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The Forest Range Officer and Others Vs. P. Mohammed Ali and Others

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Court : Supreme Court of India

Decided On : May-04-1993

Reported in : AIR1994SC120; 1993(2)ALT(Cri)152; 1993(2)Crimes415(SC); JT1993(3)SC222; 1993(1)KLT886(SC); 1993(2)SCALE792; 1993Supp(3)SCC627; [1993]3SCR497

Judge : K. Ramaswamy and; R.M. Sahai, JJ.

Acts : Kerala Forest Act, 1961 - Sections 2 and 51(1); Forest Conservation Act, 1980; Karnataka Forest Act, 1963; Indian Penal Code (IPC), 1860 - Sections 21; Prevention of Corruption Act, 1947; Rajasthan Agricultural Produce Marketing Act, 1961; Code of Criminal Procedure (CrPC) - Sections 482

Appeal No. : Criminal Appeals Nos. 420-22 and 423 of 1993 (arising out of S.L.P. (Cri.) Nos. 2827-29 of 1992 and

Appellant : The Forest Range Officer and Others;khushboo Enterprises

Respondent : P. Mohammed Ali and Others;forest Range Officer and Others

Judgement :
ORDER

K. Ramaswamy, J.

1. Special Leave granted.

2. Untrammeled by questions of fact the learned Senior counsel on both sides neatly presented question of law whether 'sandalwood oil' is forest produce within the meaning of Section 2(f)(I) of the Kerala Forest Act, 1961 for short 'the Act'. When proceedings, were laid under Section 51(1) of the Act against the respondents in Special Leave Petition (Crl.) Nos.27-29 of 1992, they questioned the jurisdiction of the court in C.C. Nos. 145 and 148 of 1988. Eschewing delineation of intermediary proceedings went on from the start of prosecution, the High Court in exercise of its power under Section 482 of the Cr PC, 1973 for short 'the Code' by order dated August 31, 1992, reported in Mohammed Ali v. Forest Range Officer 1992 (2) KLT 502 quashed the complaint holding that Sandal Wood Oil is not 'wood oil' as defined in Section 2(f)(i) of the Act. So it is not a forest produce. Thus these appeals by special leave. When same question subsequently arose, other learned Single Judge doubting the correctness of aforesaid judgment referred the matter to the division bench which by order dated December 15, 1992, reported in Khushboo Enterprises v. Forest Range Officer 1993 (1) KLT 91 held that Sandalwood Oil is a forest produce within the meaning of Section 2(f)(I) of the Act. Thus the appeal in the other case.

3. The Forest Conservation Act, 1980 aims to prevent depleting forests, conservation thereof and protection of wild life in the country to maintain ecological bafance. The State Acts regulate preservation of forest and forest produce to supplement the Central Act. The Act prescribes produce for Preservation of the forest and regulates possession of the forest produce, falling of trees in the forest area and removal from the forest or reserved forest area by transit permits etc. When Sandalwood Oil either was found in transit or in possession of the manufacturers, it was seized in the respective cases and laid the complaints under Section 51(1) for contravention thereof. As said earlier the jurisdictional question was raised on the premise that Sandal Wood Oil is not a wood oil as defined under Section 2(f)(I) of the Act.

4. The question, therefore, emerges whether Sandalwood Oil is a wood oil. Section 2(f) defines forest produce thus:

Section 2(1) 'forest produce' includes:

(i) the following whether found in or brought from, a forest or not, that is to say- timber, charcoal, wood-oil, gum, resin, natural varnish, bark, lac, fibres and roots of sandalwood and resewood; and

(ii) the following when found in or brought from a forest, that is to say-

a) trees and leaves, flowers and fruits and all other parts or produce not here-in-before mentioned, of trees;

b) plants not being trees (including grass, creepers, reeds and moss and all parts or produce of such plants;

c) silk cocoons, honey and wax; and

d) peat, surface soil, rock and minerals (including limestone, laterite), mineral oils and all products of mines or quarries.

