

Udayakumar. Vs. State by Forest Ranger.

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Court : Chennai

Decided On : Apr-01-2011

Judge : Ms.Justice R.Mala, J.

Acts : Tamil Nadu Forest Act, 1882 - Sections 21(d)(e)(f), 36A, 36E ; Tamil Nadu S.P. - Rule 3(1) ;

Appeal No. : Crl.R.C.No.822 of 2007.

Appellant : Udayakumar.

Respondent : State by Forest Ranger.

Advocate for Def. : Mr.S.Rajendiran, Adv.

Advocate for Pet/Ap. : Mr.N.Manokaran, Adv.

Judgement :

1. This Crl.R.C. is filed against the judgment of conviction and sentence passed by the Court of Principal District and Sessions Judge, Vellore in Crl.A.No.208 of 2006, dated 29.1.2007, confirming the said conviction and sentence passed by the Chief Judicial Magistrate's Court, Vellore in C.C.No.97 of 2005, dated 11.10.2006.

2. The case of the prosecution is as follows: The Forest Range Officer, Gudiyatham Circle, submitted Form in S.T.O.R.No.4 of 1997 against the petitioner/A2 before the Court of the Special Judicial Magistrate (Sandalwood cases), Tirupattur, under Section 21(d)(e)(f) and Section 36-A and E of the Tamil

Nadu Forest Act read with Tamil Nadu S.P. Rule 3(1), charging that the petitioner/A2 and other accused were in possession of 214 Kg. of sandalwood worth Rs.89,238/- in Maruthi Van on 7.4.1997. After furnishing the copies of documents, the learned Special Magistrate has framed charges against the revision petitioner/A2 for the said offences and the revision petitioner/A2 denied the charges. Before the trial Court, P.Ws.1 to 4 were examined and documents 1 to 12 were marked.

3. The skeleton of the prosecution case is as follows: On 7.4.1997 at about 4 a.m., when P.Ws.1 to 3 were conducting raid at Thapavalchavadi Circle, at about 5 a.m., the present revision petitioner/A2 and other accused have loaded 9 bags of sandalwood chips into Maruthi Van. Immediately, P.Ws.1 to 3 caught hold of them. A-1 Ravi was caught hold by P.W.1 and P.W.3 caught hold of the present revision petitioner/A2 and other accused were caught hold by the other witness Krishnan, Govindaraj, Sathishkumar and Balakrishnan. When they have opened the bag, it came to know that it contains sandalwood chips and then they have numbered the same as 129 and prepared H memo Ex.P-3 and they have weighed the sandalwood chips and prepared Form 95 in Ex.P-4 and drew a plan Ex.P-7 and prepared No.16 report Ex.P-5 and recorded the confession statements of the other accused, which have been marked as Exs.P-8 to P-12. The revision petitioner/A2 gave confession which was marked as Ex.P-2. Then the investigating officer concluded the investigation and final report was filed.

4. The case has been split up against the revision petitioner/A2. After considering the oral and documentary evidence, the trial Court (JM-Court, Thirupathur) found the revision petitioner/A2 guilty of the offences under Sections 21(d)(e)(f) and 36-A & E read with Section 3(1) of the Tamil Nadu S.P. Rules and since the punishment is higher than the jurisdiction of the learned Magistrate, Thirupattur, Vellore District, the case in C.C.No.312 of 2002 was transferred to the Court of Chief Judicial Magistrate, Vellore, by order dated 22.11.2005 and after appraising the oral and documentary evidence, the learned Chief Judicial Magistrate, Vellore, by order dated 11.10.2006, endorsed the view of the learned Judicial Magistrate, Thirupattur, Vellore District and thereby convicted and sentenced the revision petitioner/A2 for the offences under the provisions of Section 36-A and E of the

Tamil Nadu Forest Act and sentenced the revision petitioner/A2 to undergo two years' rigorous imprisonment and to pay a fine of Rs.7,500/-, in default, to undergo three months' rigorous imprisonment. Challenging the said conviction and sentence, the revision petitioner/A2 preferred Criminal Appeal before the appellate Court (Principal District and Sessions Judge), Vellore, in Crl.A.No.286 of 2006 and considering the arguments of the learned counsel for either parties and on the materials placed before Court, the appellate Court confirmed the conviction and sentence imposed by the trial Court, against which, the present Crl.R.C. has been preferred by the revision petitioner/A2.

