

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.Nos.157 and 170 of 2016

K.G.Krishnasamy @ Appu
represented by K.Sarath
S/o.K.G.Krishnasamy

...Appellant in both Appeals

Vs

1.State by Inspector of Police, Vishnu Kanchi Police
Kancheepuram, Tamil Nadu

2.State by Inspector of Police, CBCID, Kancheepuram

3.The District Forest Officer, Chengalpet
Kancheepuram.

4.(R3 is impleaded as per order dated 27.3.2018 in Crl.A
157/2016 and Crl MP 2123/2016 and Crl MP 2930/2017 and Crl.A
170/16 & Crl MP 2393/16)

...Respondents in both Appeals

Prayer:- These Criminal Appeals have been filed, against the common order, 27.01.2016, made in the Memo filed by the Prosecution in SC.No.94 of 2005, Cr.MP.No.1754 of 2015, filed by the Appellant/A5, in SC.No.94 of 2005, dismissed by the Principal Sessions Judge, Pondicherry, vide order dated 27/01/2016.

For Appellant : Mr.S.Ashok Kumar, SC for Mr.T.r.Ravi

For Respondent : Mr.V.Balamurugane, SPPCBCID-RR1&2
Ms.Thangavadana Balakrishnan,
AGP(Forest)
for R3

COMMON JUDGEMENT

1.These Criminal Appeals have been filed, against the common order, dated 27.01.2016, passed by the Principal Sessions Judge, Pondicherry, allowing the Memo filed by the Prosecution in SC.No.94 of 2005 to order for handing over the Case Property No.29 of 2005 to the Forest Department for legal disposal through the Judicial Magistrate I, Kancheepuram and dismissing Cr.MP.No.1754 of 2015, filed by the Appellant, in SC.No.94 of 2005, seeking for return of property as listed in the seizure mahazar and in the Form 95, to the Appellant herein.

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2.This court heard the learned counsel on either side and considered their respective submissions and also perused the materials placed on record.

3.Precise facts of the case:-

By judgement dated 27.11.2013 in SC.No.94 of 2005. in respect

4. During the investigation, on 26.12.2004, 1703 cut pieces of red sanders, weighing 4 tonnes and 385 cut pieces of red sanders, weighing 1457 kgs, were seized by the 1st Respondent and listed as Case Property No.29 of 2005, in Cr.No.914 of 2005. The above properties have been mentioned as Item No.32 in the list of non valuable items of case properties and found in the property extract register in PRC.No.2 of 2005, on the file of the Judicial Magistrate I Kancheepuram. After committal, the case was taken up as SC.No.191 of 2005, originally on the file of the Principal Sessions Judge, Chengalpet and later transferred to the Court of the Principal Sessions Judge, Pondicherry and renumbered as SC.No.94 of 2005.
5. The properties in question, namely, as found in Item No.32, at S.Nos.1 and 2, are (1) 3478 kgs of red sanders kept in 173 gunny bags and (2) 385 cut pieces of red sanders, weighing 1,457 kgs.
6. During the trial, on a memo filed by the Prosecution on 24.3.2009, the Trial Court, by order dated, 24.3.2009, had directed the Judicial Magistrate I, Kancheepuram to retain the properties in question, until further orders and the properties in question have been kept under the safe custody at PWD godown at Kancheepuram. No appeal against the order of acquittal in SC.No.94 of 2005 has been preferred.
7. While so, on 28.9.2015, the Prosecution had filed a memo, seeking to hand over the properties to the Forest Department, for legal disposal through the Judicial Magistrate, I, Kancheepuram. Thereafter, another memo had also been filed, on 20.10.2015, stating that the properties in question are lying intact and under the supervision of CBCID Police, Kancheepuram. Subsequently, the father of the Appellant herein had died. At this stage, while considering the memo filed by the Prosecution, the Appellant herein, K.Sarath, son of K.G.Krishnasamy @ Appu, had filed Cr.MP.No.1754 of 2015 under Section 452 of Cr.PC, claiming the properties in question.
8. In the affidavit filed in support of Cr.MP.No.1754 of 2015, it had been stated that the Appellant was running a Company in the name of Bharath Trading, at Door No.6, Gandhi Street, Vanagaram Road, Iyyambakkam, Chennai-95 and was doing business in red sanders and that the properties in question had been purchased legally from the Divisional Forest Officer, Wild Life Division, Rajampet, vide order dated, 26.7.2003 and that the witnesses, present during the seizure, had turned hostile and that in the trial, the properties in question have not been marked as material objects, as they were not concerned with the case. The Appellant had filed the death certificate of his father and the legal heirship certificate and the authorisation given by his mother and brother to file the application and sought for return of the properties in question to his custody.
9. In and by the impugned order, the Trial Court, after considering all the documents and hearing the submissions of the learned counsel on either side, had allowed the memo filed by the Prosecution, directing the Judicial Magistrate I, Kancheepuram to hand over the case property No.29 of 2005 as found in Item No.32, S.Nos.1 and 2, namely, (1) 3478 kgs of red sanders kept in 173 gunny bags and (2) 385 cut pieces of red sanders, weighing 1,457 kgs, in Cr.No.914 of 2005, on the file of the Vishnu Kanchi Police Station, Kancheepuram, in PRC.No.2 of 2005, on the file of the Judicial Magistrate I

the Appellant, seeking return of property as listed in the seizure mahazar and in the Form 95, holding that the Appellant had not produced any valid licence for possession and custody of the properties in question and that a separate report had been earlier sent to the concerned Department for taking into consideration and necessary action, as per law and that it was improbable for the Appellant to produce licence after 10 years.

