

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

CRIMINAL APPEAL NO. 595 OF 2008.

The State of Maharashtra,
through Range Forest Officer,
Kharangana, Tq. Arvi,
District Wardha.Chandrapur.

... **APPELLANT.**

VERSUS

1.Smt. Kausalyabai w/o Sadashivrao Bhojane,
Aged about 55 years, Occupation
Business, resident of Morangana,
Taluq Arvi, District Wardha.

2.Sadashivrao Mahadeorao Bhojne,
Aged about 58 years, Occupation
Agriculturist, resident of Morangana,
Taluq Arvi, District Wardha.

... **RESPONDENTS.**

Ms. M.H. Deshmukh, Additional Public Prosecutor the Appellant.
None for Respondents - Served.

CORAM : VINAY JOSHI, J.

DATE : SEPTEMBER 10, 2020.

ORAL JUDGMENT :

The appellant State has challenged the judgment and

order of acquittal of respondents, delivered by the Judicial Magistrate First Class, Arvi on 21.04.2008 in Summary Criminal Case No.1056 of 2004. Both the accused were charged for the offence punishable under Section 33[1][a] of the Indian Forest Act, 1927. It was alleged that the accused have cut trees in the reserved forest area and accordingly committed an offence.

2. On the basis of report lodged by the authorities, the Crime came to be registered. After filing of the charge sheet the learned Magistrate took cognizance and recorded plea of accused on 22.09.2004. Both the accused pleaded not guilty and claimed for trial. The prosecution has examined in all two witnesses and produced seizure panchnama to substantiate leveled charge. On appreciating the evidence, the learned Magistrate came to the conclusion that the prosecution has miserably failed to establish the alleged offence, and accordingly passed the judgment and order of acquittal.

3. I have heard the learned A.P.P. for the appellant State. None appears for respondents though served.

4. The learned A.P.P. has submitted that the trial Court has committed a manifest error in appreciating the evidence of P.W.1

Range Assistant and P.W.2 Forest Guard. According to her, huge quantity of cut wood was seized under panchnama, but, it was not considered. Moreover, it is submitted that the accused also cut trees from their field without obtaining prior permission from the Authority.

5. The prosecution has examined only two witnesses to establish the charge. P.W.1 Kisan Deshmukh, was working as Range Assistant in the Forest Department. He has stated that on 17.10.2001, they were on their patrolling duty. While they were performing their duty, they came across that in the forest area namely - compartment 192/B, they saw large quantity of teak wood cut trees. The said forest land was adjacent to the field of respondents. They also noted that certain quantity of teak wood was also cut by the accused from their own land/field without seeking permission. Accordingly the Range Forest Officer, Shri Gajbhiye took inspection of both the premises and drew seizure panchnama on the spot itself. P.W.2- Tanba Pathade, was working as Forest Guard at the relevant time. In his presence the entire seizure was effected. He has equally deposed about noting the cut trees in the reserved forest area.

6. Admittedly, prosecution has not produced the

notification regarding declaration of forest area. The learned Trial Court in paragraph no.5 of its judgment, has rightly relied on the decision of the Hon'ble Supreme Court while holding that, unless requisite notification is produced, the offence would not be complete. Both the prosecution witnesses gave several admissions which itself has destroyed the prosecution case. It has come in their cross examination that the panchnama does not specify the exact area of reserved forest. There is no description as to what quantity of teak wood was cut from the forest area and from the field of accused. Moreover, the panchnama bears overwriting and does not bear signature of accused. There is no evidence that accused were seen while cutting the trees from reserved forest area.

7. It has come in the evidence that accused have applied to the Forest Department for seeking permission to cut teak wood, however, permission was not granted within stipulated period. It is admitted that the accused have filed Civil Suit in which the Civil Court has noted the deeming provision and accordingly issued temporary injunction against the forest department restraining them from obstructing the accused from cutting the trees.

8. The trial Court has rightly considered the essential requirement to constitute the offence punishable under Section 33

of the Forest Act and particularly absence of requisite notification under Section 30 of the Act. Moreover, the prohibitory order issued by the Civil Court would protect the act of respondents in all sense. Admittedly after issuance of injunction order, the prosecution has been lodged. Moreover, the Forest Authorities were well aware of issuance of injunction order in favour of accused.

9. Taking stock of the entire evidence, it is apparent that the view expressed by the Trial Court is most probable one. There is no convincing material to establish the leveled charge. The law is well settled that while dealing with the appeal against acquittal, the presumption of innocence would become more stronger. Unless there is perversity, the Appellate Court cannot interfere into the order of acquittal. The trial Court was well justified in holding that the prosecution has failed to establish the leveled charges. In view of above, the Criminal Appeal carries no merit, hence, it stands dismissed.

JUDGE

Rgd.