

**State Vs. Heria Gimba**

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**Court :** Gujarat

**Decided On :** Nov-18-1960

**Reported in :** (1961)2GLR145

**Judge :** V.B. Raju, J.

**Appellant :** State

**Respondent :** Heria Gimba

**Judgement :**

**V.B. Raju, J.**

1. This is a criminal revision application by the-State for the enhancement of sentences passed on the Heria Gimba, who was convicted under Section 447, I.P. Code and Section 26(h) of the Indian Forest Act, and sentenced to pay a fine of Rs. 3/- in default S.I. for two days and to pay a fine of Rs. 2/- in default S.I. for one day respectively.

2. The learned Government Pleader for the State contends that the sentences are inadequate and should be enhanced. The Learned Counsel for the opponent, however, contends that the convictions are erroneous and should be set aside.

As regards the conviction under Section 26(h) of the Indian Forest Act the case of the prosecution was that on 3-9-59 the accused illegally entered into the land

belonging to Forest Department with an intention of cultivating and tilling the land unauthorisedly and also cultivated the same land. It was not the prosecution case that the land was reserved forest land. The learned Government Pleader concedes that it was not the case of the prosecution that the land was reserved forest land. Section 26 of the Indian Forest Act relates to reserved forests land and it provides that any person who in a reserved forest clears or breaks up any land for cultivation or any other purpose shall be guilty under Section 26(h) of the Act. As it is not the prosecution case that the land in question was reserved forest land the conviction under Section 26(h) the Indian Forest Act is bad and must be set aside.

3. As regards the conviction under Section 447 Indian Penal Code the learned Magistrate relied on the plea of guilty by the accused. He accepted the plea of guilty and convicted him on his own plea under Section 447 I.P. Code. Before a person can be convicted on his own plea of guilty the court must be satisfied that the accused had pleaded guilty and had thereby admitted all the necessary ingredients of the offence in question. Para I of the judgment of the learned Magistrate reads as follows:

4. It is alleged by the prosecution that on 3-9-59 the accused illegally entered into the land belonging to Forest Department with an intention of cultivating and tilling the land unauthorisedly and also cultivated the same land.

5. The learned Magistrate then observes that the accused in his examination under Section 342 Cri. Pro. Code admitted the commission of the offence. It is therefore clear that the learned Magistrate had not mentioned the necessary ingredients when asking the accused to make his plea. The accused was not asked whether he had committed an offence of criminal trespass. The intention necessary to constitute criminal trespass was also not put to the accused. The accused was also not told that it was the prosecution case that he had committed the offence of criminal trespass. The ingredients of an offence must be proved either by evidence or by admission by a plea of guilty. All the necessary ingredients are to be put to the accused before his plea is taken. It is clear that the necessary ingredients had not been put to the accused before his plea was taken.

His plea of guilty merely amounts to a plea of an admission that he had entered the land belonging to the Forest Department with an intention of cultivating and tilling the land unauthorisedly and that he cultivated the said Land. It does not amount to a plea of guilty to the charge of offence of criminal trespass or to an admission that all the necessary ingredients under Section 447 I.P. Code had been satisfied. The learned Magistrate was therefore wrong in convicting the accused under Section 447 I.P. Code on his own plea of guilty. His conviction under Section 447 is therefore bad.

I set aside both the convictions of the opponent and order that fine if paid by the opponent be refunded to him.

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