourable Supreme Court held that mere non-production of the scooter in which the contraband was transported is not fatal to the case of the prosecution especially when it was proved that the scooter belonged to the appellant. In Para Nos. 8, 15 and 16 it was held as follows:-

"8.4. The non-production of the scooter in the court cannot be a ground for setting aside the conviction since all the witnesses have specifically mentioned about the registration number of the scooter and there is no justification to discard their testimony.

15. The last contention urged relates to the non-production of the scooter in the court. The learned counsel for the appellant has harped and hammered on this submission and we must say that the vehemence of the argument reflected in this regard is much ado about nothing. All the documents pertaining to the scooter were seized and the witnesses had stated in a categorical manner about the registration number of the scooter. From the material brought on record, it is crystal clear that the scooter belonged to the appellant and the search and seizure was made in the tool box of the scooter. Under these circumstances, it can safely be concluded that the submission that the scooter was not produced in the court is entirely devoid of merit and, in fact, it amounts to an effort which is like building a castle in Spain. Thus, we unhesitatingly repel the aforesaid contention.

16. Resultantly, the appeal, being devoid of merit, stands dismissed."

15. Next it is contended on behalf of the petitioner that the occurrence spot is not a notified reserved forest area and therefore the seizure and the consequential proceedings initiated against the petitioner are without jurisdiction. The prosecution also failed to prove that the sandalwood were seized at a place

which is notified as a forest area and therefore, the trial court acquitted the petitioner for the offence under Section 21 (d) (e) and (f) of the Tamil Nadu Forest Act. By relying on this portion of the decision of the trial court, the learned counsel for the petitioner would contend that since the occurrence did not take place within a prohibited forest area or in other words in a place which was not notified as a forest area, the punishment imposed on the petitioner can be set aside and he may be released on Probation of Offenders Act. In this context, the learned counsel for the petitioner would contend that the petitioner is repenting for the offence committed by him, he has a family to support and he is the only bread winner in his family. It is also further submitted that the petitioner is a first time offender and he has not come to any other adverse case so far. The learned counsel for the petitioner relied on the decision of this Court in the case of Kumar and others vs. State represented by Forest Range Officer, Vellore District) (2011) 1 MLJ (Cr1) 197 to seek for release of the petitioner by extending the Probation of Offenders in his favour. In this decision, this Court referred to the decision in Seerangan vs. Forest Range Officer, Salem) 2005 Criminal Law Journal 987 and held in Para Nos. 6 to 10 as follows:-

"6. The learned Additional Public Prosecutor further submitted that in this case, after the property was seized by P.W.2, Form-95 was prepared which was marked as Ex.P.6, and in the said form-95, the authorised officer has made an endorsement for having received those properties.

7. This Court considered the submissions made by the parties and perused the records. It is the evidence of P.Ws.1,2 and 5 that they had seen the accused in the forest area and they seized the gunny bag containing the sandalwood pieces. The total weight of the sandalwood was 464 Kgs. The confessional statement of the accused also was recorded. Though it is contended by the learned counsel for the petitioners that the properties cannot be produced before the Court, it affect the case of the prosecution. On a perusal of the records, it is seen that in Ex.P.6, an endorsement has been made by the authorised officer who is also an Assistant Forest Guard. Further, the material shows the properties which was seized were also subjected to confiscation. In the said circumstance, though the property seized were not produced before the Court, the related documents have been filed before this Court. The properties were seized and they were sent to the custody of the authorised officers as per Section 41 and 49 of the Act. Further, the confessional statement given by the accused were also marked, wherein they admitted their guilt.

8. This Court does not find any infirmity in the order passed by the courts below convicting the petitioners.

9. The learned counsel for the petitioner contended that the offence committed was due to ignorance in the year 1995 and the final report was filed in the year 2002 and the Judgment was delivered by the trial Court in the year 2005 and the appeal was disposed in the year 2007. All the petitioners were in jail for more than 90 days. The learned counsel for the petitioners further submitted that they are not involved in any other case either before or subsequent to this occurrence.

10. In view of the circumstances pointed by the learned counsel for the revision petitioners, the petitioners being the first time offenders and the petitioners had to face the protracted criminal proceedings for more than 15 years, this Court feels that it is not necessary to send the petitioners to jail. As this Court does not find any provision under the Tamil Nadu Forest Act, barring the applicability of the probation of offenders Act, the petitioners could be released on probation of offenders Act.

