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**M.T. Joy Vs. State of Karnataka**

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**SooperKanoon Citation** : sooperkanoon.com/376229

**Court** : Karnataka

**Decided On :** Sep-09-1997

**Reported in** : 1998CriLJ1445

**Judge** : H.N. Narayan, J.

**Appeal No.** : Criminal Revision Petition No. 723 of 1995 (Against the order passed by Principal, S.J., Madikeri, D

**Appellant** : M.T. Joy

**Respondent** : State of Karnataka

**Advocate for Def.** : B.H. Satish, HCGP

**Advocate for Pet/Ap.** : M/s Hegde Associates

**Judgement** :
ORDER

1. This revision is directed against the order of the Principal Sessions Judge, Madikeri passed in Crl. A. No. 50 of 1995 dismissing the appeal filed by the petitioner.

2. The facts in brief are as follows : Forest Squad attached to D.F.O. Madikeri on receiving credible information on 31-12-1994 visited Jani Thangavva's estate at Maragodu, Hosakeri village and found a lorry bearing Reg. No. KL-7A-6084

parked there covered with tarpaulin. They searched the lorry and found 15 rose wood logs hidden under the paddy husk bags. They were seized under a mahazar as the driver or owner of the lorry failed to produce necessary licence. The property and the lorry were produced before the Authorised officer for initiating confiscation proceedings. The authorised officer upon enquiry, passed the order dt. 4-10-1995 confiscating the property and the vehicle. The order of the Authorised officer was challenged before the learned Sessions Judge in appeal. It was contented that the authorised officer has passed the impugned order in violation of natural justice. He has erred in not considering the admissions made by PWs. 1 and 2 and that he has also not considered the provisions of S. 62(3) of the Karnataka Forest Act ('the Act' for short) and that the authorised officer erred in holding that petitioner had knowledge of transporting rose wood logs in the lorry.

3. The learned Sessions Judge however has held that these contentions have no merit and therefore, dismissed the appeal. The legality and correctness of this order is challenged in this revision.

4. The learned counsel for the petitioner apart from canvassing the contentions which were raised before the learned Sessions Judge, has submitted that the rose wood logs were found in a private land and they are not the forest property and therefore, no forest offence has been committed. It is further contended that the property seized is not a Government property and therefore the authorised officer has clearly erred in initiating confiscation proceedings under S. 71-A of the Act. It is further contended that since no forest offence has been committed, the vehicle is not liable for confiscation and lastly it is submitted that the owner had no knowledge and therefore the order of confiscation is not legal.

5. Sri B. H. Satish, learned Government Pleader however has justified the orders of the Courts below.

6. The points that arise for consideration in this revision are :

1. Whether the property seized is not a Government property in which event, the Forest Officer has no power to initiate confiscation proceedings under S. 71-A of the Act ?

2. If so, whether the orders of the Courts below are not justifiable

7. Re. Point No. 1 :- The seizure of 15 rose wood logs hidden in the lorry bearing No. KL-6A-6084 at Niragidy Hosakeri village in Jani Thangavva's estate by the forest squad, is not seriously in dispute. On the request of the Authorised Officer, the R.T.O. Alopuja District, Kerala State, furnished the particulars of ownership of the lorry bearing No. KL. 6A.6084. In his report, the R.T.O. has stated that he has not allotted any such number to any lorry in the State However, in the petition filed by the petitioner for interim custody, it is stated that the vehicle was transferred from hand to hand and he entered into an agreement with one Varghese, S/o Thomas, Kunnelmane, Ulikale, Kannannur District, to purchase the said lorry and that the request was also made for change of policy in his name. It is also alleged that on 28-12-1994 he deputed his driver to bring a load of paddy from Mysore and that on 29-12-1994 he filed a complaint before the police about missing of the lorry. According to him he had no knowledge of the use of the vehicle for the purpose of transporting the rose wood billets and therefore, sought the interim custody of the said vehicle. His application was rejected by the Authorised Officer, which was questioned in appeal before the learned District Judge, Kodagu, who has also dismissed the appeal, but with a direction to expedite the confiscation proceedings. The Authorised Officer thereafter conducted an enquiry and during the course of the same, he recorded the statements of two witnesses and marked six documents. The petitioner got himself examined as D.W. 1 and got marked one document viz., the Registration Certificate. Various contentions were pleaded before the Authorised Officer which were not acceptable to him. Therefore, he dismissed the claim made by the petitioner. The petitioner unsuccessfully questioned the said order before the learned District Judge in Crl. A. No. 50 of 1995. Hence, this revision.

