

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.R.C.No.59 of 2011

Gowry

... Petitioner

Vs.

State rep. By
Forest Officer,
Forest Protection Office,
Vellore,
(Crime No.25 of 1993)

... Respondent

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure, against the conviction and sentence imposed by the learned Principal Sessions Judge, Vellore, in C.A.No.90 of 2009 on 13.04.2010, modifying the sentence imposed by the learned Judicial Magistrate No.4, Thiruputhur, Vellore in C.C.No.302 of 2002 dated 16.09.2009.

For Petitioner : Mr. G.Vinodhkumar

For respondent : Mrs. M.F.Shabana,
Gov. Advocate (Crl. Side)

ORDER

The sole accused in C.C.No.302 of 2002 on the file of the Special Judicial Magistrate, Tirupathur, is the petitioner herein. He stood charged for the offence under Sections 21(m)(e)(f), 36(a)&(e) of Forest Act. The trial Court convicted the petitioner/accused under Section 36(a) & (e) of Forest Act and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.7500/- in default to undergo rigorous imprisonment for 6 months. Challenging the above said conviction and sentence the accused/petitioner filed an appeal in C.A.No.90/2009, on the file of the Principal Sessions Judge, Vellore. The lower appellate court, while confirming the conviction, modified the sentence to undergo rigorous imprisonment for one year and also to pay a fine of Rs.3000/- in default to undergo simple imprisonment for 3 months. Aggrieved over the same, the petitioner/accused is before this Court.

2. The case of the prosecution, in brief , is as follows:-

On 29.01.1994, at about 6.00 p.m., P.W.1,2 and 3, the Forest Rangers, along with one Velumani, Assistant Forest Officer, while inspecting Amarthi Reserved Forest Area, the petitioner/accused was carrying a hand bag and when they examined him, he was found in possession of 14 kgms of sandal wood. On

enquiry, the accused had given a voluntary confession admitting his guilt that he was carrying the sandal wood without proper licence. Then P.W.2 prepared an Observation Mahazar, Ex.P.2 and recorded the confession statement of the accused. Thereafter, they reached the office along with the accused and registered a case in crime No.25/93 for under Sections 21(m)(e)(f), 36(a) & (e) of Forest Act, and remanded him to judicial custody.

3. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 3 witnesses were examined and 8 documents were exhibited.

4. Out of the witnesses examined P.W.1 and 2 are the Forest Officers and P.W.3 is the forest ranger. According to them, when they were on inspection in the Amarthi Reserve Forest Area on 29.01.1994, at 4.30 a.m., they found the petitioner/accused carrying a bag, and on examination, it was found that the accused was carrying 14 kg of sandal wood, and they recovered the sandal wood from the accused. The accused had also voluntarily given a confession stating that he was in possession of sandal wood without any licence. In view of the same, he prepared an Observation

Mahazar, and then recorded the statement of the accused and thereafter, they brought him to the Forest Office and registered a case. Then, they remanded him to the judicial custody.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any of the witnesses on his side.

6. Having considered all the above, the trial Court found the accused guilty under the said charges and accordingly, sentenced him as detailed in the first paragraph of this judgment. Challenging the said conviction and sentence the petitioner/accused filed an appeal before the Principal Sessions Judge, Vellore in C.A.No.90/2009 and the lower appellate court while confirming the conviction, modified the sentence to undergo rigorous imprisonment for one year and to pay a fine of Rs.3000/- in default to undergo simple imprisonment for 3 months. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

7. I have heard Mr.G.Vinodh Kumar, learned counsel appearing for the petitioner and Mrs.M.F.Shabana, Government Advocate, appearing for the respondent.

8. It is the consistent evidence of P.Ws.1 to 3, who are all forest Guard and Forest Rangers that when they were in patrol in the Amarthi Reserve Forest, the petitioner was found in possession of 14 kgms of sandal wood, worth about Rs.4,140/-, without proper licence. Based on the confession, they have seized the sandal wood and also registered a case. After considering all the material, both the courts below convicted the accused/petitioner.