16. It is true that the criminal prosecution came to be launched against the petitioner during the year 1997 and 18 years has lapsed since then. The petitioner, along with other accused, were found in possession of 551 kgs of sandalwood and it was also immediately seized. The contention of the petitioner that non-examination of driver is fatal cannot be accepted for the reason that immediately after the occurrence, the accused have given voluntary confession before the Forester and the same has been marked as Exs.P.2, P.4 and P.5. Further, according to the prosecution, Form "95" has been prepared at the place where the goods were seized, whereas, according to the petitioner, Form "95" was prepared in the Station House. However, from the confession statement, it is clear that the accused were in possession of Sandal Wood. The trial court rejected the claim of the respondent that the occurrence took place in a forest area and or prohibited area. In this context, before dealing with the contention of the petitioner as to whether he is entitled for extending the provisions of Probation of Offenders Act, it is necessary to look into the decision rendered by this Court in State by Public Prosecutor, High Court, Madras vs. Chinnaraji 2005 Madras Law Journal (Criminal) 500. In this case, this Court had held that when it is proved that an offence under the Forest Act has been committed, it is mandatory to impose the appropriate sentence or at least the minimum sentence prescribed in the Forest Act otherwise it could have deleterious effect of polluting the Criminal Justice System. The relevant portion of this decision reads as follows:-

"19. On analysing the scheme of the Probation of Offenders Act and other Acts, where the operation of Probation of Offenders Act is

excluded, we may categorise them into three classes of instances:-

(a) Firstly, under the scheme of the Act, even under Section 18 of the Probation of Offenders Act, operation of certain enactments are saved, as stated in Section 18 which is as under:-

"Nothing in this Act shall affect the provisions of Section 31 of the Reformatory Schools Act, 1897 (8 of 1897), or sub-section (2) of Section 5 of the Probation of Offenders Act, 1947 (2 of 1947) or of any law in force in any State relating to Juvenile offenders or Borstal schools.

(b) Secondly, certain special enactments barring application of Probation of Offenders Act and Section 360 of CrI.P.C. For instance, we may refer to Sec.20-AA, Prevention of Food Adulteration Act and Sec.33 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Section 20-AA of the Prevention of Food Adulteration Act reads as follows:-

"Nothing contained in the Probation of Offenders Act, 1958 (20 of 1958) or Sec.360 of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.

Section 33 of the Narcotic Drugs and Psychotropic Substances Act, 1985 is on similar line as that of Sec. 20-AA of Prevention of Food Adulteration Act.

(c) The third instance if there is no such power for invoking the Probation of Offenders Act, having regard to the nature of the offence and its effects on the society, the Courts restricting the operation of application of Probation of Offenders Act.

20. On par with the Prevention of Food Adulteration Act, and the Narcotic Drugs and Psychotropic Substances Act, there is no specific bar in Tamil Nadu Forest Act. Therefore, on behalf of the accused, it is mainly contended that when the application of Probation of Offenders Act is not specifically barred under the Tamil Nadu Forest Act, there could be no bar for extending the benevolent provisions of Probation of Offenders Act, even in cases of possession of sandalwood/Scheduled timber for which the minimum

punishment is prescribed for. In support of his contention that there is no bar for invoking the Probation of Offenders Act to the offences under the Tamil Nadu Forest Act, the learned counsel for the respondent accused relied on two decisions:-

(i) Etti Gounder vs. The Forest Range Officer, Namakkal, 1985 L.W. (Cr1) 68 (ii) Andiappan and others vs. The State by the Forest Range Officer, Bargur, 1985 L.W. (Cr1) 323.

On the above decisions, it is submitted that when the single Judges of this Court have invoked the Probation of Offenders Act in the appeals/revisions arising out of conviction for the alleged possession of sandalwood, the trial Court has rightly exercised its discretion in invoking the Probation of Offenders Act.

21. Of course, on line with Prevention of Food Adulteration Act and Narcotic Drugs and Psychotropic Substances Act, there is no specific bar in Tamil Nadu Forest Act on the application of Probation of Offenders Act. On that ground, no body could claim the benefit of Sections 3 and 4 of the Probation of Offenders Act for the offences where the Legislature has provided for the minimum sentence. Only in fair exercise of discretion in the facts and circumstances of each case, having regard to the nature of the offences, its general effect on the society and the character of the offender etc., it could be invoked.

