

Ouseph Devassi Vs. State

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Court : Kerala

Decided On : Jan-06-1958

Reported in : AIR1958Ker262; 1958CriLJ1184

Judge : Sankaran, J.

Acts : Travancore-Cochin Forest Act, 1952 - Sections 101(1) and 101(3); Travancore Forest Act, 1968 - Sections 33, 35 and 39; Travancore Timber Transit Rules - Rules 11 and 26

Appeal No. : Criminal Revn. Petn. No. 99 of 1956

Appellant : Ouseph Devassi

Respondent : State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : N.D.P. Nambooripad, Adv.

Disposition : Revision petition allowed

Judgement :

Sankaran, J.

1. This is a revision petition, filed by accused 1 and 2 in Calendar Case No. 1325/954 on the file of the Stationary Second Class Magistrate's Court at Alwaye.

There were four other accused in the case. All the six of them were prosecuted for the offences punishable under Clause (f) of Section 27 of the Travancore-Cochin Forest Act (Act III of 1952) and under Rule 11 of the Timber Transit Rules framed under the Travancore Forest Act (Act II of 1068). On 1-8-1954 the Forest Depot Officer at Varapuzha noticed two bamboo rafts being rowed down the Periyar river by accused 3 to 6 and, on suspecting that those bamboos were being unauthorisedly removed from the reserve forest, the Depot Officer seized the bamboos fastened together in the two rafts.

Accused 3 to 6 produced the passes Exts. C to C 10 before the Depot Officer to convince him that the bamboos were being transported on the authority of these passes. But the passes were found to be time-expired and hence the Depot Officer proceeded with the investigation of the case. In the course of such investigation, accused 1 and 2 produced Ext. D series of passes and contended that the bamboos in question belonged to them and were being transported under the authority of these passes. Accused 3 to 6 were employees under accused 1 and 2, entrusted with the work of transporting bamboos. The authorities of the Forest Department were not satisfied with the explanation offered by the accused and hence the prosecution was launched for the offences already mentioned against accused 1 to 6.

2. After considering the evidence adduced by the prosecution, the trial Court came to the conclusion that accused 3 to 6 were only servants under accused 1 and 2 and were merely carrying out the work entrusted by their masters and that these four accused were not guilty of any of the offences mentioned in the charge. Accordingly, accused 3 to 6 were acquitted. The trial Court further found that there is no evidence that the bamboos in question were being illegally removed from the reserve forest and that, therefore, the charge under Section 27 (f) of the Forest Act is not sustainable even as against accused 1 and 2. But these two accused were found to have acted;in contravention of Rule 11 of the Timber Transit Rules passed under the Travancore Forest Act. On the strength of that finding, the trialCourt convicted accused 1 and 2 under Section 35 of the Travancore Forest Act and sentenced each of them to pay a fine of Rs. 15/- and in default of payment of fine, to undergo simple imprisonmentfor 3 days. The bamboos seized by the

forest authorities were sold in auction and the sale price was directed to be disbursed to accused 1 and 2. They preferred an appeal to the Sessions Court at Parur against the aforesaid conviction and sentence. But that Court confirmed the trial Court's findings and dismissed the appeal. Accused 1 and 2 have therefore come up in revision, challenging the legality of the conviction recorded against them under Section 35 of the Travancore Forest Act.

3. The main point urged on behalf of the petitioners is that the lower Courts erred in invoking the aid of a repealed Act for the purpose of recording a conviction against them. They have also a further contention that they have not contravened Rule 11 of the Timber Transit Rules framed under the Travancore Forest Act of the year 1068. If the petitioners are to succeed on the first point urged by them, it may not be necessary to examine the second ground on its merits. The first ground may, therefore, be examined on the assumption that the petitioners had as a matter of fact contravened the provisions of Rule 11 of the Timber Transit Rules.

4. The Timber Transit Rules are published at pages 17 to 32 of the Supplement to the Acts and Proclamations of Travancore. As already stated, these rules were passed under the relevant sections of Act II of 1063 of Travancore. This Act itself was repealed by the Travancore-Cochin Forest Act (Act III of 1952). This repeal was effected by Sub-section (1) of Section 101 of the new Act. That Sub-section runs as follows :

'The Travancore Forest Act of 1068 (Act II of 106B) as subsequently amended and the Cochin Forest Act (Act III of 1080) as subsequently amended, are hereby repealed'.

Even though there has been such an express repeal of the Forest Acts of Travancore and Cochin, the rules passed under the repealed Acts so far as they are consistent with the new Act, were saved and retained by Sub-section (3) of Section 101, which is in the following terms :

'All rules prescribed, appointments made, powers conferred and orders issued under the enactments hereby repealed shall, so far as they are consistent with this Act, be deemed to have been respectively made, conferred and issued

hereunder".

