

Kumar, and ors. Vs. State Represented by Forest Range Officer Vellore Range,

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Court : Chennai

Decided On : Jul-23-2010

Judge : T.Sudanthiram, J.

Acts : [Code Of Criminal Procedure \(CRPC\), 1973](#) - Sections 397, 401

Appeal No. : CRL.R.C.No.183 of 2008

Appellant : Kumar, and ors.

Respondent : State Represented by Forest Range Officer Vellore Range,

Advocate for Def. : Mr.V.R.Balasubramaniam, Adv.

Advocate for Pet/Ap. : Mr.V.Parthiban, Adv.

Judgement :

1. The revision petitioners herein are the accused in C.C.No.631 of 2002, on the file of the Judicial Magistrate III, Thiruppathur, and they were convicted for the offence under Sections 36(A) & (E) of Tamil Nadu Forest Act and sentenced to undergo rigorous imprisonment for two years each and to pay a fine of Rs.7,500/- each in default to undergo simple imprisonment for six months and the sentence are to run concurrently. The said conviction and sentence were confirmed by the learned Additional Sessions Judge (Fast Track Court), Vellore. Aggrieved by the

said conviction and sentence, the petitioners preferred this criminal revision.

2. The case of the prosecution in brief is as follows: On 01.08.1995, at about 05.00 a.m., P.W.4, the Forest Officer on information went to the forest area at Arasanpattu alleri along with other forest officers P.Ws.1, 2 and

5. They saw the accused keeping some gunny bags underneath bush. They were surrounded. Inside the gunny bag, they found sandal wood pieces. P.W.5 recorded the confessional statement from the accused. The sandal wood pieces were recovered and they were given specific mark and mahazar also was prepared. The total weight of the sandal wood was 464 kgs worth Rs.1,07,184/- . The trial Court after analysing the evidence let in by the prosecution, convicted the accused. The said conviction also was upheld by the appellate court.

3. Mr.V.Parthiban, learned counsel appearing for the petitioners submitted that the properties said to have been seized by the Forest officials has not been produced before the court and as such, the seizure of the property has not been established by the prosecution. He also relied on the decision of the Honourable High Court reported in 2005 CrI.L.J 987 (Seerangan v. Forest Range Officer, Salem) wherein it has been held as follows: "As held by the Supreme Court, the respondent/complainant failed to establish the offence against the revision petitioner/accused by producing the sandalwood and also the Ambassador Car bearing registration No.TAB 1437 in which, it is alleged, at the time of occurrence the sandalwood was transported by the accused along with two others. The non-production of the properties seized under Ex.P.2 during trial is very much fatal to the case of the complainant."

4. The learned counsel for the petitioners further submitted that even if the petitioners are not acquitted, they may be released under Probation of Offenders Act and submitted that there is no bar for releasing the petitioners under Probation of Offenders Act, since application of Probation of Offenders Act is not specifically excluded in the Tamil Nadu Forest Act.

5. Per contra, learned Additional Public Prosecutor submitted that the decision cited by the learned counsel for the petitioners is not applicable to the facts of the

case, since in that case, the occurrence related to the period prior to the amendment of Section 41 of the Act, which was brought into effect. As per Section 41(3), every officer seizing the property should place a mark indicating the same has been seized and on account of such seizure in respect of scheduled timber shall make a report to his official superior and produce before the authorised officer as per Section 49(A) being subjected to confiscation.

6. The learned Additional Public Prosecutor further submitted that in this case, after the property was seized by P.W.2, Form-95 was prepared which was marked as Ex.P.6, and in the said form-95, the authorised officer has made an endorsement for having received those properties.

7. This Court considered the submissions made by the parties and perused the records. It is the evidence of P.Ws.1,2 and 5 that they had seen the accused in the forest area and they seized the gunny bag containing the sandalwood pieces. The total weight of the sandalwood was 464 Kgs. The confessional statement of the accused also was recorded. Though it is contended by the learned counsel for the petitioners that the properties cannot be produced before the Court, it affect the case of the prosecution. On a perusal of the records, it is seen that in Ex.P.6, an endorsement has been made by the authorised officer who is also an Assistant Forest Guard. Further, the material shows the properties which was seized were also subjected to confiscation. In the said circumstance, though the property seized were not produced before the Court, the related documents have been filed before this Court. The properties were seized and they were sent to the custody of the authorised officers as per Section 41 and 49 of the Act. Further, the confessional statement given by the accused were also marked, wherein they admitted their guilt.

8. This Court does not find any infirmity in the order passed by the courts below convicting the petitioners.

9. The learned counsel for the petitioner contended that the offence committed was due to ignorance in the year 1995 and the final report was filed in the year 2002 and the Judgment was delivered by the trial Court in the year 2005 and the appeal was disposed in the year 2007. All the petitioners were in jail for more than

90 days. The learned counsel for the petitioners further submitted that they are not involved in any other case either before or subsequent to this occurrence.

10. In view of the circumstances pointed by the learned counsel for the revision petitioners, the petitioners being the first time offenders and the petitioners had to face the protracted criminal proceedings for more than 15 years, this Court feels that it is not necessary to send the petitioners to jail. As this Court does not find any provision under the Tamil Nadu Forest Act, barring the applicability of the probation of offenders Act, the petitioners could be released on probation of offenders Act.

11. In the result, the conviction imposed on the petitioners is confirmed. But the sentence imposed on them are set aside. The revision petitioners are released on probation of good conduct on entering into a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each with one surety to the satisfaction of the trial Court and also to appear and receive the sentence when called upon during the period of two years and in the meantime to keep the peace and be of good behaviour. The fine amount paid by these petitioners shall be treated as compensation and costs as provided under Section 5 of the Probation of Offenders Act.

12. Except the above modification, the revision petition is dismissed.

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