

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.04.2018

DELIVERED ON: 26.04.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.21751 of 2011

and

Crl.M.P.No.1 of 2011

1. Jabbar
2. Ashraf
3. Santosh
4. K.T.Majeed
5. Ponnangathody Baputty
6. M/s National Fragrances Petitioners/Accused 1 to 6

//vs//

State: represented by
Agricultural Officer,
Department of Forests & Wildlife
Puducherry.

Prayer

Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in S.T.R.No.433 of 2006 on the file of the Judicial Magistrate No.1, Puducherry and quash the same.

For Petitioners: M/s R.John Sathyan,
A.R.Sindhu

For Respondent : Mr.D.Bhartha Chakravarthi
Public Prosecutor for the State of
Puducherry

ORDER

Heard Mr.R.John Sathyan, learned counsel appearing for the petitioners and the learned Public Prosecutor, Puducherry, appearing for the respondent.

2. The petitioners are the accused in S.T.R.No.433 of 2006 on the file of Judicial Magistrate No.1, Puducherry. The respondent namely the State represented by Agricultural Officer, Department of Forests & Wildlife, Puducherry has filed a complaint under Section 190(1) (a) of Criminal Procedure Code, 1972, for the contravention of Rule 9 of the Pondicherry Timber Transit (Amendment) Rules 1988, punishable under Rule 10 of the Pondicherry Timber Transit (Amendment) Rules, 1999 read with Section 51(2) of the Indian Forest Act, 1927 against the petitioners herein, on 14.03.2006. The Magistrate took

cognizance of the offence on 08.06.2006 and issued summons to the accused, At this stage, the petitioners have filed the present petition under Section 482 of Cr.P.C to quash the entire proceedings.

3. The brief facts of the case of the respondent is narrated as under:-

(i) The petitioners 1 to 5 are partners in M/s National Fragrances, (6th petitioner) having its business at No.8/3, Sivarandhagam road, Manakuppam, Nallathoor (Post), Pondicherry 605 106. On the request of the Divisional Forest Officer Munnar, the factory premises of M/s National Fragrances was inspected on 17.01.2005 and on 18.01.2005 lead by a team of officials Dr.P.Devaraj, Deputy Conservator of Forests, Pondicherry, and Thiru B.Ramakichenin @ Balagandhi, Deputy Director (Forest). The complainant from Pondicherry Forest Department and Thiru Rajan Seghal, District Forest Officer, Munnar, Thiru Nagaraj, Range Officer, Marayoor, Kerala, Thiru Saji Kumar, Range Officer, Devikulam and Thiru A.P.Manoj, Range Officer, Munnar from Kerala Forest Department were also present.

(ii) According to the respondent, Al was asked to produce the records of the firm for verification and a stock of 42.2 kg of sandal wood oil claimed to be stocked in the premises was verified and found to be containing mostly of water with little traces of oil. Further, on verification of sandal wood stocks revealed that the gunny bags which were stocked in two godowns contained mostly chips woods and pieces of miscellaneous timber species/fire wood, but none of them were sandal wood. According to the respondent, on verification of the stock register of the firm, there was a carry over stock of 6500 kg. of sandal wood / Heart wood as seen from page No.27 of form IV Register and a stock of 6000 kilo grams of sandal wood sap wood as seen from page No.75 of form IV. Also a stock of 42.2 kilograms of sandal oil was mentioned in page No.67 in form R.G.1 (Annexure X) Register as on 18.01.2005. The entire materials as per books of firm was not available in the factory including Sandal Wood Oil.

(iii) It is further averred by the respondent that the tins in which the sandal wood oil claimed to be stored in the premises was actually found to contain only water with traces of oil, was actually water and therefore, there is every reason to believe that the firm is indulging in illegal activity. It is also contended by the respondent that the timber species that were kept in the two godowns weighing 6402 kilogram were seized by the respondent from the 6th petitioner factory on 25.01.2005, in the presence of witness. According to the respondent, the petitioners have contravened the provisions of Rule 9 of Pondicherry Timber Transit (Amendment) Rules, 1998, punishable under Rule 10 of Pondicherry Timber Transit (Amendment) Rules, 1999 read with Section 51(2) of the Indian forest Act, 1927.