5. Challenging the conviction and sentence imposed by the trial Court and confirmed by the appellate Court, learned counsel for the revision petitioner/A2 submitted that the charge sheet was filed against six persons and it is nine bags containing 214 Kgs. of sandalwood chips and the value of the same is Rs.89,238/- . He raised the following contentions:

- (i) The material objects seized have not been produced before Court.
- (ii) The confession of the co-accused cannot be taken as a ground for convicting the revision petitioner/A2.
- (iii) No evidence is available to show as to whether the sandalwood tree has been cut and sandalwood chips have been prepared.
- (iv) There is no evidence that this revision petitioner/A2 possessed or transported more than 5 Kgs. for invoking the provisions of Section 36-A of the Tamil Nadu Forest Act. To substantiate his contentions, he relied on the decisions of this Court.

6. Learned Government Advocate (Crl. Side) appearing for the respondent submitted the evidence of P.Ws.1 to 4 clearly proved that the revision petitioner/A2 along with A-1 and other accused, illegally possessed 214 Kgs. of sandalwood chips which were packed in nine gunny bags and that P.Ws.1's evidence is corroborated by the evidence of P.Ws.2 and 3 and so, the Courts below have considered these aspects in proper perspective. He further submitted that all the

six accused have loaded 214 Kgs. of sandalwood chips and so, each accused possessed more than 5 Kgs. of sandalwood and they were in joint possession and hence, the decisions relied on by learned counsel for the petitioner/A2 are not applicable to the facts of the present case and he prayed for dismissal of the Crl.R.C.

7. Considering the rival submissions made by both sides, and on a perusal of the materials available on record, it is seen that the revision petitioner/A2 along with other accused, on 7.4.1997 at about 4 a.m., possessed 214 Kgs. of sandalwood chips and have loaded the same in a Maruthi Van and at that time, the accused were caught red handed and they were arrested after following the procedures and Form A has been filed.

8. The first limb of argument advanced by learned counsel for the petitioner is that the material objects seized, have not been produced before Court. Admittedly, since the Tamil Nadu Forest Act is a special enactment, as per the provisions of the Tamil Nadu Forest Act (as amended), it is not necessary to produce the material objects before Court and the seizure memo is sufficient and in this case, the seizure mahazar is Ex.P-6. In such circumstances, non-production of material objects (sandalwood chips) seized is not fatal to the case of the prosecution. So, the argument advanced by learned counsel for the revision petitioner/A2 does not merit acceptance.

9. Learned counsel for the petitioner/A2 nextly submitted that the confession of the co-accused cannot be taken as a ground for convicting the revision petitioner/A2. This contention does not hold good, because, in this case, the revision petitioner/A2 has given a confession statement, which was recorded and marked as Ex.P-2. As per Ex.P-2 confession statement of the revision petitioner/A2, himself and A1 Ravi made arrangement for securing the sandalwood chips and that Ex.P-2 is admissible in evidence. In such circumstances, the argument advanced by learned counsel for the petitioner/A2 that the confession of the co-accused cannot be taken as a ground for convicting the petitioner/A2, cannot be sustained, since the revision petitioner/A2 himself gave confession statement as per Ex.P-2 and admitted the commission of the offence, and so, the conviction is

not based on the confession statement of the co-accused.

10. Thirdly, learned counsel for the petitioner/A2 submitted that there is no evidence available to show as to when the sandalwood tree had been cut and sandalwood chips have been prepared. It is an admitted case that the material objects seized from the petitioner/A2 along with other accused, are only the sandalwood chips. In this regard, Section 36-A of the Tamil Nadu Forest Act has to be looked into, which reads as follows:

"Section 36-A: Possession of sandalwood under licence: No person shall have in his possession any quantity of sandalwood in excess of five kilograms, unless under licence granted by the District Forest Officer in that behalf or unless such sandalwood is affixed by a Forest Officer with such manner and in such manner as may be prescribed: Provided that the District Forest Officer may refuse to grant or renew a licence to any applicant or licensee in respect of whom he is satisfied that by reason of his conviction of an offence under this Act or the rules thereunder, of the previous cancellation or suspension of any license granted thereunder, or the contravention of any of the requirements as to the possession of sandalwood, or for any other reasons which may be prescribed he is not a fit person to whom a license should be granted or renewed under this section. Every such order shall be communicated to the applicant or the licensee as the case may be as soon as possible."