5. A reading thereof do indicate that the forest produce whether found in or brought from a forest or not is a forest produce which include, that is to say, the enumerated items in Clauses I and II 'wood-oil' is one of the enumerated items as well as roots of sandalwood and rosewood. The contention of Sri G. Ramaswami, the learned Senior counsel for the accused is that technical Dictionaries, Botanical Text Books and expert opinion would bring out a demonstrable distinction between wood oil and sandalwood oil. The wood oil is a natural produce of the forest directly derived as an exudation from living trees in the forest belonging to the family of the Dipterocarpucoae trees while sandal wood oil is a bye product from sandalwood (Santalum Album) by industrial process. Wood oil is produced by making a hole on the trunk of the living tree commonly known as 'oil trees' or 'wood oil trees'. This family of trees are variously known in different parts of south India but they relate to Dipterocarpucoae family. Wood oil is gathered by heating the hole in the trunk to induce exudation of the oleicresin from the tree and commercially dealt with as wood oil which is a cheap substance in the commercial world used solely for the purpose of painting planks of wood or wooden vessels floating in the sea. The physiochemical properties of wood oil are distinct and different from other oil. Sandal wood oil would be produced only at factory level

and that too by mechanised process utilising the heart wood and roots of sandal wood trees removed from the forest as a raw material. Sandal wood oil is having very high commercial value and it is mainly used in manufacturing perfumery and cosmetic items of different types and grades. The production of sandal wood oil is being carried out as industry, either by licence by the individuals or the State Government as its monopoly like Karnataka State, in a larger scale or as a small scale business. It is further contended that the meaning of the word 'wood oil' defined in Section 2(f)(I) must receive its colour from its context and connotation. When the legislature used the word 'that is to say' the wood oil and other natural growth referred to in the definition it would only mean natural bye-product directly drawn from the trees. The Learned Single Judge had rightly construed the meaning of the word 'wood-oil' and held that sandal wood-oil being the bye-product derived commercially manufacturing process is not wood oil. The division bench committed manifest error in its construction of the word 'wood-oil' to include sandal wood oil. Sri Krishna Murty lyer, the learned Senior counsel for the respondents, on the other hand, refuted the contention arguing that inclusive definition of forest produce must receive extended meaning. It must also be construed in the context in which it is used and the purpose the Act seeks to serve and the family to which sandal wood oil belongs being an essential oil would include wood oil. The expression wood-oil being a technical and part of inclusive definition has to be construed in its technical sense and in an exhaustive manner. It cannot be restricted in a narrow circumference as was done by the learned Single Judge so as to defeat the object and purpose of the act. Extraction of sandal wood oil even by mechanised process would nonetheless be a wood oil. He laid emphasis on the word 'timber' defined in Section 2(k) which include 'Sandal wood 'being a forest produce the oil extracted therefrom would also be within the meaning of the word 'wood-oil'. The restricted meaning canvassed by the counsel would defeat the purpose of the Act and the literal interpretation giving narrow meaning to the word 'wood-oil' should be excluded.

6. Ex-fade the argument of Sri Ramaswarni backed by material, though is alluring, deeper probe denied its acceptance. Undoubtedly, the Karnataka Forest Act, 1963 incorporated in its definition of forest produce Sandalwood oil after the word 'wood oil' and the legislature in Andhra Pradesh and Tamilnadu, like the Act, do not

specifically incorporate Sandalwood oil in the definition of forest produce. From this could it he concluded, if it be otherwise interpretable, that wood oil would not include Sandalwood oil as well. Undoubtedly Stedman's Medical Dictionary (23rd Edition) defined at page 1576, wood oil as gurjan balsam and gurjan balsam defined at p. 156 to mean wood oil - oleo-resin from Dipterocarpus alatus (family Dipterocarpuceae), - a tree of India and other regions of southern Asia. Similar meaning was given in Concise Chemical and Technical Dictionary cited by H. Bennett (Fourth Edition) at page 1217; Scientific Treatises on the subject by Ernest Guenther in Volume 6; Edward Balfour in his 'Cyclopaedia of India' and of Eastern and Southern Asia; R.N. Khori in his 'Materia Medical of India and their Therapeutics' and 'Pharmacographia Indica' by William Dymock defined wood oil in the same strain. All these technical literatures were concerned in finding out physiochemical properties contained in wood oil and the source from which they are drawn for use in industrial purposes. The literal interpretation given therein if given acceptance would lead to manifest frustration of the purpose of the Act. In its interpretation we have to keep at the back of our mind the purpose which the Act and the Parent Act (Forest Conservation Act) seek to subserve, J.F. Dastru equally in his 'Medical Plants of India and Pakistan' tread into the same path and given construction to wood oil in the context of its exudation obtained from the trunk of the trees belonging to the family of Dipterocarpacoae as an oleo-resin or gurjan balsam. There would be no quarrel on that behalf. It must be noted in this context that several types of essential oils in India, the important being Sandalwood oil, agar-wood oil, deodar oil and pine oil, apart from aloeresin and wood oil derived from exudation from living trees in the forest area. These essential oils are obtained from any of forest wood. Sandalwood as observed by the High Court is forest produce. Even its roots thereof are also included as forest produce. They are also timber within the meaning of Section 2(k) of the Act. The purpose of the Act is to conserve forest wealth which is very clear for preservation to maintain ecology. Forest produce defined under Section 2(f) is an inclusive definition. It is settled law that the word 'include' is generally used as a word of extension. When used in an interpretation clause, it seeks to enlarge the meaning of the words or phrases occuring in the body of the statute. Craies on Statute Law Seventh Edition at p.64 stated the construction to be adopted to the meanings of

