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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2015

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THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.91 of 2015

and M.P.Nos.1 and 2 of 2015

1. Saman
2. Murugan

.. Petitioners/Accused

Vs

State rep. by
Forest Range Officer,
Ambur Range,
Vellore District.

.. Respondent/Complainant

Criminal Revision filed under sections 397 and 401 of Criminal Procedure Code against the conviction and sentence imposed by the learned Principal Sessions Judge, Vellore in C.A.No.35 of 2009 on 13.04.2010 confirming the conviction under section 36(A) r/w (E) of the Tamil Nadu Forest Act sentence that the petitioner should undergo one year R.I and fine of Rs.3000/- i/d three months S.I. modified the sentence imposed by the learned Special Judicial Magistrate, Tirupathur in C.C.No.31 of 1997 dated 07.05.2009 for the offences under Section 36(A) r/w (E) of the Tamil Nadu Forest Act that the petitioner should undergo two year R.I. and fine of Rs.7500/- i/d six months S.I.

For Petitioners : Mr.G.Vinoth Kumar
For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor.

O R D E R

Criminal Revision Case has been filed against the concurrent finding of the Courts below against the petitioners/accused for commission of offence under Section 36(A) r/w (E) of the Tamil Nadu Forest Act, 1882.

2. Case of the prosecution is that PW1-Mr.Gunasekaran, Forest Range Officer, along with P.Ws.2 to 8 went for a raid on 03.04.1983 and when they were inspecting Sanakuppam Reserve Forest near Ambur beet, they saw the accused and two others have trespassed into the forest and caused damage to the forest produce. They were in possession of Sandalwood. They encircled the accused and found that they were in possession of 239.500 Kgs



of Sandalwood. They prepared "H" Form, Ex.P1. They brought the accused and logs to the office and thereafter, the accused were sent to the Court. Confessional statement of the accused and one another, Ex.P2 to Ex.P8, were obtained. Rough Sketch is Ex.P6, Property Namuna is Ex.P7. Ex.P8, is the copy of the Government Order regarding Reserve Forest. Exs.9 and 10 are "A" and "C" Forms, respectively. Regarding incriminating evidence against them during questioning of the accused under Section 313(1)(b) of Cr.P.C., they pleaded not guilty.

3. Before the learned Special Judicial Magistrate, Thirupattur and Vellore District, PW1, Forest Range Officer has deposed that alongwith his party the accused and two others were encircled and that they were in possession of Sandalwood pieces. During cross examination, this aspect has not been controverted. PW1 has also deposed that recovery of 239.500 Kgs of Sandalwood has been made and Form "H" is Ex.P1. PWs. 2 to 8 have corroborated the evidence of PW1. Though, before the courts below, the accused / petitioners, had contended that no independent witness has been examined, after considering the entire materials and the testimony of PWs. 2 to 8, the Court below has observed that there is absolutely no reason to presume that the Forest Officials have foisted a false case against the petitioners/accused. Besides, when the Forest Officials were on their duty inside the Forest, presence of independent witness cannot be expected. Therefore, the contention of the learned counsel for the petitioners to the contra cannot be countenanced.

4. Section 36 (A) and (E) of the Tamil Nadu Forest Act, 1882 states as follows:

"36-(A): No person shall have in his possession any quantity of sandalwood in excess of five kilograms, unless under license granted by the District Forest Officer in that behalf of unless such sandalwood is affixed by a Forest Officer with such manner and in such manner as may be prescribed.

36-(E): Whoever in contravention of his chapter or of a rule made or license granted there under possesses sandalwood shall be punished with imprisonment for a term which may extend to five years and with fine which may extend to twenty thousand rupees."

The appellate Court has concurred with the finding.

5. In the case on hand, accused, Saman and Murugan, petitioners have given confessional statements and admitted that they were in possession of Sandalwood, intended to be transported in a Van. In so far as confessional statement is concerned, it is the



categorical decision of this Court reported in E.C.Richard Vs. Forest Range Officer, Mettupalayam reported in (1957) 2 MLJ 624, that Forest Officers are not police officers and therefore section 25 of the India Evidence Act is not applicable. Hence any statement given to a Forest Officer is admissible in evidence and not hit by Section 25 of the Indian Evidence Act. PW7 has adduced evidence to the effect that the petitioners/accused have given confessional statements. Possession of 239.500 Kgs of Sandalwood has been amply proved. As per Section 56(D) of the Act, whenever any person is accused of any offence under this Act in respect of any scheduled timber, it shall be presumed until the contrary is proved that such person has committed such offence.

6. Going through the judgments, this Court is not able to deduce any material that the accused have come with an explanation regarding the possession of the Sandalwood. It could be further deduced from the judgment of the learned Special Judicial Magistrate, Tirupattur in C.C.No.31 of 1997 dated 07.05.2009 that when the learned Judicial Magistrate has questioned the accused/petitioners on the aspect of sentence to be imposed on them, the accused/petitioners have only stated that they have committed the offence for the first time, they are too poor and therefore, a lesser penalty be imposed. Learned Special Judicial Magistrate, while convicting the accused/petitioners under Section 36(A) r/w (E) of the Tamil Nadu Forest Act, 1882, imposed R.I. for a period of two years with fine of Rs.7,500/- each and i/d. to undergo S.I. for a period of six months. However, the appellate Court has reduced the period of sentence by one year R.I and to pay a fine of Rs.3,000/- each i/d to undergo two months S.I. for offence under Section 36(A) r/w (E) of the Tamil Nadu Forest Act, 1882.

7. Though, the learned counsel for the petitioners submitted that there are material contradictions in the Mahazar H Namuna and Recovery Mahazar and that therefore, the Courts below ought to have rejected the case of recovery, this Court is not inclined to accept the said contention for the reason that the prosecution witnesses have adduced categorical evidence of seizure of Sandalwood pieces, during their inspection and raid.

8. In the light of the above discussion, this Court, is not inclined to interfere with the judgment of the learned Principal Sessions Judge, Vellore, Vellore District in C.A.No.35 of 2009 dated 13.04.2010 confirming the conviction and modifying the sentence imposed by the learned Special Judicial Magistrate, Tirupattur, Vellore District, in C.C.No.31 of 1997 dated 06.04.2009 and the same is sustained. The Criminal Revision Case



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is dismissed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Principal Sessions Judge, Vellore, Vellore District.
2. The Special Judicial Magistrate, Tirupattur, Vellore District
3. The Forest Range Officer, Ambur Range, Vellore District.
4. The Public Prosecutor, High Court, Madras.

+1 CC to Mr.G.Vinodh Kumar, Advocate Sr.6303/15

CO-SR

ths : 20.02.2015

Cr1.R.C.No.91 of 2015
and
M.P.Nos.1 and 2 of 2015