So far as Rule 11 of the Timber Transit Rules is concerned, there is nothing in it inconsistent With the new Act and hence this rule may be deemed to be a rule passed under Section 33 of Act III of 1952 of Travancore-Cochin. This is the section which empowers the State Government to make rules to regulate the transit of timber and other forest produce. This section corresponds to Section 33 of the repealed Act II of 1068 of Travancore.

5. Rule 11 of the Timber Transit Rules does not provide for any penalty for contravening that rule. The provision for penalty is contained in Rule 26 which runs as follows :

'Whoever commits any breach or Infringement of Rules 3, 4, 5, 11, 12, 14, 15 and 16 shall be liable to punishment under Section 35 of the Forest Regulation'.

The 'Regulation' referred to in this rule is Act 11 of 1058 of Travancore, Section 35 of that Act was in the following terms :

'Whoever commits an infringement of the provisions of Section 33 (a) or the rules framed under Section 33 and Section 33 (g), shall be liable to imprisonment which may extend to one month, or fine which may extend to Rs. 200/-, or both'.

It is this section which the lower Courts have invoked for convicting accused 1 and 2 in this case for having contravened Rule 11 of the Timber Transit Rules. Since Act II of 1068 of Travancore was repealed in toto by Sub-section (1) of Section 101 of the Travancore-Cochin Forest Act (Act III of 1952), it is obvious that Section 35 of the repealed Act could no longer be invoked for any purpose. It is wrong to assume that this section is alive for the purpose of Rule 26 of the Timber Transit Rules even after the repeal of the Act as a whole. The mere fact that some of the rules passed under that Act have been kept alive by virtue of the provision contained in Sub-section (3) of Section 101 of the new Act. cannot in any way support or justify such a position.

It has to be noticed that only such of the rules as are consistent with the new Act are saved by Sub-section (3) of Section 101. Rule 26 of the Timber Transit Rules

is clearly inconsistent with the new Act because that rule proceeds on the assumption that Section 35 of the Travancore Forest Act of 1068 is in force while, as a matter of fact, that section has gone out of the statute book with the repeal of that Act. When the new Act was passed the legislature did not think it necessary to retain in the new Act a section corresponding to Section 35 of the repealed Act. On the other hand, the legislature appears to have thought that the penalties for contravention of the Timber Transit Rules may be provided for in the rules to be passed under the new Act. Section 38 of that Act empowered the State Government to make rules to regulate the transit of timber and other forest produce and Section 39 of the new Act states that:

'The Government may by such rules Prescribe as penalties for contravention thereof, imprisonment for a term which may extend to 6 months, or fine which may extend to Rs. 500 or both'.

It is not for the Court to examine the reason why the legislature in its wisdom thought that the new Act need not contain a section like Section 35 of the old Act. But it is sufficient that provision for penalties is made in the rules to be framed under the Act. For certain other matters penalties have been provided for in the new Act itself. Section 40 is one such section. Sub-section (1) of that section states that :

'The holder of every pass issued under the Rules framed under Section 38 shall, while such timber or forest produce is in transit, be bound to produce the same for inspection on being required to do so by any Magistrate or Forest or Police Officer'.

Sub-section (2) states that :

'Whoever infringes the provision in Sub-section (1) shall be liable to imprisonment which may extend to one month, or fine which may extend to Rs. 100, or both'.

This provision could not be invoiced in the present case for the obvious reason that the charge is not that the accused did not produce the pass for inspection by the officer concerned; the charge, on the other hand, is that the accused were

making use of time-expired passes and were transporting bamboos in excess of the limit mentioned even in such passes. The legislature in its wisdom thought that this matter need not be provided for in a section of the statute, but left it to be provided for by the rules contemplated by Sections 28 and 39.

Strangely enough, the rules contemplated by these sections do not appear to have been passed by the Government, even up to this date. Thus Section 39 stands by itself without the rules contemplated therein prescribing the penalties to be imposed for contravention of the provisions of the Timber Transit Rules. The failure to pass the required rules cannot be remedied by invoking the section of a repealed statute or of a rule framed under that Statute but which is inconsistent with the provisions of the new Act.

6. It follows, therefore, that Section 35 of Act II of 1068 of Travancore or Rule 26 of the Rules passed under that Act, cannot be invoked in the present case for recording a conviction against the accused. The lower Courts acted illegally in relying on those provisions for entering a conviction against the accused. Such conviction is unsustainable in law and has to be quashed. In this view of the matter, no other question arises for consideration in this case.

7. In the result this revision petition is allowed and the conviction entered against the petitioners --accused 1 and 2 -- under Section 35 of the Travancore Forest Act (Act II of 1068) is quashed and they are acquitted of the charge against them in this case. The fine, if realised, will be refunded to them.

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