the words and phrases that 'The cardinal rule for the construction of Acts of Parliament is that the should be construed according to the intention expressed in the Acts themselves. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the law giver'. At p.214 it is stated that an interpretation clause which extends the meaning of a word does not take away its ordinary meaning. An interpretation clause of the inclusive definition is not meant to prevent the word receiving its ordinary, popular and natural sense whenever that word that word that would be properly applicable, but to enable the word as used in the Act, when there is nothing in the context or the subject matter to the contrary, to be applied to some things to which it would not ordinarily be applicable- An interpretation clause should be based for the purpose of interpreting words which are ambiguous or equivocal, and not so as to disturb the meaning of such as are plain. At p.216 it is stated that another important rule with regard to the effect of an interpretation clause is, that an interpretation clause is not to be taken as substituting one set of words for another, or as strictly defining what the meaning of the term must be under all circumstances, but rather as declaring what may be comprehended within the term where the, circumstances require that it should be so construed.

7. this Court in Babu Manmohan Das Shah and Ors. v. Bishun Das : [1967]1SCR836 adopting the ordinary rule of construction stated that 'the provisions of a statute must be construed in accordance with the language used therein unless there are compelling reasons such as where the literal construction would reduce the Act to absurdity or prevent manifest legislative purpose from being carried out'. The question therein was the interpretation of the phrase 'materially altered the accommodation or is likely substantially to diminish its value' in the construction to a shop. In that context this Court laid that cardinal principle of statutory obstruction referred to hereinbefore would apply. In State of Madhya Pradesh v. M.V. Narasimhan : (1975) 2 SCR 377 the definition of 'public servant' in Section 21 I.P.C. was amended and Clause 12 thereof was brought on statute. The Prevention of Corruption Act, 1947 created its own provisions as specific offences of criminal misconduct which is different from the offence of bribery

defined in the Indian Penal Code. When similar definition was not given under the P.C. Act, 1947 the contention was raised that the respondent cannot be prosecuted not being a public servant under the P.C. Act. this Court while holding that definition of public servant was incorporated in P.C. Act by necessary implication of public servant defined in Clause 12 of Section 21 I.P.C. and held that P.C. Act is supplemental to I.P.C. and that, therefore, both would deal with the same offence. Accordingly, the respondent was held to be public servant coming within the definition of P.C. Act. this Court adopted the doctrine of purposive interpretation to prevent corruption, a penal offence. In Municipal Corporation of Greater Bombay v. Indian Oil Corporation : AIR 1991 SC686 , this Court adopted purposive construction in the definition of the word 'building' for the purpose of levy of property tax under the Bombay Municipal Corporation Act to include oil storage tanks to be 'building' and held that the language of a statutory provision is not static vehicle of ideas and concepts and as ideas and concepts change, as they are bound to do in any country like ours with the establishment of a democratic structure based on egalitarian values, the meaning and content of the statutory provision undergo a change. The law does not operate in a vacuum. It cannot be interpreted without taking into account the social, economic and political setting in which it is intended to operate. The Judge has to inject flesh and blood in the dry skeleton provided by the legislature and invest it with a meaning which will harmonize the law with the prevailing concepts and values and make it an effective instrument for delivering justice.

8. The word include in the definition under Section 2(f) would show that it did not intend to exclude what was ordinarily and in common parlance be spoken of wood oil. The expression being technical and being part of an inclusive definition has to be construed in its technical sense but in an exhaustive manner, it cannot be restricted in such a manner so as to defeat the principle object and purpose of the Act. The process by which the oil is extracted is not decisive as oil may be extracted by natural process of exudation or it may be extracted by subjecting to chemical or mechanical process and Sandalwood (Santalum Album) are cut into pieces. Its heart wood and roots of Sandalwood trees removed from the forest are used as a raw material at a factory level that too by mechanised process to extract sandalwood oil. The purpose for which the oil is used is not decisive. Therefore,