22. In these above decisions, the learned single Judges of this Court might have invoked the Probation of Offenders Act having regard to the age, character of the offender and other circumstances, the details of which are not discernible from the available facts in the reported decisions. Suffice it to point out that the learned single Judges have invoked the Probation of Offenders Act in exercise of discretion in the factual situation of those cases. The same cannot be adopted as precedence in all the cases. The benefits mentioned in Sections 3 and 4 are subject to the limitations laid down in those provisions and that the word 'may' in Section 4 of the Probation of Offenders Act is not to be understood as 'must'.

23. Instances are many when having regard to the nature of the offence, the Supreme Court has declined to extend the benefits of the Probation of Offenders Act. Offences of rash and

negligent driving under Section 304-A of IPC, is punishable with imprisonment for a term which may extend to two years or with fine or with both. Thus, the offence of rash and negligent driving is clearly an offence, "...not punishable with death or imprisonment for life....." as contemplated in Section 4 of the Probation of Offenders Act thus falling within the ambit of Section 4 of Probation of Offenders Act. But having regard to the nature of the offence and increasing trend of negligent driving, the Supreme Court has declined to invoke the provisions of Probation of Offenders Act in road traffic accident cases. In Dalbir Singh vs. State of Haryana and others, AIR 2000 SC 1677, the Supreme Court has held that the benefits of Probation of Offenders Act should not normally be extended in respect of the offences under Section 304-A of IPC, when it involves rash and negligent driving. The Supreme Court has made it clear that Sec. 4 of Probation of Offenders Act could be resorted to only when the court considers the circumstance of the case, particularly the nature of the offence and the Court forms its opinion that it is proper that the offender could be released under probation of good conduct.

24. It is appropriate to refer to the observations of the Supreme Court where the Supreme Court dissuaded from invoking the benefits of Probation of Offenders Act to the offences under Section 304-A of IPC:-

7. The conditions for applying Section 4 of the P.O. Act have been delineated in the commencing portion of the provision in the following words :

"When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct....."

8. Parliament made it clear that only if the court forms the opinion that it is expedient to release him on probation for his good conduct regard being had to the circumstances of the case. One of the circumstances which cannot be sidelined in forming the said opinion is "the nature of the offence."

9. Thus Parliament has left it to the court to decide when and how the court should form such opinion. It provided sufficient indication that releasing the convicted person on probation of good conduct must appear to the court to be expedient. The word "expedient" had been thoughtfully employed by the Parliament in the section so as to mean it as "apt and suitable to the end in view".....

10. It was then held that the court must construe the said word in keeping with the context and object of the provision in its widest amplitude. Here the word "expedient" is used in Section 4 of the P.O. Act in the context of casting a duty on the court to take into account "the circumstances of the case including the nature of the offence.....". This means Section 4 can be resorted to when the court considers the circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct.

25. Considering the increasing trend of negligent driving, when the Supreme Court has declined to invoke the provisions of the Probation of Offenders Act in road traffic accident cases, can Section 4 of Probation of Offenders Act be invoked to an offence under the Tamil Nadu Forest Act, where there is increasing trend of cutting and removing trees, particularly the Scheduled Timber, where the minimum punishment is provided for?

26. In the proviso to Sec.21 (1) of the Tamil Nadu Forest Act, the legislature has used the expression "shall not be less than (two years)..... and shall not be less than (Seven thousand and five hundred rupees)". Thus, the Legislature in its wisdom has disfavoured the sentence to any less than the minimum limit and the fine than the minimum prescribed. The expression "shall not be less than....." is pre-emptory in tone. In such cases where the minimum sentence is provided for, normally, this Court has no discretion even to award a sentence less than the minimum prescribed sentence. While so, how could the same be by-passed by resorting to the Probation of Offenders Act when the offenders are bent upon cutting and removing trees unmindful of the depletion of Forest resources/wealth.

29.When such is the concern of the Apex Court, the lower Courts are duty bound to share the consciousness of protection of forest and environment. The lower courts, particularly the Courts which are dealing with offences arising under Tamil Nadu Forest Act cannot be oblivious of the depletion of the vast area of forest resources and their obligation to share the parliamentary concern and the concern of the Apex Court in the sphere of protection of forest and preservation of ecology and environment absolutely there could be no room for leniency.

