

Abdul Razak Vs. State of Karnataka

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Court : Karnataka

Decided On : Jan-12-2004

Reported in : 2004CriLJ3457; 2004(5)KarLJ456

Judge : K. Ramanna, J.

Acts : [Karnataka Forest Act, 1963](#) - Sections 62, 71A, 86 and 87; [Indian Penal Code \(IPC\), 1860](#) - Sections 379; Karnataka Forest Rules, 1969 - Rules 144 and 165

Appeal No. : Criminal Revision Petition No. 364 of 2002

Appellant : Abdul Razak

Respondent : State of Karnataka

Advocate for Def. : B. Belliappa, High Court Government Pleader

Advocate for Pet/Ap. : S. Mahesh, Adv. for ;R.B. Deshpande, Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

K. Ramanna, J.

1. An unsuccessful accused has filed this revision petition under Sections 397 and 401 of the Cr. P.O. against the order dated 16-1-2002 passed by the Additional Sessions Judge in Cri. A. No. 76 of 2001, whereby the learned Sessions Judge confirmed the judgment and order of conviction and sentence dated 10-9-2001 passed by the Civil Judge (Junior Division) and Judicial Magistrate First Class, N.R. Pura in C.C. No. 68 of 2001, convicting him for the offence punishable under Section 87 of the Karnataka Forest Act read with Section 379 of the IPC directing him to undergo S.I. for 3 years and also to pay a fine of Rs. 10,000/-. In default of payment of fine of Rs. 10,000/-, he shall further undergo S.I. for 6 months. Therefore, feeling aggrieved by the judgment and orders by the aforesaid Courts, he has come up with this revision petition mainly on the ground that there are no independent witnesses regarding the alleged seizure mahazar drawn by the forest officials at about 8.15 p.m. under the torchlight and vehicle light by the Department Chief at a distance of 1 or 1 1/2 kms. from the village limits. The evidence of prosecution witnesses are full of contradictions and omissions. Even though the Trial Court as well as the learned Sessions Judge wrongly believed and accepted their evidence and convicted him, which require interference at the hands of this Court.

2. The brief facts of this case are that: On 25-12-2000, the Range Forest Officer, Chikkagrahara received a credible information about transporting of sandalwood. Therefore, himself along with his staff kept a watch on Ravoor to N.R. Pura Road of Singalale Village. At about 7.30 p.m., an autorickshaw bearing No. MEL 8601 came from Ravoor side. After seeing that autorickshaw coming, the raiding party made an attempt to stop the autorickshaw. But on seeing the Forest Officers in uniform, the revision petitioner and another inmate of the said autorickshaw stopped it at a distance of 5 mts. and then started running away. The forest officials apprehended those persons and succeeded in their attempt in catching this revision petitioner. Further, other accused escaped. It is the further case of the respondent-complainant that on search, the Forest Officers found sandalwood, stumps and chips contained in gunny bags and plastic bags. On enquiry, the revision petitioner did not produce any licence or permit to transport the sandalwood stumps, billets and chips. Therefore, transport of sandalwood without possessing valid licence or permit is an offence under the provisions of Sections

86 and 87 of the Karnataka Forest Act. Therefore, they were seized under a mahazar-Ex. P. 1, Thereafter, registered a case and submitted F.I.R. After investigation, the accused 2, who was present on the day, could not be traced. Therefore, the charge-sheet has been filed against the revision petitioner for the offence under Sections 62, 86, 87 and 71-A of the Karnataka Forest Act read with Sections 144 and 165 of the Karnataka Forest Rules. So, after receipt of charge-sheet, the Trial Court furnished the copies to the revision petitioner-accused 1. After hearing the learned Counsel for the revision petitioner-accused and the A.P.P., charge for the offence under Sections 86 and 87 of the Karnataka Forest Act and under Section 379 of the IPC were framed, read over and explained to him. Since he pleaded not guilty, claimed to be tried. Therefore, the respondent-prosecution examined in all six witnesses, got marked documents at Exs. P. 1 to P. 6 with M.Os. 1 to 54 and closed its case. Thereafter, this revision petitioner was examined under Section 313 of the Cr. P.C. The defence of this revision petitioner is of total denial. After hearing arguments of both sides, after considering the oral and documentary evidence placed on record, the Trial Court convicted this revision petitioner for the offence under Section 87 of the Karnataka Forest Act read with Section 379 of the IPC but acquitted him for the offence under Section 86 of the Karnataka Forest Act. Feeling aggrieved of the said order of conviction and sentence, he preferred an appeal Cri. A. No. 76 of 2001 before the Principle Sessions Judge at Chickmagalur. Since this Cri. A. No. 76 of 2001 was assigned to the Additional Sessions Judge at Chickmagalur, that Additional Sessions Judge after reappraisal of the evidence and after considering the arguments advanced by both sides, dismissed the appeal. Hence, this revision petition.

3. Heard the arguments of the Advocate for the revision petitioner, that of the learned High Court Government Pleader for respondent-State and perused the records.

