



Crl.R.C(MD)No.51 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.51 of 2017

1.Manickam
2.Chellathurai
3.Suresh
4.Davidson

... Revision Petitioners/
Appellants/Accused Nos.1 to 4

Vs.

The State of Tamil Nadu,
Represented by Forest Range Officer,
Timber Depot,
Vadesery,
Nagercoil,
Kanyakumari District.

... Respondent/
Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the Judgment of conviction and sentence imposed in C.A.No.33 of 2009 on the file of the Special Court (Forest Offences), Nagercoil, dated 24.08.2016, confirming the Judgment in C.C.No.229 of 2008, on the file of the Special Sub court (Forest Offences), Nagercoil.

For Petitioners : Mr.L.George Paul Anto

For Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate (Crl. Side)



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ORDER

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This revision has been filed to set aside the Judgment in C.A.No.33 of 2009, on the file of the Special Court (Forest Offences), Nagercoil, dated 24.08.2016, confirming the Judgment in C.C.No.229 of 2008, on the file of the Special Sub Court (Forest Offences), Nagercoil.

2.The case of the prosecution is that on 27.08.1999 at about 03.30 p.m., near Kothalampallam on Nagercoil to Palamoor Road, Accused Nos.1 to 3 were travelled in the Tempo bearing Registration No.TN-74-D-7171, which belonged to Accused No.4, and they were found in possession of 28 pike wooden logs and 78 bags of clove leaves. After seeing the respondent, the third accused fled away from the scene of occurrence. After recording the confession statement, the respondent lodged the complaint. The same has been taken cognizance by the trial Court for the offence under Section 21(d)(e)(f) of the Tamil Nadu Forest Act and Section 35 of the Forest Act, 1968 and Rule 2 of the Tamil Nadu Timber Transit Rules.



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3.On the side of the respondent, they had examined P.W.1 to P.W.4 and marked Ex.P.1 to P.6 and also produced material objects M.O.1 and M.O.2. On the side of the petitioner, no one was examined and no documents were exhibited.

4.On perusal of the oral and documentary evidence, the trial Court found Accused Nos.1 to 3 guilty for the offence punishable under Section 21(d)(e)(f) of the Tamil Nadu Forest Act, 1968 and Rule 2 of the Tamil Nadu Timber Transit Rules and Accused No.4 for the offence punishable under Section 21(d)(e)(f) of the Tamil Nadu Forest Act, 1968 and Rule 2 of the Tamil Nadu Timber Transit Rules read with Section 109 of I.P.C and sentenced them to undergo two years Rigorous Imprisonment and imposed a fine of Rs.7,500/- each and in default to undergo two months Simple Imprisonment. Aggrieved by the same, the petitioners preferred an appeal in C.A.No.33 of 2009, on the file of the Special Court (Forest Offences), Nagercoil and the Appellate Court also dismissed the same confirming the conviction and sentence imposed by the trial Court. Hence, the present Revision.



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5.The learned counsel appearing for the petitioners would submit that the respondent did not prove the case beyond any doubt, since they have not examined any independent witnesses, though the occurrence had taken place on the road in the residential place. All the witnesses are official witnesses, and no independent witnesses were examined by the prosecution to substantiate their contention. He further submitted that no witness had spoken about the clove leaves, though as if they were found in possession by the accused and produced as material object M.O.2. According to the case of the prosecution, the fourth accused is the owner of the Tempo. Mere ownership of the Tempo is not sufficient to add the owner as an accused without any material to show he is also actively involved in the offence. Even according to the case of the prosecution, Accused Nos.1 to 3 travelled in the Tempo and after seeing the respondent and his team, the third accused escaped from the scene of the occurrence. The prosecution also failed to prove that the alleged Timber was cut down from the reserved forest area. The seized wooden logs are scheduled Timber, and it was cut down from the dead tree. If at all it is a scheduled Timber, the respondent used to mark the same and without even identifying the said mark, in which the trees were cut down, it cannot be said that the petitioners cut down those wood from the reserved forest



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area. According to the petitioners, the wooden logs were owned by the private person from whom it was transported. Therefore, the prosecution failed to prove its case beyond any doubt.

