

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APPA) 385 OF 2017

State of Maharashtra, through Range Forest Officer, Pusad

...VS..

Vasantrao Bapurao Deshmukh and others

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri. N. B. Jawade, APP for the appellant.

Shri. R.S. Kurekar, counsel for the respondents.

CORAM: ROHIT B. DEO, J.

DATE: 19th MARCH, 2018.

Heard.

2 This application is preferred by the State seeking leave to appeal against the judgment and order dated 18.10.2014 passed by the 6th Judicial Magistrate First class, Pusad in Criminal Case 114 of 1991, by and under which respondent – 8 Sudam Rathod is discharged under section 245(1) of the Code of Criminal Procedure and the other respondents – accused are acquitted of offence punishable under section 26(1)(a)(e)(f) of the Indian Forest Act and under section 379 read with section 34 of the Indian Penal Code.

3 Heard Shri N.B. Jawade, the learned Additional Public Prosecutor for the appellant and Shri R.S. Kurekar, the learned counsel

for the respondents.

4 The prosecution case is that accused 2 G.B. Pawar who was the then Range Forest Officer at Paradh recorded the cutting of teak trees and indicated that the offenders are absconding. Out of 25 trees shown cut, 12 trees were from compartment 71 of Paradh beat and 13 were from compartment 370 of Mokhad beat. Shri V.N. Tajne investigated the said report and recorded the statements of Babusingh Rathod and Ulhas Aade. Some of the forest produce was seized from the custody of Panchal Saw Mill at Janwad, a part was seized from the field of one Shiwaji Patil and a part was lying unclaimed at distance of 2 km from village Janwad. The seized wood was compared with the stump of the cut trees. Investigation revealed that accused 3 cut the teak trees in collusion with accused 2 and with the help of accused 4 to 13 transported the cut teak trees to Janwad. Accordingly, the complaint was filed by the then Sub Divisional Forest Officer, Zilla Parishad, Garad. Offence was registered and the accused were chargesheeted. Since the accused 6 and 10 died and accused 8 absconded, the learned Magistrate framed charge against accused 1 to 5, 7, 9 and 11 to 13 at Exh. 172 after separating the trial from accused 8.

5 It must be noted at the very outset that PW 3 and PW 4 Raghunath Ghundre and Pralhad Kamble, were examined at the stage of evidence before charge and the defence reserved the right to cross-examine the said witness after framing of charge. However, since PW 3 and PW 4 were not produced for cross-examination after framing of charge, the learned Magistrate rightly discarded their pre-framing of charge evidence.

6 PW 5 Vasant Tajne investigated the offence. He has recorded the statement of accused 2 and M.G. Rathod and Babusingh Rathod. PW 5 states that Babusingh revealed that when he went to the forest with accused 2, cut trees were being loaded in a truck and then accused 2 asked Babusingh to accompany the truck for which he was paid Rs. 50/-. Babusingh accompanied the truck to Dhanora. The said statement was recorded in the presence of accused 2 and panch witness. Accused 2 however refused to sign the statement and a panchanama to this effect was prepared (Exh. 98). The statement of Babusingh is Exh. 97.

7 The prosecution contended before the learned Magistrate that the statement of Babusingh (Exh. 97) is admissible under section 72(2) of the Indian Forest Act in evidence, since the statement was recorded in

the presence of the accused. Babusingh, is however, not examined in the trial.

8 The learned Magistrate has even otherwise recorded a finding that the panchanama Exh. 98 is not proved and as a result it is not proved that the statement of Babusingh was recorded in the presence of the accused.

9 The alleged illegally cut teak is seized from the custody of Panchal Saw Mill and Shiwaji Patil against whom no proceeding is initiated. In so far as the other accused are concerned, the learned Magistrate has noted in paragraphs 11 and 12 of the judgment and order impugned that there is absolutely no evidence on record to connect accused 4 to 13 with the alleged offence. The prosecution did not prove that the seized property matched with the stump of trees nor did the prosecution prove the alleged seizure, is the finding recorded. I have perused the deposition and the other material on record in the context of the findings recorded by the learned Magistrate. Having done so, I do not find any infirmity much less perversity in the finding recorded by the learned Magistrate. The view taken by the Magistrate is not only a possible view, but is the only view which could have been taken in the

teeth of evidence on record.

The application is sans merit and is rejected.

JUDGE

rsb