the word wood oil used in the Act will require purposive interpretation drawing the context in which the words are used and its meaning will have to he discovered having regard to the intention and object which legislature seeks to subserve. The restricted meaning sought to put up by the accused would frustrate the object and the literal interpretation would defeat the meaning. The legislature does not intend to restrict the word wood oil nor we find any compelling circumstances in the Act to give restricted meaning that only oil derived from Dipterocarpus trees to be wood oil as contended for the accused and found acceptance to the learned Single Judge. The purposive interpretation would aid conservation of sandal wood, a valuable forest wealth, prevent illicit falling and transportation of them and makes the manufacturers of sandalwood oil accountable to the possession of sandalwood trees or chips or roots etc. Incorporation of sandalwood oil abundentecatela in Karnataka Act and absence thereof in sister Acts operating in South India does not detract from giving its due meaning. The expert opinion is only an opinion evidence on either side and does not aid us in interpretation. this Court in Aditya Mills v. Union of India : 1988(37)ELT471(SC) , did not adopt the dictionary meaning as it may be to some extent delusive guide to interpret entries in Central Excise and Salt Act. In Kishan Lal v. State of Rajasthan : [1990]183ITR433(SC) to which one of us, Sahai, J. was a member, this Court was to consider the word 'Sugar' whether under Rajasthan Agricultural Produce Marketing Act, 1961 an agricultural produce. It was contended that the Khandsari Sugar was not an agricultural produce. Repelling that contention, this Court held that the word agricultural produce include all produce whether agricultural, horticultural, animal husband or otherwise as specified in the schedule. The legislative power to add or include and define a word even artificially, apart, the definition which is not exhaustive but inclusive neither exclude any item produced in mills or factories nor it confines its width to produce from soil. If that be the construction then all items of animal husbandry shall stand excluded. It further overlooks the expression 'or otherwise as specified in the Schedule'. Accordingly it was held that Khandsari Sugar is an agricultural produce under that Act. In State of Bombay and Ors. v. The Hospital Mazdoor Sabha and Ors. : (1960)ILLJ251SC , this Court adopted purposive approach in interpreting the word 'industry' in Section 2(j) of the Industrial Disputes Act, and held that the Legislature in defining the word 'industry'

in Section 2(j) of the Act deliberately used term of wide import in its first clause and referring to several other industries in the second in an inclusive way obviously denoting extension. The conventional meaning attributed to trade. or business was eschewed even in the absence of profit motive. It was held that hospital was an industry. Therefore, the ratio, far from helping the accused, is consistent with the view we have expressed above. In South Gujarat Roofing Tiles Manufacturers Association and Anr. v. State of Gujarat and Anr. : [1977]1SCR878 , the inclusive definition was construed in the context of the explanation given to Entry 22. It was held, therefore, that the word 'pottery' does not include tiles industry for the purpose of Minimum Wages Act. The ration therein renders little assistance to the accused. In Rathi Khandsari Udyog and Ors. v. State of U.P. and Ors. : [1985]2SCR547 , this Court held that the words not defined may be construed in the popular sense in which it is being commonly used in commercial parlance. The ratio is not apposite to the fact situation. Similarly the construction placing reliance on the passage at p.164 of Craies on Statute Law that the word is to be construed in the sense in which it is being understood in trade, business or transaction known to the trade is also inapplicable to the factual context. In Fatesang Gimba Vasava and Ors. v. State of Gujarat and Ors. : AIR1987 Guj9 , the division bench construed whether bamboo would include in its ambit cut pieces in the context and the purpose the Act sought to serve the tribals in the forest area. Privilege was granted to the tribals to remove certain forest produce from forest area for sale to supplement their livelihood. When toplas, supdas and palas made out of bamboo chips were being taken out for sale, they were sought to be prosecuted. It was challenged by the tribals. In that context the division bench held that though bamboo is a forest produce, the Bamboo chips of the specified description do not fall within the definition of forest produce. Accordingly it was interpreted, from the context and purposive approach of the word 'forest produce'. Accordingly the ratio therein does not assist the accused.

9. The Andhra Pradesh High Court, relied for the accused, had not correctly laid the law in Kangundi Industrial Works, Kuppam v. The Govt of A.P. of A.P.(12) Accordingly we hold that Sandalwood oil is wood oil within the meaning of Section 2(f)(i) of the Act. Therefore it is a forest produce. Necessary conclusion is that the Trial Court has jurisdiction to proceed with the trial. It is for the Trial Court to find

whether the offence as imputed to the accused has been made out at the trial. We need express no opinion at this stage. The appeals of the State are allowed and the appeal of the accused is dismissed.

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