9. From the perusal of the records, it could be seen that the accused was found in possession of 14 kgms of sandal wood without proper license and hence, I find no illegality or irregularity in the order passed by the courts below. Hence, the conviction of the petitioner/accused is liable to be confirmed.

10. So far as the sentence imposed on the petitioner is concerned, the petitioner is a first time offender, he is a poor man, and he has no bad antecedents, and have a big family to maintain and the occurrence had also taken place in the year 1994. Taking into consideration all the mitigating as well as aggravating circumstances, this Court feel that the ends of justice would be met by releasing the petitioner under Section 4(1) of the Probation of Offenders Act.

11. In the result, the conviction and sentence imposed on the revision petitioner are set aside, with a direction to release of the revision petitioner under Section 4(1) of the Probation of Offenders Act. With this modification, the revision is disposed of. The petitioner shall execute a bond for a sum of Rs.1000/- (Rupees One Thousand only) with two sureties each for a like sum to the satisfaction of the lower court and to appear and receive the sentence when called upon during the period of one year and in the meantime to keep peace and be of good behaviour.

Index:Yes/No
Internet:Yes/No
mrp

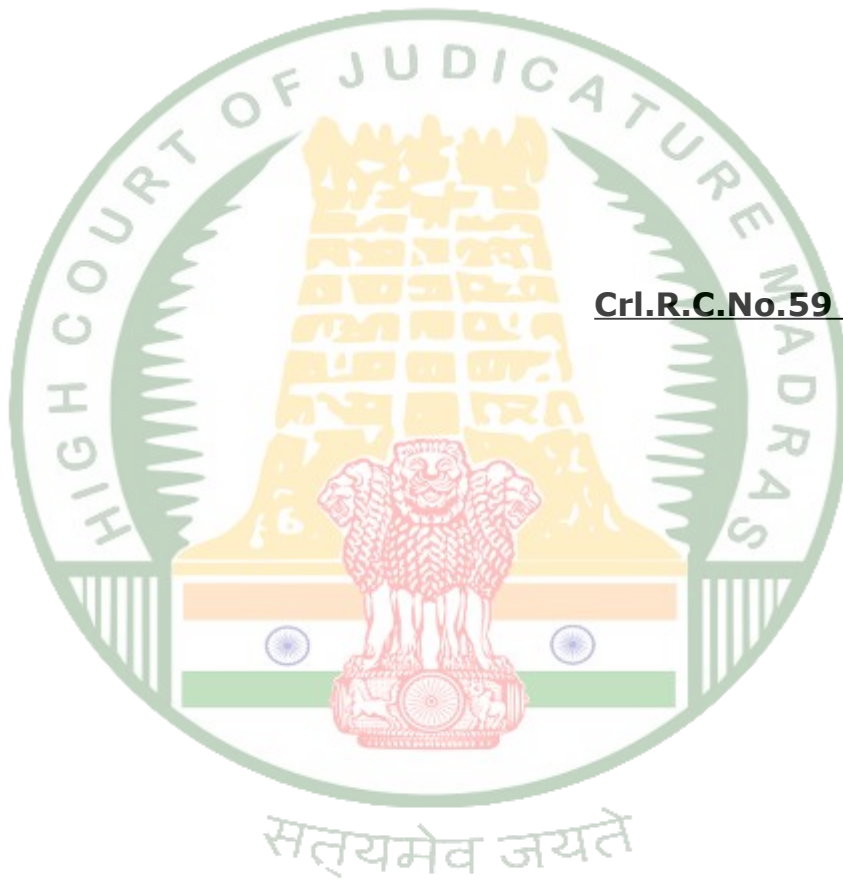
12.01.2017

To

1. The Principal Sessions Judge,
Vellore.
2. The Judicial Magistrate No.IV,
Vellore.
3. The Public Prosecutor,
High Court, Madras.

V.BHARATHIDASAN, J.

mrp



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