4. The learned Counsel for the revision petitioner contended that there are no independent mahazar witnesses to believe the oral testimony of the official witnesses. It is contended that the Trial Court misread the evidence even though no corroborated evidence placed on record through an independent witness and in convicting this revision petitioner. The non-examination of the independent

witnesses is a fatal to the case of the prosecution. It is further submitted that the mahazar-Ex. P. 1 said to have been prepared under the torchlight and so also under the vehicle light is highly suspicious and unbelievable and therefore, the contents of Ex. P. 1 is a created document. The alleged seizure of sandalwood chips, billets and stumps from the possession of the revision petitioner is totally incorrect and illegal. Further, it is maintained that the forest officials have no jurisdiction to investigate the offence under Section 379 of the IPC. Therefore, the report filed by the forest officials against this revision petitioner under Section 379 of the IPC and the order of conviction passed by the Trial Court is totally incorrect and illegal and liable to be set aside.

5. As against this, the learned High Court Government Pleader submitted that non-attestation of seizure mahazar by the independent witnesses, cannot be a ground to disbelieve the recovery of articles by the officers of the Forest Department. It is further submitted that the evidence of official witnesses cannot be thrown for want of corroboration. It is further maintained that the revision petitioner was apprehended and seized with sandalwood stumps, chips and billets at about 8.15 p.m. at a distance of about 1 or 1 1/2 kms. from town limits of N.R. Pura. Therefore, it is not proper to expect the forest officials to secure the independent panchas to the spot during those hours. It is not a ground to disbelieve the evidence placed on record. It is further maintained by the High Court Government Pleader that both the Trial Court and the learned Sessions Judge have rightly appreciated the evidence placed on record and convicted this revision petitioner. Accordingly, the revision petition is liable to be dismissed as devoid of any merits.

6. Having heard the arguments of both sides, the point that arises for my consideration and decision is:

'Whether the order passed by the Trial Court as well as the learned Sessions Judge is perverse, incorrect and illegal? If so, whether it calls for any interference?'

7. It is an undisputed fact that a charge-sheet came to filed against this revision petitioner and the absconding accused 2-Khadeer S/o. Syed Abdul for the offence under Sections 62, 86, 87 and 71-A of the Karnataka Forest Act read with Rules 144 and 165 of the Karnataka Forest Rules. Therefore, the contention of the

learned Counsel for the revision petitioner that the Forest Officer has no jurisdiction to investigate the case for the offence under Section 379 of the IPC does not hold water. On the other hand, the material placed on record clearly establishes that, while convicting this revision petitioner, the Trial Court by invoking the provisions of Section 87 of the Karnataka Forest Act read with Section 379 of the IPC sentenced the accused to undergo S.I. for 3 years and pay a fine of Rs. 10,000/-. In default of payment of fine, he shall undergo further S.I. for a period of 6 months.

8. I have carefully reviewed the order of conviction passed by the Trial Court and the judgment passed by the learned Sessions Judge.

9. It is an undisputed fact that this revision petitioner was the inmate of the autorickshaw which was involved in transporting sandalwood billets, chips and stumps and another inmate of the said vehicle namely, split-up accused 2 fled away and the Forest Authorities though made an attempt to apprehend him, they could not succeed. But, however they succeeded in apprehending this revision petitioner. The records indicate that when he was apprehended by P.W. 1, he has not produced any licence or permit to transport the sandalwood billets, chips and stumps. Therefore, the forest officials rightly seized the vehicle as well as sandalwood billets, chips under the mahazar-Ex. P. 4. However, there is an evidence placed on record that the officials of the Forest Department made an attempt to secure the independent panchas to draw the mahazar. It is clear from the evidence that they apprehended the revision petitioner at a distance of 1 or 1 1/2 kms. from the limits of N.R. Pura Town. This fact has been clearly dealt with by the learned Sessions Judge while dismissing the appeal filed by the revision petitioner.

10. No criminal case is free from minor contradictions and omissions. The evidence of the prosecution witnesses shows that there are some minor omissions and contradictions, which will not take away the case of the prosecution. So, after seizure of sandalwood stumps, billets, chips and autorickshaw, this revision petitioner has been produced before the jurisdictional Magistrate, N.R. Pura. The owner of the auto rikshaw not at all, either filed an application or appeared before

the Forest Officer to claim the vehicle. In fact, the forest officials produced the said vehicle before the Authorised Officer to initiate proceedings under the provisions of Section 71-A(1) of the Karnataka Forest Act. Though the Trial Court has given opportunity for this revision petitioner to adduce defence evidence on his behalf, he did not choose to do so though some suggestions were put to the prosecution witnesses by the Advocate for the revision petitioner. This revision petitioner-Abdul Razak, was taken from the house of one Ghouse and unfortunately this revision petitioner-accused has not at all made any statement in his under Section 313 of the Cr. P.C. that the officials of the Forest Department took him from the house of Mohd. Ghouse. Therefore, the contention of the learned Counsel for the revision petitioner that he was taken from the house of Ghouse is unacceptable. Therefore, the Trial Court acquitted him for the offence under Section 86 of the Karnataka Forest Act but convicted for the offence under Section 87 of the Karnataka Forest Act.

11. Therefore, viewed from any angle, I do not find any factual or legal infirmities in the impugned order under challenge passed by both the Trial Court and learned Sessions Judge.

Accordingly, the revision petition is liable to be dismissed. Hence, it is dismissed.