8. The learned counsel for the petitioner has raised some legal contentions which need careful consideration in this revision. It is submitted that the rose wood billets/logs were in fact found in a private land and they were not the property of the forest and therefore, no forest offence has been committed by the petitioner or his driver and hence, the vehicle is not liable for seizure under S. 62 of the Act. It is also canvassed that the prosecution has not proved that the alleged offence has

been committed with the knowledge of the owner and therefore, the Courts below have committed manifest illegality which are liable to be set aside. Hence, this Court is called upon to determine whether the property seized is the forest produce and whether the petitioner's driver has committed the forest offence. If so, whether the vehicle used for the said purpose is liable for confiscation.

9. Forest produce as defined in S. 2(7) of the Act reads as follows :

'Forest Produce' includes, -

(a) The following whether found in or brought from a forest or not that is to say :

timber, charcoal, caoutchoue, catechu, sandalwood, lootikat, wood oil, resin, rubber latex coco beans or pods etc. etc. .....'

A forest offence as defined in S. 2(5) of the Act means an offence punishable under this Act or under any rule made thereunder. Rule as defined in S. 2(17) of the Act means a rule made by the State Government under this Act. 'Reserved trees' as defined in S. 2(15) of the Act means teak or sagavni (Tectona grandis) black wood or bite (Dalbergia latifolia), Kino or Honne etc. etc. and such other trees as the State Government may by notification, declare to be reserved trees for purpose of this Act. 'Timber' as defined in S. 2(20) includes trees when they have fallen or have been fallen and all wood whether cut up or sawn or fashioned or hollowed out for any purpose or not.

10. The procedure for control of timber and other forest produce in transit is available in Chapter VI of the Act. Section 50(1) empowers the State authority in this regard. 'Hence, the control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest produce in transit by land or water, is vested in the State Government and it may make rules to regulate the transit of all timber and other forest produce.'

11. There is a special provision for trade and transport of black wood or bite trees and timber thereof. Section 104A of the Act provides that :

'No person other than -

(a) the State Government; or

(b) the Officers of State Government not below the rank of a Divisional Forest Officer, authorised in writing in this behalf, shall purchase or transport any black wood or bite tree (Belibergia Latifiolia) or timber thereof :

Provided that the purchase of any such tree or timber from the State Government or the aforesaid officers shall not be deemed to be a purchase in contravention of the provisions of this sub-section :

Provided further that the State Government may by order exempt any such tree or timber below such measurements as may be specified by it from time to time from the provisions of sub-sec. (1).'

Sub-section (2) provides that -

'No person shall sell or otherwise dispose of any such tree or timber to any person other than the State Government or the aforesaid officers.'

Exception provided in S. 104A(3) is only for bona fide personal use in accordance with the terms and conditions of a permit issued by such authority and in such manner as may be prescribed.

Under S. 104B, all offences under Chapter X and under S. 104A and rules made thereunder shall be cognizable.

Section 104A(8) provides for punishment with imprisonment for a term which may extend five years and with fine which may extend to ten thousand rupees, for contravention of the provisions of S. 104A.

Section 77 of the Act specifically empowers the District Magistrate or any Magistrate of the first class specially empowered in this behalf by the State Government to try any forest offence punishable with imprisonment which may extend to six months or with fine which may extend to five hundred rupees or with both.

Chapter XIVA deals with black wood or bite trees. Rule 127A of the Karnataka Forest Rules, 1969, provides for cutting, felling and sale or disposal of black wood or bite trees. Under Rule 127A(1), no person shall cut, fell, sell or transport any black wood or bite trees or timber thereof standing on any land except in accordance with the provisions of this rule. Rule 127A(2) provides that every person intending to cut or fell such trees standing on any land shall apply in Form No. 45 to the Divisional Forest Officer having jurisdiction along with the relevant documents indicating the tenure of the land, nature of its rights to the trees, consent of the owner or occupant of the land if the applicant is not the owner or occupant thereof and such other particulars as are specified in the application and may be required by the Divisional Forest Officer. Rule 127(4) provides for cutting, felling, conversion and transport of such trees shall be done under the supervision and guidance of the officer or officers of the department though the rule not applicable to such cutting or felling of bite trees required for bona fide personal use of the owner thereof upto a limit of 350 Cft. or 10 Cmtr.