6.Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent would submit that admittedly the petitioners were found in possession of pike wooden logs numbering 28 worth about Rs.20,000/- along with 78 bags of clove leaves worth about Rs.1,000/-. All the forest officials had categorically spoken about the possession of the pike wooden logs and clove leaves. The prosecution had marked Ex.P.6 stating that the area was declared as a Reserved Forest. That apart, both the Courts below concurrently held that the petitioners were found guilty for the offence under Section 21(d)(e)(f) of the Tamil Nadu Forest Act, 1968 and Rule 2 of the Tamil Nadu Timber Transit Rules. Therefore, it does not warrant any interference by this Court and prayed for dismissal of the revision.

7.Heard the learned counsel appearing on either side and perused the materials available on record.



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8. Totally there are four accused, in which the petitioners are arraigned as Accused Nos.1 to 4. According to the case of the prosecution, on 27.08.1999 at about 03.30 p.m., Accused Nos.1 to 3 had transported 28 pike wooden logs and 78 bags of clove leaves in a Tempo bearing Registration No.TN-74-D-7171, which belonged to the fourth accused, in a hidden manner under the cover of clove leaves. On secret information, the respondent and his team inspected the vehicle and seized the wooden logs and the seizure of wooden logs was recovered from Accused Nos.1 and 2. After seeing the police team, Accused No.3 flew away from the scene of the occurrence. After recording the confession statement of Accused Nos.1 and 2, the fourth accused has been implicated as an accused, who is the owner of the Tempo. The vehicle was intercepted near Kottalampallam on Nagercoil to Palamoor road. In the said place, there are other residents and third parties are very much available. The respondent did not examine any independent witnesses. All the Forest Officials were examined as witnesses, in order to prove the seizure, confession and arrest. In order to prove that, the area in which the pike wooden logs and clove leaves were recovered from the petitioners was declared as reserved forest and marked Ex.P.6. However, the prosecution failed to identify the dead tree from where the seized wooden logs were cut down by the petitioners. The pike



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tree is a scheduled Timber. It should be marked and properly identified by the respondent in order to substantiate that the said trees were not owned by any individual and which were cut down from the reserved forest. Further, the respondent failed to identify the cut trees from the reserved forest, and they also failed to mark them in the forest. Further, no one had spoken about the clove leaves.

9. According to the case of the prosecution, under the clove leaves, the accused persons had hidden the pike wooden logs numbering 28. However, they had not spoken about the same. Based on the confession of Accused Nos.1 and 2, Accused Nos.3 and 4 were implicated as the accused and lodged the complaint. As far as the fourth accused is concerned, except the ownership of the Tempo, which was allegedly used in the crime on 27.08.1999, no other material was produced by the respondent to connect the fourth accused in this crime. As rightly pointed out by the learned counsel appearing for the petitioners, the alleged sized pike wooden log is a scheduled Timber. When it is being so, the respondent ought to have mark the same in the forest to identify the same. In the case on hand, admittedly, the respondent failed to prove that the



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wooden logs which were seized from the first accused were cut down only from the reserved forest. Therefore, the prosecution failed to prove its case beyond any doubt and the benefit of doubt goes in favour of the petitioners herein. In view of the above, the conviction and sentence imposed on the petitioners cannot be sustained and the same is liable to set aside.

10. Accordingly, the Judgment in C.A.No.33 of 2009, on the file of the Special Court (Forest Offences), Nagercoil, dated 24.08.2016, confirming the Judgment in C.C.No.229 of 2008, on the file of the Special Sub Court (Forest Offences), Nagercoil is set aside and the Criminal Revision Case is allowed. The petitioners/Accused Nos.1 to 4 are acquitted. Bail bond if any executed by the petitioners/Accused Nos.1 to 4 shall stand cancelled and a fine amount if paid is ordered to be refunded to the petitioners/Accused Nos.1 to 4 forthwith.

10.04.2023

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

- 1.The Special Court (Forest Offences),
Nagercoil.
- 2.The Special Sub court (Forest Offences),
Nagercoil.
- 3.The Forest Range Officer,
Timber Depot,
Vadesery,
Nagercoil,
Kanyakumari District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

ps

Order made in
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