11. During the pendency of these appeals, this Court, by order dated, 27.03.2018, had suo moto impleaded the District Forest Officer, Chengalpet Division, Kancheepuram, as the 3rd Respondent herein, directing him to file necessary statement/affidavit and documents. The 3rd Respondent has entered appearance.

12. The learned counsel for the Appellant would submit that his father was running a business dealing with red sanders under the name and style of M/s. Bharat Trading Company and that the properties seized from the father of the Appellant, K.G. Krishnasamy, who was arrayed as A5, were legally purchased by him from the Divisional Forest Officer, Wild Life Division, Rajampet, vide order dated, 26.7.2003 and that after legally transporting it to Tamil Nadu, the father of the Appellant had obtained valid possession certificate from the Tamil Nadu Forest Department, on 27.08.2003 and as per the possession certificate, his father had licence, to hold the scheduled timber till 31.3.2004. He would further submit that the properties seized are in no way connected with the criminal case and the properties were produced before the Judicial Magistrate I, Kancheepuram on 30.3.2005 and that the witnesses who had been examined with regard to the seizure have also turned hostile and that since his father was affected by cancer, he did not take any action seeking for return of the properties during his life time and his father died on 16.02.2015. He would further submit that on coming to know that his father's property was kept in the custody of the Court, the Petition seeking to return of the same, had been filed.

13. The Special Public Prosecutor for the Respondents 1 and 2 would submit that the Prosecution had filed a memo as early as on 24.3.2009, seeking for disposal of the properties, in accordance with law, however orders were passed by the Trial Court, directing the Judicial Magistrate I, Kancheepuram, to retain possession of the properties in question, until further orders and they have been taking earnest steps for disposal of the properties, however, because of the pendency of the present appeals, the properties are now being retained at the godown of PWD at Kancheepuram and that Respondents are incurring unnecessary and heavy costs for safe keeping of the properties in the godown for no fault of them and would pray that now since the Forest Department is seized of the matter and directed to deal with the disposal, they may be directed to pay the rents to PWD. He would further submit the father of the Appellant had not challenged the earlier order passed by the Trial Court based on the memo, dated 24.03.2009.

14. The learned Additional Government Pleader appearing for the 3rd Respondent would submit that the licence given to the father of the Appellant was valid till 31.3.2004, whereas, the properties in question were seized on 26.12.2004 and as such, on the date of seizure, the father of the Appellant did not possess any valid licence and thereby, there was violation of the provisions of the Tamil Nadu Forest Act and the Rules framed thereunder and thereby, the properties are liable for

the Appellant has neither sought for renewal of the licence nor produced any document to prove that those properties which had been seized were legally purchased by his father from the Government of Andhra Pradesh and that the properties in question are connected to the possession certificate issued by the Government of Tamil Nadu. She would further submit that unless and until a proper enquiry is conducted by the appropriate authority, the Department cannot come to a conclusion that the properties belonged to the father of the Appellant and that the Trial Court, finding that the possession of properties in question by the father of the Appellant as on the date of seizure was not in accordance with law, had rightly directed for handing over the properties to the Forest Department to deal with disposal of the properties in accordance with law. She would further submit that the District Forest Officer, Chennai is the proper authority to deal with the disposal of the properties in question and during enquiry, if it is found that any violation is committed by the owners of the property, the properties are liable for confiscation and that confiscation can be done only after following the procedures in accordance with law and that appropriate notice will be served on the Appellant and due enquiry will be conducted and a finding will be arrived at only after completion of the enquiry.

15. At this juncture, the learned counsel for the Appellant would submit that the properties in question have been seized from the father of the Appellant without following the procedures as contemplated under law and no notice had been issued to the father of the Appellant during his life time and that now the Appellant being the legal heir of the person from whom the properties in question have been seized, is entitled to be heard before any order is passed regarding disposal of the properties.

16. The learned Additional Government Pleader for the 3rd Respondent would submit that the properties are now in the custody of the Judicial Magistrate I, Kancheepuram and they are stored in the godown of PWD at Kancheepuram, under the supervision of CBCID Police and the properties will be disposed of after due enquiry being conducted under the provisions of the Tamil Nadu Forest Act and the Rules framed thereunder. She would submit that notice will be served on necessary parties concerned and the 3rd Respondent will complete the enquiry within six months and would pray that still such time, the properties in question may be retained at the PWD Godown at Kancheepuram and that after conclusion of the enquiry, suitable orders will be passed by the 3rd Respondent, in accordance with law.