12. From the provisions extracted above, it makes it very clear that even though the blackwood or bite trees are not the forest produce or the Government property, cutting, felling conversion and transport thereof is regulated by Chapter XIVA of the Karnataka Forest Rules, 1969. Contravention of the provisions of S. 104A is punishable with imprisonment for a term which may extend to five years or with fine or with both and the offence committed under the said provisions and Rules made thereunder (R. 127A) shall be cognizable.

13. The question that arises for consideration now is whether such property is liable for seizure under S. 62 of the Act and whether it is liable for confiscation under S. 71-A of the Act.

14. The provisions of S. 62 are applicable only when there is reason to believe that a forest offence has been committed in respect of any Forest produce. It is only then any Forest Officer or Police Officer may take action under Chapter IX.

Section 65 further provides that all timber or forest produce which is not the property of Government and in respect of which a forest offence has been committed and all tools boats vehicle and cattle used in committing any forest

offence shall subject to S. 71G be liable by order of the convicting Court to forfeiture to the State Government. There is a bar of jurisdiction in certain case of confiscation under S. 71G of the Act. The bar refers to the timber, ivory, firewood or charcoal belonging to the State Government or any sandalwood, together with any tool, rope, chain, boat, vehicle or cattle used in committing any offence is seized under sub-sec. (1) of S. 62, the authorised officer under S. 71A or the officer specially empowered under S. 71C or the Sessions Judge hearing an appeal under S. 71D, shall have and, notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 or in any other law for the time being in force any other officer, court, tribunal or authority shall not have, jurisdiction to make orders with regard to the custody, possession, delivery, disposal or distribution of such property. In other words, 71A comes into play only when the socalled produce enumerated in S. 71G belongs to the State Government or if it is a sandalwood and not otherwise.

15. Section 71A empowers the authorised officer to pass an order of confiscation only where a forest offence is believed to have been committed in respect of timber, ivory, firewood and charcoal which is the property of the State Government or in respect of sandalwood. Hence, the authorised officer must be satisfied that a forest offence has been committed in respect of such property enumerated in S. 71A of the Act. A combined reading of S. 62, 65, 71G and 71A leaves no doubt that a forest offence has not been committed in respect of the property of the State Government.

16. Admittedly, the property seized is not sandalwood. The material produced clearly discloses that the property in question is blackwood or bite logs. The same was seized upon the information given by the owner of the estate from where the said bite trees were cut. The accused was found transporting bite logs from a private land which was not for bona fide purpose. Therefore, the prosecution has failed to prove that the accused has committed an offence in respect of timber, ivory, firewood and charcoal which were the properties of the State Government or in respect of sandal wood. What was seized was bite or black wood. The evidence discloses that the accused was found transporting bite or black wood which were felled, from a private land which is the offence governed by S. 104-A of the Act

which is only punishable with imprisonment. The provisions of the said Act do not enable any forest authority to confiscate the vehicle as such.

In view of this fact, the vehicle used for transporting such produce is not liable for confiscation under S. 71-A of the Act though the forest authority concerned has power to confiscate the blackwood as such for contravention of the provisions regulating the said product under the Act.

17. The learned Sessions Judge and the Authorised Officer have no doubt referred to and relied upon various provisions of the Karnataka Forest Act and Rules, but they have not directed themselves to this aspect of the matter while classifying the produce and whether that produce becomes the Government property liable for confiscation under S. 71-A of the Act. Seizure of the property for contravention of certain provisions of the Karnataka Forest Act and Rules does not enable the authority in all cases to invoke the provisions of Ss. 62 and 71-A of the Act. In my opinion, they have committed this legal error while passing the impugned orders. Therefore, the orders are not justifiable.

18. In the result, this revision is allowed. The orders of Confiscation passed by the Courts below are set aside.

19. Revision allowed.

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