4. The primordial submission of Mr.R.John Sahyan, learned counsel appearing for the petitioners is that the present complaint filed by the respondent is barred by limitation under Section 468 of Code of Criminal Procedure. He drew the attention of this court to Section 9 and 10 of the Pondicherry Timber Transit (Amendment) Rule 1999.

Section 9. Red Sanders wood:- No person shall have in his possession or move red sanders timber, chips or powder except under a special permit issued by the Deputy Director of Agriculture (Horticulture) in Form VI.

Section 10. Whoever infringes any of the provisions of these rules shall be punished with imprisonment which may extend to one month or with fine which may extend to two hundred rupees or with both.

His contention is that since the imprisonment prescribed for the said offence is one month or with fine, which may extend to Rs.200/- or with both, the respondent/complainant should have filed his final report within a period of one year, since Section 468(2)(b) of the Code of Criminal Procedure prescribes the period of limitation as one year, if the offence punishable with imprisonment for a term not exceeding one year.

5. His specific contention is that, since the inspection of the factory was completed on 18.01.2005 and the miscellaneous timber species weighing 6402 kilograms were allegedly recovered from the two godowns of the factory on 25.01.2005, filing of complaint on 14.03.2006 by the respondent and taking cognizance of the offence by the learned Judicial Magistrate on 08.06.2006 are beyond the period of limitation.

6. Per contra, the learned Public Prosecutor, Puducherry appearing for the State contended that since the offence contemplated in the complaint is a continuing offence, there is no question of bar of limitation under Section 468 of Cr.P.C. He also placed his reliance on the decision in Bhagirath Kanoria and others vs. State of Mathyapradesh reported in (1984) 4 Supreme Court Cases 222 and contended that the period of Limitation prescribed by Section 468 of Code of Criminal Procedure cannot have any application in the instant case and that the offences, which is alleged against the petitioners would be covered by Section 472 of Code of Criminal Procedure. According to him, a fresh period of limitation begins to run at every moment of the time during which the offence continues. He would also contend that any court may take cognizance of the offence, after the expiry of the period of limitation, if interalia, it is satisfied that it is necessary to do so in the interests of justice.

7. Section 468 of Code of Criminal Procedure places an embargo upon court from taking cognizance of an offence after the expiry of the limitation period provided therein. Section 469 prescribes, when the period of limitation begins. Section

473 enables the court to condone the delay, provided the court is satisfied with the explanation furnished by the prosecution/complainant and where, in the interests of justice, extension of the period of limitation is essential. The principle of condonation of delay is based on the general rule of the criminal justice system which states that a crime never dies, as has been explained by way of the legal maxim, *millum tempus and locus occurrit regi* (lapse of time is no bar to the crime for the purpose of initiating proceedings against the offenders). A criminal offence is considered as a wrong both against the state and the society as a whole, even though the same has been committed against an individual.

8. It is to be pointed out that the expression "continuing offence" has not been defined in the Code of Criminal Procedure. This is because the said term does not have a fixed connotation and therefore, no formula of universal application can be formulated.

9. In *Balakrishna Savalram Pujari Waghmare and others. Vs. Shree Dnyaneshwar Maharaj Sansthan and others* reported in AIR 1959 SC 798, the Honourable Supreme Court dealt with the aforementioned issue, and observed that a continuing offence is an act which creates a continuing source of injury, and renders the doer of the act responsible and liable for the continuation of the said injury. In case, a wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the said act may continue. If the wrongful act is of such character that the injury caused by it itself continues, then the said act constitutes a continuing wrong. The distinction between the two wrongs therefore depends, upon the effect of the injury. In the said case, the court dealt with a case of a wrongful act of forcible ouster, and held that the resulting injury caused, was complete at the date of the ouster itself, and therefore, there was no scope for the application of Section 23 of the Limitation Act in relation to the said case.

