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Court : Rajasthan

Decided On : Jan-29-1985

Reported in : 1986WLN(UC)307

Judge : Gopal Kishan Sharma, J.

Appeal No. : S.B. Criminal Revision Petition No. 94 of 1979

Appellant : Kalya

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

Gopal Kishan Sharma, J.

1. This revision petition is preferred against the judgment of the Sessions Judge, Bundi dated 24th June, 1978 by which he dismissed the appeal of the petitioner and convicted him under Section 77 of the Rajasthan Forest Act (here in after to be called as the Act'), and sentenced him to a fine of Rs. 500/- and in default of payment of fine, to undergo 1 month's imprisonment.

2. The petitioner was prosecuted in the court of Judicial Magistrate No. 2, Bundi, for contravening sub-rules (i), (ii) & (iii) of Rule-9 of the Rajasthan Forest (Produce Transit) Rules, 1957 (here in after to be called as 'the Rules'). The learned

Magistrate after trial, found the petitioner guilty of contravening the rules which was punishable under Section 42 of the Act. He sentenced the petitioner to 2 months' RI and a fine of Rs. 200/-, and in default of payment of fine, to further undergo 1 month's RI. The petitioner then preferred an appeal before the Sessions Judge Bundi, who held that the petitioner was found guilty of contravening the rules, but, he could not be punished under Section 42 of the Act. But he punished him under Section 77 of the Act. The learned Sessions Judge reduced the sentence and punished him with a fine of Rs. 500/-. In default of payment of fine he was to undergo 1 month's simple imprisonment.

3. The learned Counsel for the petitioner argued that the learned lower courts have erred in finding the petitioner guilty of the offence, he was charged with. It was argued by him that the petitioner was prosecuted for contravening the rules which was punishable under Section 42 of the Act. But, the, learned Sessions Judge found him guilty and convicted him under Section, 77 of the Act, for which, no charge had been framed. As such, according to him, the whole trial was illegal.

4. I have considered this argument, and do not agree with the learned Counsel. From the judgment of the learned Sessions Judge, I find that similar objections were also raised by the counsel for the petitioner before him, and he conceded that the case should not be remanded for trial on this ground. The counsel there requested the court to dispose of the appeal and pass sentence as provided under Section 77 of the Act. So, before the learned Sessions Judge, this point was conceded by the learned counsel for the petitioner. On this confession, the learned Sessions Judge passed the sentence under Section 77 of the Act. I have given my thoughtful consideration to this argument. Section 41 of the Act empowers the State Government to make rules to regulate the transit of forest produce. The Rules of 1957 have been framed under Section 41 of the Act, which becomes clear from a bare reading of the rules. Sub-rules (i),(ii) & (iii) of Rule 9 read as under:

(i) The Conservator of Forest may establish such places as he thinks fit as depots to which the forests produce shall be taken.--

(a) for examination prior to the grant of a pass, or

(b) for determining the amount of money if any, payable to Government, and for the payment of any money so found to be due, or

(c) in order that any mark required by law or these rules is to be fixed thereto may be so fixed.

(ii) The Conservator of Forests shall make known from time to time by notification in official Gazette, and locally in such manner as he deems fit the names and situation of each depot in his Circle.

(iii) Each depot shall be in charge of an officer appointed by or under the orders of the Conservator of forests without whose permission no forest produce shall be brought into or removed from the depot.

The allegation against the petitioner is that he was in possession of 400 quintals of wood without permit. He could not have collected those wood without taking permission from the Conservator of the forest. He could not have removed the said wood from the depot of the Conservator of the forest without his permission. So, Sub-rules (i), (ii) & (iii) of Rule 9 were violated. Section 42 provides punishment for violation of the rules made under Section 41 of the Act. So, it is clear that the Transit Rules were made under Section 41 of the Act, and the petitioner had violated having contravened the provisions of Rule 9. I fail to understand, how the learned Sessions Judge arrived at the conclusion that Section 42 was not applicable to this case. The judgment of the learned Sessions Judge on this aspect, cannot be maintained. It has been amply proved by the prosecution that the petitioner was, found in possession of 400 quintals of wood for which he could no give any satisfactory, explanation. Whatever explanation was given by the petitioner in the lower court, was not accepted by the learned Magistrate. I have perused the entire evinedce as well as the judgment of the learned Magistrate, and find that he was correct in rejecting the plea of the petitioner. According to Section 69 of the Act, there is presumption in that the forest produce belongs to the Government. Once there is a presumption to this effect, it is the duty of the accused to prove contrary. In this case, the petitioner has failed to prove that he bonafide had purchased this wood, and was in possession of it because, he wanted to use it for cooking purpose. This plea was

not accepted by the learned Magistrate, and correctly also. Therefore, I see no reason to interfere in the finding of fact, and the conclusion arrived at by the learned Magistrate. It has been proved that the petitioner was found in possession of 400 quintals of wood without permit. The learned Magistrate correctly found the petitioner guilty of the offence under Section 42 of the Act. The learned Sessions Judge has committed error in converting the conviction of the petitioner from Section 42 of the Act to Section 77 of the Act. Therefore, I do not agree with the judgment of the learned Sessions Judge, and agree with the judgment of the learned Magistrate and hold that the petitioner who had contravened the transit rules framed under Section 41 of the Act, can be punished under Section 42 of the Act. The learned Sessions Judge has sentenced the petitioner to a fine of Rs. 500/- and in default of payment of fine, to undergo 1 month's SI. The punishment as provided under Section 42 of the Act is that of 6 months or or fine, which may extend to Rs. 500/- or both. The learned Sessions Judge while reducing the sentence awarded by the learned Magistrate, punished the petitioner to pay a fine of Rs. 500/-only, and I see no reason to enhance the said punishment.

5. Therefore, the revision petition is rejected. The conviction of the petitioner is maintained and he is sentenced to a fine of Rs. 500/- only. In default of payment of fine, he shall undergo 1 month's SI. Two months' time is granted to pay the fine, if not already paid by the petitioner.