

**Sankar and Others Etc. Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/787202](http://sooperkanoon.com/787202)

**Court :** Chennai

**Decided On :** Mar-29-1990

**Reported in :** 1991CriLJ2355

**Judge :** Padmini Jesuddurai, J.

**Appeal No. :** Criminal Revn. Cases Nos. 286, 298 and 778 of 1986 in Criminal Revn. Petns. Nos. 278, 290 and 769 of

**Appellant :** Sankar and Others Etc.

**Respondent :** The State

**Advocate for Def. :** Ms. K.C.G. Mallika, Govt. Adv.

**Advocate for Pet/Ap. :** N. Jothi and ;M. Jagadeesan, Adv.

**Judgement :**

ORDER

1. These revisions have been filed by the accused, who have been convicted by the trial Court for an offence under S. 36-A read with S. 36-E of the Tamil Nadu Forest Act (Act 5 of 1982) and sentenced to undergo imprisonment for a period of 2 years and also convicted for an offence under section 21(d) and (f) of the same Act, with no separate sentence, challenging their conviction and sentence.

2. The gravamen of the charge against the petitioners was that on 5-10-1982, they trespassed into the Manmalai Reserve Forest in Theettukkal Range, removed forest produce namely sandalwood and each petitioner was found to be in possession of sandalwood in excess of 5 kg. without a valid licence for such possession.

3. On 5-10-1982, P.W. 1 the Forest Ranger, on information, headed a mobile party to prevent sandalwood removal. At 5.30 p.m., the petitioners and 6 others, who were tried along with the petitioners, were found climbing down inside the forest area with sandalwood billets on their head. All the 12 were rounded up and it was seen that they in all, carried 64 sandalwood billets. P.W. 1 took the measurement of each billet and gave a mark to all the 64 billets. Statements under Exhibits P. 1 to P. 10 were obtained from them. All the 12, together with the 64 billets M.O. 1 series, were taken to the Forest Rest House at Sobanapuram and on weighing each of the 64 billets, it was found that together, they weighed 471.300 kgms. Under Ex. P. 11 the remand report, the accused were sent to the Judicial Magistrate for remand. Under Ex. P. 12, the Form 95 M.O. 1 series were remanded to Court. P.W. 1 gave Ex. P. 14 complaint to the concerned police. P.W. 2, the Inspector of Police registered a case in Cr. No. 149/82 under Section 21(d) and (f) of the Tamil Nadu Forest Act (hereinafter referred to as the Act). He took up investigation and after completing it, laid charge-sheet against the petitioners and the 6 others.

4. Since two among them were juvenile accused, the petitioners and the four adult accused were tried together in CC No. 423 of 1983 by the Judicial First Class Magistrate, Kulithali. On behalf of the prosecution, P.Ws. 1 and 2 were examined and Exhibits P. 1 to P. 14 were marked. The accused when questioned under Section 313(1)(b) denied complicity with any crime. They had no evidence to offer. The learned Magistrate finding all the accused guilty, convicting them and sentencing them as shown above, which had been confirmed in appeal. The aggrieved accused have filed the present revision.

5. Thiru Jothi, learned Counsel appearing for the petitioners in Cri. Revision Cases 286 and 298 of 1986 and Thiru Jagadeesan, learned Counsel for the petitioner in

Cri. Revision Case No. 778 of 1986, assailed the conviction on a short but crucial point. According to the counsel, under section 36-A possession of sandalwood exceeding 5 kg. in weight without the valid licence alone is punishable and in the instant case, the prosecution has not proved that each one of the accused carried sandalwood exceeding 5 kg. in weight and as such there could be no conviction. Neither in the oral evidence of P.W. 1 nor in any one of the documents exhibited on the side of the prosecution, it is stated that each accused carried sandalwood in excess of 5 kg.

5A. The learned Public Prosecutor sought to sustain the conviction by referring to the total weight of all the 64 sandalwood billets which the 12 accused had carried and contended that each accused must have carried more than 5 kg., in view of the fact that the total weight of 64 billets was 471.300 kg.

6. The relevant portion of S. 36-A is as follows :

'No person shall have in his possession any quantity of sandalwood in excess of five kilograms, unless under a licence granted by the District Forest Officer in that behalf of unless such sandalwood is affixed by a Forest Officer with such marks and in such manner as may be prescribed.'

It is clear therefore, that the prosecution in order to bring home the charge against each accused must prove, that each accused was found in possession of sandalwood in excess of 5 kg. If this element is lacking, there could be no conviction under the above section, since a licence is required only for possession of quantity exceeding 5 kg.

7. In the instant case, the only witness who speaks about the occurrence is P.W. 1. Nowhere has he stated the weight of sandalwood carried by each accused in the case. As indicated earlier, he would only say that all the 12 accused were rounded up and were found to carry sandalwood billets 64 in number and the measurements of each of the 64 billets were taken at the spot and later at the Forest Rest House, each billet was weighed and the total weight of the 64 billets was 471.300 kg. He has not stated what was the weight of the sandalwood billets carried by each accused. There is no reference to the weight of the sandalwood

billets carried by each accused in any one of the statements Exhibits P. 1 to P. 10. Ex. P. 12 which is the Form 95, gives the weight of each of the 64 billets. It does not show how many billets were carried by each of the accused and what was the weight of the billets carried by each accused. From Ex. P. 12, we find that there are several billets below 5 kg. in weight. There are some billets which are less than 2 kg. and many more which are less than 5 kg. It is possible that anyone of the accused might not have had any head load on them for even if they were found to carry sandalwood, the total weight of the billets carried by them could be less than 5 kg. At any rate, it is not open to a criminal Court to speculate on this vital matter, which is one of the basic ingredients of the offence. Though the petitioners had urged this point before the appellate Court, by a mathematical calculation the appellate Court concludes that each accused could not have carried sandalwood weighing less than 5 kg. It is the bounden duty of the prosecution to prove that the weight of the sandalwood billets found in the possession of each accused exceeded 5 kg., particularly when the offence calls for a minimum sentence of imprisonment. Though all the accused had come in a group and were apprehended together and there has been a common seizure, the prosecution has still to establish that the weight of the sandalwood billets found to be in the possession of each of the accused exceeded 5 kg. Nowhere in the records, I find this ingredients of the offence established against each of the petitioners. The prosecution, therefore, cannot succeed. The conviction under section 36-A read with Sec. 36-E of the Act therefore fails and is set aside. The conviction under Section 21 (f) will fail for want of evidence of removal in this case and consequently conviction under section 21(d) also fails.

8. In the result, the convictions and sentences under section 36-A read with S. 36-E and under section 21(d) and (f) are set aside. The petitioners are acquitted and the bail bonds shall stand cancelled.

9. Revisions allowed.