31. Criminal Justice system is no longer just an unindividualistic view, functioning in isolation from the society. The Criminal Courts must properly respond to the social problems of society particularly in the area of protection of forest and environment. Need to rise up to the occasion has become great and imperative when the forest cover is shrinking.

"32. Reported cases of offences relating to Scheduled Timber have to be sternly dealt with, with a steel heart, not yielding to any plea of softness on any ground as in this case, where the trial magistrate has casually invoked the Probation of Offenders Act on the flimsy grounds that the accused is a poor and first time offender. To follow popular line of showing indulgence is not very difficult. In fact, it is more difficult to resist the temptation to do so, rather than to adhere to nail-studded path of duty, institutional perspective and responsibility towards the society.....

35. Invoking the Probation of Offenders Act in offences relating to Tamil Nadu Forest Act could have deleterious effect of polluting the Criminal Justice System. It might subvert the process of law and frustrating the social object behind the Forest Act.....

36. No parameters could be fixed for invoking the Probation of Offenders Act. As said earlier, Criminal Justice System is no longer just an individualistic view or opinion functioning in isolation from the society. There is no doubt that releasing the accused under Section 4 (1) of the Probation of Offenders Act is against the letter and spirit of the legislature. The impugned judgment of the trial court needs to be set aside. The conviction of the respondent/ accused under Section 21 (d) (e), (f) of the Tamil Nadu Forest

Act and the direction of trial Magistrate in ordering the release of the accused under Sections 4 (1) and 4 (3) of the Probation of Offenders Act are set aside. Minimum fine amount of Rs.7,500/- (Rupees Seven Thousand Five Hundred Only) is imposed upon the respondent/accused in default the respondent/accused should undergo rigorous imprisonment for one year. In view of the factual situation of the case, this Court dissuades from imposing the minimum sentence of imprisonment since at this distant point of time, it would not be fit to direct the respondent/accused to serve the sentence.

39. Directions to the lower Courts:-

(i) Lower Courts are directed to see that in offences arising under Tamil Nadu Forest Act, particularly in offences relating to Scheduled timber, appropriate sentence, commensurate with the crime visualized by the Law makers, is awarded

(ii) The lower Courts are further directed not to by-pass the imposition of minimum sentence by invoking the benefits of Probation of Offenders Act to Tamil Nadu Forest Act

(iii) Like wise, in other cases, where the Legislature has provided the minimum sentence, to see that proper sentence commensurate with the crime committed by the accused is required to be imposed

(iv) Any improper exercise of discretion in invoking Probation of Offenders in Tamil Nadu Forest Act and in the other laws, where the minimum sentence is prescribed would not legally be viewed."

17. No doubt the application of Probation of Offenders Act is not specifically excluded in the Tamil Nadu Forest Act. It is also to be mentioned that the provisions of Probation of Offenders cannot be invoked as a matter of course. However, a discretion is vested with the Courts to extend the provisions of the Probation of Offenders Act having regard to the facts and circumstances of that case. It is needless to mention that such discretion has to be exercised sparingly and not for the sake of asking. In this case, the Appellate Court imposed minimum punishment of one year on the petitioner. The quantum of sandalwood seized from the petitioner is 551 kilograms. Therefore, having regard to the above facts, especially the quantum of the seized sandalwood is 551 kilograms, I am not inclined to show indulgence to the petitioner by extending the provisions of

Probation of Offenders Act. Accordingly, the conviction and sentence imposed on the petitioner by the Appellate Court is confirmed. It is needless to mention that the period of sentence already undergone by the petitioner shall be given set off under Section 428 of Cr.P.C. The Criminal Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

paa

To

- 1.The Forest Range Officer
Polur Range.
 - 2.The Principal Sessions Judge,
Vellore District.
 - 3.The Special Judicial Magistrate,
Thirupattur.
 - 4.-do- Through The Chief Judicial Magistrate, Tirupattur.
 5. The Public Prosecutor, High Court, Madras.
 6. The Section Officer, Crl.Section, High Court, Madras.
- + 1 cc to Mr.M.Krishnamoorthy, Advocate SR.36622

सत्यमेव जयते

Cr1.R.C. No. 1098 of 2010

GR(CO)
EU 21.09.15

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