10. In *Gokak Patel Volkart Ltd. v. Dundayya Gurushiddaiah Hiremath & Ors.*, (1991) 2 SCC 141, the Honourable Supreme Court dealt with the issue and held as under:

According to the Blacks' Law Dictionary, Fifth Edition, 'continuing' means 'enduring; not terminated by a single act or fact; subsisting for a definite period or intended to cover or apply to successive similar obligations or occurrences'. Continuing offences means 'type of crime which is committed over a span of time'. As to period of statute of limitation in a continuing offence, the last act of the offence controls for commencement of the period. 'A continuing offence, such that only the last act thereof within the period of the statute of limitations need be alleged in the indictment or information, is one which may consist of separate acts or a course of conduct but which arises from that singleness of thought, purpose or

action which may be deemed a single impulse'. So also a 'continuous crime' means one consisting of a continuous series of acts, which endures after the period of consummation, as, the offence of carrying concealed weapons. In the case of instantaneous crimes, the statute of limitation begins to run with the consummation, while in the case of continuous crimes it only begins with the cessation of the criminal conduct or act.

11. While deciding the case in Gokak Pael Volkart Ltd. (Supra), the Honourable Supreme Court placed reliance upon its earlier judgment in State of Bihar v. Deokaran Nenshi and another reported in AIR 1973 SC 908, wherein the court while dealing with the case of continuance of an offence has held as under:

"A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all".

12. Articles 68, 69 and 91 of the Limitation Act govern suits in respect of movable property. For specific movable property lost or acquired by theft, or dishonest misappropriation or conversion; knowledge as regards possession of the party shall be the starting point of limitation in terms of Article 68. For any other specific movable property, the time from which the period begins to run would be when the property is wrongfully taken, in terms of Article 69. Article 91 provides for a period of limitation in respect of a suit for compensation for wrongfully taking or injuring or wrongfully detaining any other specific movable property. The time from which the period begins to run would be when the property is wrongfully taken or injured or when the detainer's possession becomes unlawful.

13. Further more, in Bihar Vs. J.P.Singh 1963 BLJR 782 the High Court of Patna has held that conducting a restaurant without having it registered and without maintaining Registers required by the Bihar Shops and establishments Act 8, 1954 and the rules framed thereunder were continuing offences as every

time a restaurant was run without its being registered and without maintaining the required Register was an offence and therefore, the period of limitation under Section 36 of the Act would run from the date of the occurrence of each of the default.

14. In the light of the above decisions, the present case on hand would be covered by Section 472 of Code of Criminal Procedure which reads as " Continuing offence - in the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues."

15. The question of delay in launching a criminal prosecution may be a circumstance to be taken into consideration while arriving at a final decision. However, the same may not itself be a ground for dismissing the complaint at the threshold. Moreover, the issue of limitation must be examined in the light of gravity of the charge in question as laid down in *Japani Sahoo Vs. Chandra Sekar Mohanty* reported in AIR 2007 SC 2762 (ii) again *Kumar Vs. C.B* (2010) 9 SCC 368 and *Norda Entrepreneurs Association Vs. Norda* and another reported in AIR 2011 SC 2112. Also, whether it is a case of continuing offence or not cannot be considered at the time of framing of charge, as all these facts are matter of evidence and evidence is not discussed at the time of framing of charge. The court is to see whether a *prima facie* case is made out or not at the time of framing of charge. The Magistrate in the instant case has taken cognizance of the offence and also issued summons to the accused. Moreover, the scope of this court under Section 482 Cr.P.C. is very limited.