17. The learned Additional Government Pleader for the 3rd Respondent would submit that the 2nd Respondent has also filed an affidavit of undertaking, stating that the properties in question will not be disposed of till the enquiry is completed.

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18. Admittedly, the properties in question were said to have been seized from the father of the Appellant during the year 2004. The father of the Appellant has not claimed for return of the properties in question during his life time. Only after the death of his father, the Appellant has claimed for return of the properties in question. The Trial Court, suspecting the bona fide of the Appellant, had dismissed the Petition.

the Rules framed thereunder. In such circumstances, this Court is of the opinion that the properties cannot be disposed of without conducting a proper enquiry.

20.The 3rd Respondent is the appropriate authority to deal with the properties in question, in accordance with the Tamil Nadu Forest Act and the relevant Rules framed thereunder, since the properties in question being a scheduled timber. The Trial Court had directed the Prosecution to hand over the properties in question to the 3rd Respondent for legal disposal through Judicial Magistrate I, Kancheepuram. Now that a claim has been made by the legal heir of the person from whom the properties in question have been seized, it would be proper on the part of the 3rd Respondent to issue notice to them and conduct an enquiry and pass appropriate orders.

21.Accordingly, these Criminal Appeal are disposed of with the following directions:-

i.The Forest Department shall serve notice on the Appellant, who is the legal heir of K.G.Krishnasamy, who was A5, in SC.No.94 of 2005, from whom the properties in question were seized and thereafter, shall conduct an enquiry as contemplated under the Tamil Nadu Forest Act and the Rules framed thereunder and pass appropriate orders, for disposal of the properties in question, in accordance with law and on merits, within a period of six months from the date of receipt of a copy of this order.

ii.From 01.09.2019, onwards the rental charges for keeping the properties in question in the Godown of PWD at Kancheepuram shall be borne by the Forest Department.

Iii.Till the completion of the enquiry by the Forest Department and till the passing of the final order, the properties shall not be disposed of by the 3rd Respondent.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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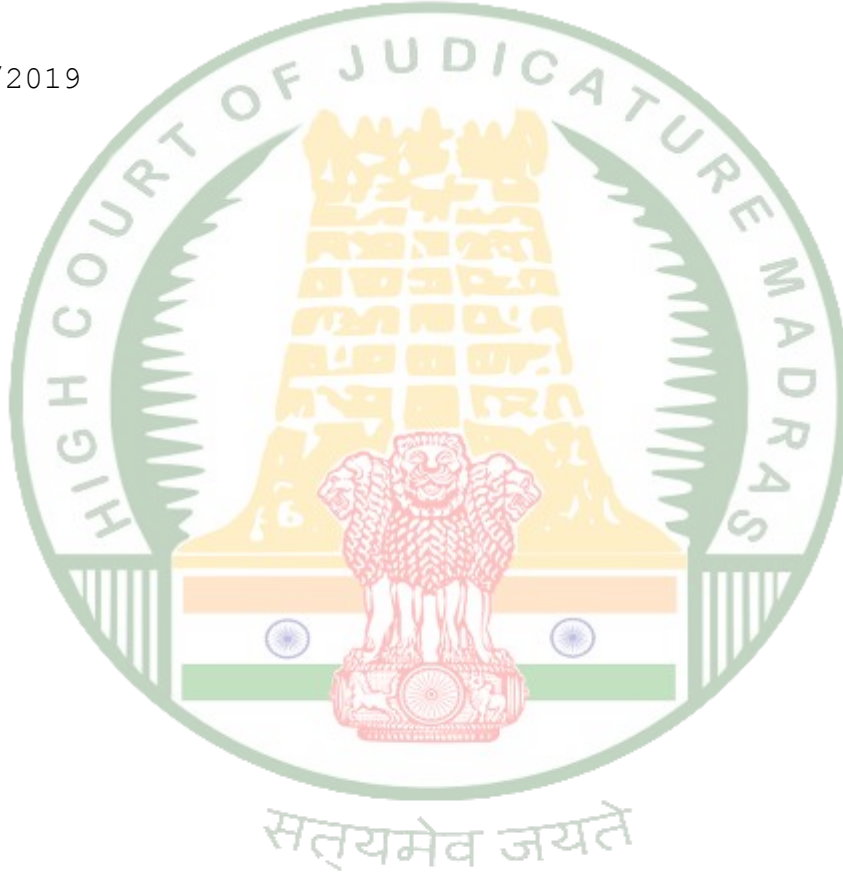
- 1.The Public Prosecutor, High Court, Madras
- 2.The Inspector of Police, Vishnu Kanchi Police, Kancheepuram, Tamil Nadu
- 3.The Inspector of Police, CBCID, Kancheepuram
- 4.The District Forest Officer, Chengalpet, Kancheepuram

7.The Section Officer,
Criminal Section, High Court, Madras.

+1cc to the Special Government Pleader sr.74219
+1cc to Mr.T.R.Ravi, Advocate sr.74157
+1cc to the Public Prosecutor, pondicherry Sr.74923
+1cc to Mr.T.R.Ravi, Advocate Sr.74158 [23/10/2019]

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