



Crl.R.C(MD)No.577 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.577 of 2016

Murugesan ... Petitioner/Appellant/Sole Accused

Vs.

The State of Tamilnadu
Rep. by Range Officer,
Azhagiyapandiapuram Range,
Through Special Prosecutor
for Forest Offences
(O.R.No.96/97-98). ...Respondent/Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records of the Judgement dated 01.07.2016 passed in C.A.No.140 of 2008 on the file of the Mahila Fast Track Court, Nagercoil confirming the judgement dated 23.10.2008 passed in C.C.No.154 of 2008 on the file of the Special Court (Forest Cases), Nagercoil and set aside the same.

For Petitioner : Mr.R.Anand

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl.Side)



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ORDER

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This petition has been filed to set aside the Judgement dated 01.07.2016 passed in C.A.No.140 of 2008 on the file of the Mahila Fast Track Court, Nagercoil confirming the judgement dated 23.10.2008 passed in C.C.No.154 of 2008 on the file of the Special Court (Forest Cases), Nagercoil.

2.The case of the prosecution is that on 24.11.1997, at about 04.00 p.m, when the respondent/Forest Department Officials and their team were in patrolling for the regular inspection, they heard some unanimous noise in the place of Azhakiyapandiyapuram Range, Veerapuli Reserve Forest, Thadikkarankonam South Beat, Pallakulam Saragam, near Keeriparai Aalangesam and found 3 persons trespassing into the Reserved Forest and they were carving the sandal logs which were illegally cut and removed by them. When the respondent and his team tried to catch them, two unknown persons escaped from the place of occurrence and the petitioner was secured by the respondent herein. He was found in possession of 18 sandal Wood Logs. They were confiscated and entered in registers concerned. After conducting enquiry, a case was registered in Forest Offence Report No.96 of 1997-98 for the offence



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under Section 20, 21(d)(e) of the Tamil Nadu Forest Act-II against the 3 persons.

3.In order to bring home the charges, the prosecution had examined P.W.1 to P.W.3 and marked documents Ex.P.1 to Ex.P.4 and On the side of the petitioner no one was examined. But, exhibits A1 and A2 were marked.

4. After considering the oral and documentary evidence, the trial court convicted the petitioner for the offence punishable under Section 21(d)(e) of the Tamil Nadu Forest Act-II and sentenced him to undergo 2 years Rigorous Imprisonment and to pay a sum of Rs.7,500/- as fine and in default to undergo 6 months Simple Imprisonment. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.140 of 2008 before the learned Mahila Fast Track Court, Nagercoil, and the same was also dismissed on 01.07.2016. Against which, the petitioner preferred the present Revision.

5.The learned counsel for the petitioner would submit that the respondent recovered 18 Sandal Wood Logs from the petitioner and also recovered a Saw and a knife without handle. They were produced before



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the learned Judicial Magistrate, Boothapandi under Form-95. However, the properties which were allegedly recovered from the petitioner were not placed before the Trial Court. Without any material object, the Trial Court found him guilty for the offence under Section 21(d)(e) of the Tamil Nadu Forest Act-II. The respondent also failed to prove that the place of occurrence is a Reserve Forest Area. As per provision, any trespass into the Reserve Forest Area, will amount to commission of offence under Section 21(d)(e) of the Tamil Nadu Forest Act-II. However, the alleged place is not a Reserve Forest Area. It is a Rubber Forest. The respondent also failed to follow the procedure as contemplate under Section 44 Tamil Nadu Forest Act. In support of his contention, he relied upon a judgment of this Court in the case of **State of Public Prosecutor Vs Muthu Gounder** reported in **1983 LW (Cri) 148**.

6.The learned Government Advocate (Crl.Side) would submit that in order to bring home the charges, the prosecution had examined P.W.1 to P.W.3 and marked exhibits 1 to 3. He would further submit that 18 Sandal Wood Logs, a small Saw and a small Knife were recovered from the accused and the same were placed before the learned Judicial Magistrate, Boothapandi under Form-95 which were marked as Ex.P.4.



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The confession statement was recorded by P.W.1 and witnessed by P.W.2 & P.W.3. Therefore, the prosecution categorically proved its case beyond any doubt and the Court below rightly convicted the petitioner under Section 21(d)(e) of the Tamil Nadu Forest Act-II and therefore, it does not require any interference.

7.Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side).

8.The petitioner is a sole accused. According to the case of the prosecution, on 24.11.1997, when the respondent and his team were in patrolling, the petitioner along with two others trespassed into the Reserved Forest Area and they were curving sandal logs. On seeing the police party, two persons fled away from the scene of occurrence. But, the petitioner was secured. From him, 18 Sandal Wood Logs, a small Saw and a small Knife without handle were recovered. Thereafter, they recorded the confession statement from the petitioner. After completion of investigation, final report was filed before the Special Court (Forest Cases), Nagercoil, and the same was taken cognizance in C.C.No.154 of 2008. After trial, the petitioner was found guilty. Hence, the Trial Court



convicted the petitioner. Against which, he preferred an appeal in C.A.No.140 of 2008 before the Mahila Fast Track Court, Nagercoil, and the same was also dismissed. It is seen that both the Courts below found him guilty and sentenced him to undergo 2 years RI and also imposed fine of Rs.7,500/-.

