

Bail Slip

The Petitioners/Accused viz., R.Shanmugam, R.Murugan were directed to be released on bail as per order of this court dated 23.2.2016 and made in Crl.MP.No.2045/2016 in Crl.RC.No.308/2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.R.C.No.308 of 2016

1.R.Shanmugam

2.R.Murugan

... Petitioner/Accused

Vs.

State rep by
The Forest Range Officer,
Polur Range,
Thiruvannamalai District.
(STOR No.35/1997)

... Respondent/Complainant

PRAYER: This Criminal Revision Petition has been filed, under Section 397 and 401 of Cr.P.C., seeking to call for the records pertaining to the case in C.C.No.537/1998, dated 01.06.2009, passed by the Special Judicial Magistrate Court, Tirupattur, Vellore District, which was confirmed and modify the sentence made in Crl.A.No.42/2009, dated 13.04.2010, by the learned Principal Sessions Judge, Vellore and set aside the same.

For Petitioner : Mr.S.Vijaya Ganesh

For Respondent : Mr.M.Mohamed Riyaz, APP

ORDER

1.This Criminal Revision Petition has been filed, seeking to set aside the judgment of conviction and sentence made in C.C.No.537/1998, dated 01.06.2009, by the Special Judicial magistrate Court, Tirupattur, Vellore District, which was modified in Crl.A.No.42/2009, by the judgment dated 13.04.2010, passed by the learned Principal Sessions Judge, Vellore.

- 2.The brief facts of the case are that the petitioner along with two other persons were arrayed as the accused in C.C.No.537/1998, on the file of the learned Special Judicial Magistrate, Tirupattur, Vellore District. The accused persons were tried for the offences under Section 21 (d) (e) and (f) and Section 35 (A) r/w (E) of Tamil Nadu Forest Act and after trial, they were convicted for the offence under Section 36(A) r/w (E) of the Tamil Nadu Forest Act and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.7,500/- failing which, to undergo simple imprisonment for two months. On appeal, the conviction of the Trial Court passed against the accused was confirmed by the the Appellate Court, however, the sentence alone was modified, directing the accused to undergo rigorous imprisonment for one year and also to pay a fine of Rs.3,000/- each, in default to undergo simple imprisonment for two months for the offence under Section 36 (A) r/w (E) of the Tamil Nadu Forest Act. As against the same, the present criminal revision has been filed by the petitioners/A2 and A3.
- 3.The case of the prosecution is that on 05.08.1997, under the leadership of P.W.1/Devarajan, forester, P.W.2 to P.W.6 were went on routine raid inside the forest area and when they were conducting inspection on Valasamalai Reserve Forest near Mullakadu, they have seen the accused having trespassed in to the forest and damaged the forest produce viz., Sandal Wood and at the time of inspection, the accused were found to be in possession of 551.00 Kgms. of Sandal Wood and its value was to be around Rs.2,47,950/-. The accused persons have voluntarily given confession, relating to the occurrence and based on such confession, the case in STOR. No.32/1997, came to be registered against three persons including the petitioners/A2 & A3 on the same day. The officials of the respondent have prepared Form-H, which was marked as Ex.P.1 as well as Form -95, which was marked as Ex.P.6 and immediately, after the occurrence, the seized Sandal Wood was produced before the Forest Officer along with Form-H and Form-95, which was prepared by the respondent and the Forest Officer has also acknowledged the same. The seized Sandal Wood was also assigned with identity and the accused were sent to the Judicial Magistrate Court, Tirupattur for remanding to the judicial custody. The respondent, after completion of investigation, had filed the charge sheet against the accused for the offences under Section 21 (d) (e) (f) and under Sections 35 and 36 (a) r/w (E) of the Tamil Nadu Forest Act.
- 4.After examination of witnesses, the accused persons were questioned in respect of charges framed for the offence as

stated above and the petitioners/accused persons have denied the charges and they sought to be tried.

5. On the side of the prosecution, six witnesses were examined as P.W.1 to P.W.7 and nine exhibits were marked as Ex.P1 to Ex.P9. The Form-H was marked as Ex.P1 and P.W.1, recorded the confession statement of the accused and the said confession statements were marked as Ex.P2, Ex.P4 and Ex.P6. The xerox copy of the Government Order regarding the area as a Reserved Forest is marked as Ex.P7, the Property Namuna was marked as Ex.P.6, Form-A is Ex.P8 and the list of property is Ex.P9.

6. When the petitioners/accused persons were questioned under Section 313 (1) (b) of Cr.P.C., regarding incriminating evidence, they pleaded not guilty. On the side of the defence no witness has been examined.

