

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.6 OF 2016

Shri Joaquim Milagres Joao Fernandes,
Senior citizen, r/o Lourenco Apartments,
2nd floor, Erasmo Carvalho Street,
Margao, Salcete, Goa.

.... Petitioner

V e r s u s

1. State,
Represented by the Public Prosecutor;

a) The Sub-Divisional Magistrate,
Margao, Goa.

b) The Conservator of Forest and Appellate
Authority, Junta House, Panaji, Goa.

2. Shri Eraclio Fernandes,
Major in age, R/O Baga Velim,
Salcete, Goa.

..... Respondents

Mr. Baptista D'Cruz, Advocate for the Petitioner.

Mr. S. Redkar, Advocate for the Respondent no.1 under Legal Aid Scheme.

Mr. S. R. Rivankar, Public Prosecutor for the State.

CORAM: S. B. SHUKRE, J.
DATE: 1ST MARCH, 2016.

ORAL JUDGMENT:

Heard. Rule. Rule made returnable forthwith.

2. Heard finally by consent.

3. It is seen from the impugned orders that both the authorities below have not read the report of the Range Forest Officer in its correct perspective. His report dated 30/10/2014 nowhere states that the condition of the tree is ruinous or such as to indicate that it is likely to fall down. Report only states that because some electric lines are passing from below the tree, it may be dangerous to life and property. Report suggests that passing of electric lines from below the tree is the reason for making threat to life and property. It is clear that the tree by itself is not in dangerous or ruinous condition. The requirement of exercise of power under section 12-A of the Goa, Daman and Diu Preservation of Trees Act, 1984 is that the tree in question must be in a ruinous state or its branches should be in a ruinous state or the tree should be in such a condition that it is likely to fall and thereby cause injury to persons living or property in the vicinity. These conditions are not fulfilled in this case. In fact, the order passed by the appellate authority dated 30/11/2015 also does not speak of dangerous condition of the tree in question which is a Savor tree in this case. The order only shows that the tree has been left unattended and the problem is caused by release of silk cotton from the tree. The impugned orders dated 15/11/2010 and 30/11/2015, therefore, cannot be sustained in the eye of law and deserve to be quashed and set aside.

4. While setting aside the impugned orders, it would also be

necessary for this Court to address the problem caused by the release of silk cotton from the pods of the Savor tree which appears to be the main grievance of the respondent no.2, according to whom the silk cotton released by the pods gets stuck to ceiling fans, roofs, windows and doors of the houses of various persons in the vicinity and thus, creates a nuisance for them. The learned counsel for the petitioner, on instructions, gives an undertaking that he would be regularly harvesting the pods of the Savor tree before they are allowed to burst. This undertaking given orally is accepted.

5. In the result, the writ petition is allowed. The impugned orders dated 15/11/2010 and 30/11/2015 are hereby quashed and set aside. The undertaking so given by the petitioner shall be adhered to by him every year.

6. Rule is made absolute in these terms.

7. Writ petition is accordingly disposed of.

S. B. SHUKRE, J.

Ap/-