9.The learned counsel for the petitioner has raised 4 grounds mainly in this Revision which are as follows:-

1.Whether the non-marking of any material object which was allegedly seized from the petitioner is fatal to the case of the prosecution.

2.No independent witness was examined by the respondent though there was Rubber Forest and 1000 workers were working.

3.Whether the scene of crime is notified as Reserved Forest Area and if not notified it is fatal to the case of the prosecution.

4.Admittedly the respondent seized 18 Sandal Wood Logs, a small Saw and a small Knife without handle which were produced before the learned Judicial Magistrate, Boothapandi, under Form-95 which were marked as Ex.P.4. However, after committal, it was not marked as Material Objects by the prosecution.

10.That apart, except the petitioner, other co-accused persons were not secured by the respondents thereafter. The respondents also failed to



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submit any explanation before the Trial Court for non-production of alleged Sandal Wood Logs before the Trial Court. That apart, Section 44 of the Tamil Nadu Forest Act-II is says “*disposal on conclusion of trial for forest-offence of produce in respect of which committed. Accordingly, when the trial of any forest-offence is concluded, any timber or forest-produce in respect of which such offence has been committed shall, if it is the property of 2 [the Central or State Government] or has been confiscated, be taken possession of by or under the authority of the District-forest-officer; and in any other case may be disposed of in such manner as the Court may order*”.

11. Here, absolutely there is no evidence to show what happened to the property which was allegedly seized from the petitioner. Therefore, the respondent failed to follow the procedure as contemplated under Section 44 of the Tamil Nadu Forest Act-II. Hence, non-production of the property which have already been seized under Form-95 which was marked as Ex.P4 is fatal to the case of the prosecution.

12. It is seen from the evidence of P.W.1 that the scene of occurrence is a place of rubber collection and there were persons



working near the place of scene of occurrence even the respondent failed to examine any independent witness. On perusal of confession statement of the respondent, it reveals that the confession statement was recorded by P.W.1 and the same was witnessed by P.W.2 and P.W.3 who are none other than the Forest Officers. Therefore, the said confession statement is inadmissible in law and it cannot be reliable on the prosecution. Therefore, non-examination of independent witness in the present case is fatal to the prosecution.

13.The learned counsel for the petitioner vehemently contended that the scene of crime was identified as Reserved Forest Area. It is relevant to extract provision under Section 21(d)(e) of the Tamil Nadu Forest Act-II.

“21.Any Person Who-

d) trespassess, or pastures cattle, or permits cattle to trespass;

e) fells, girdles, marks, lops, taps, uproots or burns any tree or strips off the bark or leaves from, or otherwise damages, the same;”

14.Thus, it is clear that trespass into the Reserve Forest Area would amount to 21(d)(e) of the Tamil Nadu Forest Act. In this regard,



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the learned counsel for the petitioner relied upon the decision of this

Court in **State of Public Prosecutor Vs Muthu Gounder** reported in

1983 LW (Cri) 148. Paragraph 10 of the said order reads as under:-

“10.In this case admittedly the notification was not filed. But, it is now sought to be filed in this appeal by the learned Public Prosecutor. As the notification published in the Official Gazette is a public document the same is admitted. What is the effect of the admission of the Gazette, is the next question that has to be answered. If the Official Gazette containing the notification under the Act is produced in Court, its genuineness cannot be questioned in view of S.81 of the Evidence Act. But, then, the mere production of the Gazette in Court will not establish the ingredients of the offences with which the accused is charged. There is absolutely no proof that the offence complained of was done in a forest constituting a reserved forest. I have also held that mere production of Ex.P.3 cannot show that the respondent has committed an offence under Section 36-A of the Act. Though the Gazette is filed in this case now, there is nothing in Ex.P3 to show by whom the billets were seized and from which place they were seized P.W.2 has admitted that there is no reference in Ex.P.3 as to from whom the sandalwood pieces were seized and from which place they were seized. The order acquitting the accused is



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confirmed though not for the reasons stated by the Magistrate.”

15.Admittedly, in this case, the respondent has failed to produce any notification regarding scene of crime is Reserved Forest Area. Therefore, prosecution has failed to prove the case beyond doubt and the benefit of doubt goes in favour of the petitioner herein.

16.In the result, the Criminal Revision Case stands allowed and the judgment and conviction dated 23.10.2008 by the Special Court (Forest Cases), Nagercoil in C.C.No.154 of 2008 is hereby set aside and the petitioner is acquitted from all charges. The bail bonds executed by the petitioner also shall stand cancelled.

23.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

1. The Mahila Fast Track Court, Nagercoil.
2. The Special Court (Forest Cases), Nagercoil.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.K.ILANTHIRAIYAN, J.

dss

Order made in
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