7. After analysing the entire records and after hearing the arguments on both sides, the Trial Judge, acquitted the petitioners/accused persons for the offences under Section 21 (d) (e) (f) and found them guilty and convicted and sentenced the petitioners/accused persons for the offence under Section 36 (a) r/w (e) of the Tamil Nadu Forest Act as stated above. On appeal, the conviction of the Trial Court was confirmed however, the Appellate Court modified the sentence from two years rigorous imprisonment to one year rigorous imprisonment and also reduced the fine amount from Rs.7,500/- to Rs.3,000/- each.

8. Assailing the judgments of the Courts below, Mr.S.Vijaya Ganesh, learned counsel appearing for the petitioners/accused persons would vehemently contend that the prosecution has failed to prove that the occurrence took place in the Reserved Forest Area and that no evidence has been let in by the prosecution to prove that the occurrence had happened inside the forest area and that the alleged confession statements had been disclosed the seizure of the Sandal Wood seized from them. He would further submit that no independent witnesses have been examined and that the driver who was stated to have driven the vehicle has not been examined on the side of the prosecution, which is fatal to the case of the prosecution. In the alternative he would plead that the occurrence had happened during the year 1997 and that more than 21 years of lapsed and thereby, would pray for undertaking the provisions under the provisions of Offenders Act.

9. The learned Additional Public Prosecutor would submit that the first accused in this case viz., Dhakshnamoorthy had filed a

criminal revision, challenging the orders passed by the Courts below in Crl.R.C.1098/2010 and this Court after carefully analysing the entire evidence and materials on record has confirmed the orders of the Courts below, confirming the conviction and sentence. He would submit that there is a specific provision under the Tamil Nadu Forest Act viz., Section 56 (d) of the Tamil Nadu Forest Act, which says that whenever any person is accused of any offence in respect of any scheduled timber, it shall be presumed that until the contrary is proved, such person have committed such offence. In this case, the petitioners along with other accused were found inside the reserved forest area in possession of prohibited scheduled timber, weighting of 551.00Kgms of Sandal Wood, which is valued at Rs.2,47,950/- and the prosecution by letting in evidence and by marking the Government Order/Ex.P7 has proved that the accused had committed the offence and that the petitioners/accused persons have not let in evidence to rebut the presumption under the Forest Act. Further, another Bench of this Court in Crl.R.C.No.1098 of 2010 filed by the co-accused who was similarly placed had found that the prosecution has proved the case beyond all reasonable doubt and dismissed the revision and convicted the co-accused. He would further submit that this Court has also taken into consideration, the grounds raised by the similarly placed accused and having not convicted with the grounds raised has confirmed the conviction and that the plea invoking the provisions of the Probation of Offenders Act was raised by the co-accused and this Court refused to invoke the same in favour of the accused. Moreover, he would submit that it is the forest offence where the petitioners were found in possession of 551.00Kgms of Sandal Wood and this Court has also given valid reasoning for not invoking the provisions of Offenders Act.

10.This Court heard the submissions made by the learned counsel for the Petitioners/Accused persons and the learned Additional Public Prosecutor appearing for the Respondent/State and perused the entire materials on record.

11.After carefully analysing the evidence on record and also taking into consideration, Section 56 of the Tamil Nadu Forest Act, the Trial Court had found that the prosecution by cogent evidence has proved that the petitioner along with the other accused were found in possession of 551.00Kgms of Sandal Wood, which is a scheduled timber and having found that the prosecution has not rebutted the presumption had found the accused guilty and convicted them. This Court, in Crl.R.C.No.1098/2010, in respect of the co-accused on analysis of the evidence on record and after hearing the legal grounds

raised by the petitioners and co-accused had dismissed the petition by order dated 20.07.2015, confirming the conviction and sentence passed by the Appellate Court. Further, this Court also finding that though Provisions of the Offenders Act is not specifically excluded in the Tamil Nadu Forest Act, taking into consideration, the quantity of Sandal Wood, seized from the petitioners/accused persons had not inclined to show the indulgence to the accused persons by accepting the provisions of the Offenders Act. This petitioners are also similarly placed that of the other petitioner. This Court having gone through the materials on record and also having gone through the orders of this Court in CrI.R.C.No.1098/2010, do not find any infirmity in the order passed by the Courts below.

12. In view of the above, the Criminal Revision Petition is dismissed. Accordingly, the conviction and sentence imposed by the Courts below is confirmed. The Bail Bond if any executed by the petitioner/A2 & A3 shall stand cancelled. The Trial Court shall take steps to secure the petitioners/A2 & A3 to commit them to prison for undergoing the remaining period of sentence if any.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1. The Special Judicial Magistrate Court,
Tirupattur, Vellore District.

2. The Principal Sessions Judge,
Vellore.

3. The Forest Range Officer,
Polur Range, Thiruvannamalai District.

4. The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.S.Vijayaganesh, Advocate SR.98149

CrI.RC.No.308 of 2016

MP(CO)
CB(30/01/2020)
CB(28/02/2020)