16. As far as the present case is concerned, a stock of 42.2 kg. of sandal wood oil is claimed to be in the stock which when verified, found to contain mostly of water with little traces of oil and sent for analysis. The verification of sandalwood stocks also revealed that only miscellaneous timber species/ fire wood were stocked and further the entire materials as per books of firm was not available in the factory, including sandalwood oil. It is therefore alleged that the petitioners are indulging in illegal activity and the miscellaneous timber species that were kept in the two godowns weighing 6402 kilograms were also seized on 25.01.2005 in the presence of the witnesses and therefore, the provisions of Section 472 of Code of Criminal Procedure, would be attracted as far as the present case is concerned. Further more, the wrongful act in the instant case is of such a nature that the injury caused by the act itself continues and therefore, it has to be construed that the said act constitutes a continuing wrong.

17. The court is to exercise its inherent powers under Section 482 of Code of Criminal Procedure only under exceptional cases where, there is a grave miscarriage of justice. But in the present case, no exceptional ground has been made out, which has resulted in grave miscarriage of justice to the petitioners. Since the offence alleged by the respondent would affect the

public at large, it has to be construed as continuing offence. I therefore, hold that the present criminal original petition cannot be sustained.

18. In the result, the criminal original petition is dismissed. Consequently, connected criminal miscellaneous petition is closed. The petitioners are directed to appear before the learned Judicial Magistrate No.1, Puducherry, within a period of one month from the date of receipt of a copy of this order.

Sd/-

Deputy Registrar

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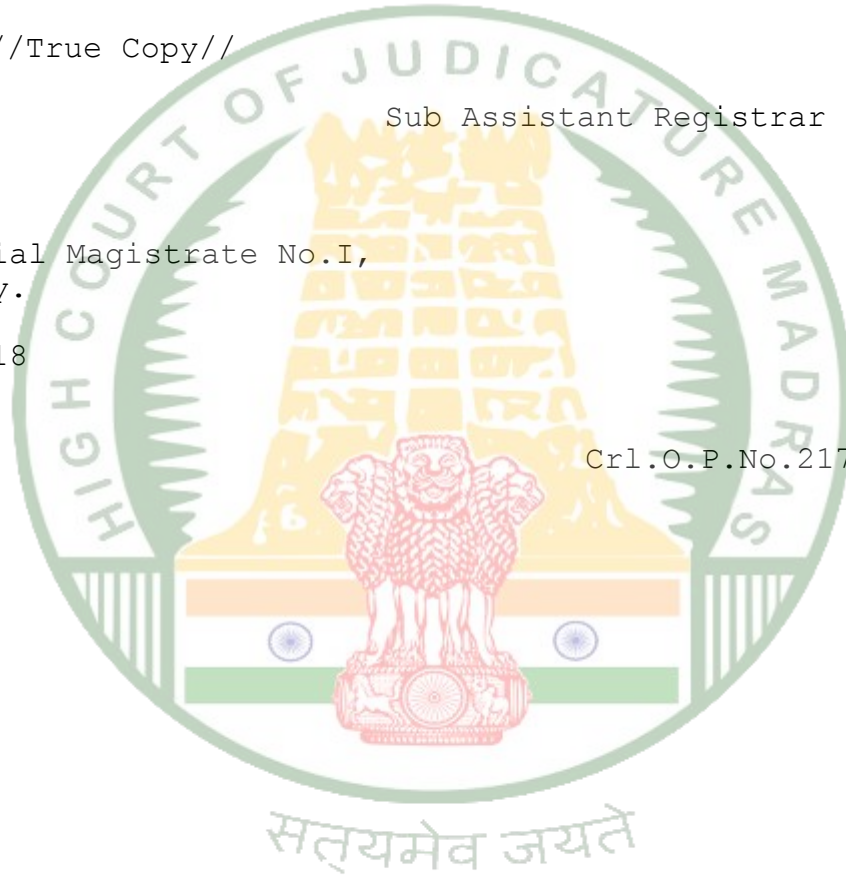
Sub Assistant Registrar

mst
To

The Judicial Magistrate No.I,
Puducherry.

sm:9.5.2018

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