

Suresh Vs. State of Kerala

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Court : Kerala

Decided On : Dec-20-2012

Judge : Honourable Mr.Justice S.S.Satheesachandran

Appellant : Suresh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE S.S. SATHEESACHANDRAN THURSDAY, THE 20TH DAY OF DECEMBER 2012 29TH AGRAHAYANA 193 CrI. MC. No. 3604 of 2012 () ----- CMP.8297/2012 of J.M.F.C.,CHITTUR PETITIONER(S): ----- SURESH, S/O. MARICKAR AMBAKUZHY, KANNANGODE KARIPODE P.O., PALAKKAD. BY ADV. SRI. M.C. JOHN COMPLAINANT(S): ----- STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM REPRESENTING FOREST RANGE OFFICER KOLLENGODE, PALAKKAD-682 031. BY SRI. M.P. MADHAVANKUTTY, SPL. GOVT. PLEADER FOR FOREST DEPARTMENT THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20-12-2012, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI. MC. No. 3604 of 2012 () APPENDIX PETITIONER'S EXHIBITS:- ANNEXURE I - COPY OF MAHAZAR DATED 08 02.2012 PREPARED BY THE GOVERNMENT. ANNEXURE II - COPY OF ORDER A3-6274/12 DATED 21 08.2012 OF THE CHIEF CONSERVATOR OF FORESTS,

PALAKKAD. ANNEXURE III - COPY OF THE APPLICATION AND THE ORDER DATED 30 10.2012 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE, CHITTOOR. ANNEXURE IV - COPY OF RELEASE MEMO DATED 07 11.2012 ISSUED BY THE JUDICIAL FIRST CLASS MAGISTRATE, CHITTOOR. RESPONDENT'S EXHIBITS:- NIL //TRUE COPY// P.A. TO JUDGE. sp S. S. SATHEESACHANDRAN, J.

----- Crl. M.C. No.3604 of 2012
----- Dated this the 20th day of December, 2012.

ORDER

Petitioner claims to be the owner of timber transported in a lorry, which was seized by Forest Officials alleging violation of provisions of the Forest Act. A report being filed before the magistrate intimating seizure with a further request made for disposal of timber by sale in public auction, learned magistrate passed an order permitting the forest officials to do so. Petitioner has filed the above petition for quashing that order exercising inherent powers of this court. That order is patently erroneous and amounts to an abuse of the process of court, is the case canvassed. Notice given, Special Government Pleader for Forest has entered appearance. Learned Special Government Pleader submits that the competent Forest Authority has taken a decision that no confiscation proceedings as contemplated under Section 61A of the Forest Act need be taken in the case since the offence involved would fall only under the provisions of the Kerala Forest Produce Transit Rules, 1975. Petitioner and the others involved in the transportation of timber can Crl. M.C. No.3604 o

2. be prosecuted only for violation of Section 3(1) of that court and that Act, confiscation of timber transported is not warranted, was the decision taken and it has been affirmed by the Chief Conservation of Forest as well. When that be so, the order passed by magistrate according sanction for sale of timber by auction cannot be sustained. However, since the proceedings are pending, release of timber can be ordered only after an enquiry over the claim of petitioner, and execution of a bond if the magistrate is satisfied that he is entitled to have interim custody of the property seized. Subject to the above observation, order passed by

the magistrate for sale of seized timber by auction is set aside. If any application is moved by petitioner for release of timber, learned magistrate shall consider that application expeditiously and pass appropriate orders at the earliest. CrI. M.C is disposed of. S. S. SATHEESACHANDRAN JUDGE sp

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