In this case, admittedly, all the accused jointly possessed 214 Kgs. of sandalwood chips, but they have not possessed any licence for having possession of more than 5 Kgs. In such circumstances, there is no need to let in evidence to show as to where the sandalwood tree had been cut and as to how they have prepared sandalwood chips, and the same is unnecessary. Hence, the argument advanced by learned counsel for the revision petitioner/A2 in this regard that there is no evidence on the part of the prosecution as to when the sandalwood tree had been cut and the sandalwood chips prepared, is unnecessary, and so, the above argument does not merit acceptance.

11. Lastly, learned counsel for the revision petitioner/A2 mainly focussed that the prosecution has miserably failed to prove that each accused possessed more than

5 Kgs. of sandalwood at the time of arrest, and so, the conviction under Section 36-A of the Tamil Nadu Forest Act, is unsustainable and to substantiate this contention, learned counsel for the revision petitioner/A2 relied on the decisions of this Court reported in 1991 Cri.L.J. 2355 (Sankar and others etc., v. The State) and 2001 (1) MWN (Cr.) 232 (Pukan @ Chelliah v. State by Forest Range Officer, Trichy).

12. The confession statement of the revision petitioner/A2 marked in Ex.P-2 clearly proved that himself, along with A-1 made arrangements for collecting the sandalwood chips three days prior to the incident, and on the fateful day, when they were loading nine bags containing sandalwood chips and at that time only, they have been caught red handed and in such circumstances, all the accused have been in possession of 9 gunny bags, which contain 214 Kgs. of sandalwood chips totally. The revision petitioner/A2 and other accused possessed more than 5 kgs. of sandalwood.

13. In this context, it is worthwhile to consider the decisions relied on by learned counsel for the revision petitioner/A2. In the decision of this Court reported in 1991 Cri.L.J. 2355 (Sankar and others etc. v. The State), it was held by this Court as follows:

"6. 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. Though the petitioners 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 Sec.21(f) will fail for want of evidence of removal in this case and consequently conviction under Sec.21(d) also fails."

14. In the other decision relied on by learned counsel for the petitioner/A2, reported in 2001 (1) MWN (Cr.) 232 (Pukan @ Chelliah v. State by Forest Range Officer, Trichy), this Court relied on the above cited decision reported in 1991 Cri.L.J. 2355 and acquitted the accused therein.

15. It is true that as per the above decision reported in 1991 Cri.L.J. 2355 (cited supra), it is the bounden duty of the prosecution to prove that each and every person must possess more than 5 Kgs. At this juncture, it is appropriate to consider the evidence of P.Ws.1 to 3.

16. In the chief examination of P.W.1, he has specifically mentioned that six persons have been loading nine bags of sandalwood chips and they were caught red handed. In cross examination, P.W.1 denied the suggestion that no such occurrence has taken place. One more suggestion was posted to him that for statistical purpose, the case has been foisted against the petitioner, which had been denied by him. He also denied the suggestion that the revision petitioner/A2 was doing coolie work and he was taken from his house and obtained signature in the Forms and a false case has been foisted against the revision petitioner/A2. But, during the course of evidence of P.W.1, there is no suggestion that the revision petitioner possessed less than 5 kgs. of sandalwood.

17. P.W.2 in his cross-examination, stated that he is not in a position to say as to which accused brought which bag and he further stated that some accused have brought two bags. He stated in his cross-examination as follows:

@ /// ve;j vjphp ve;j K:l;ilia bfhz;L te;jhh; vd;W brhy;y KoahJ/ xU rpyh; 2 K:l;ilfis bfhz;L te;jhh;/ ,uz;L K:l;il vLj;Jte;j vjphpapd; bgah; brhy;y ,ayhJ/ ///@

18. P.W.3 who is the person who caught hold of the revision petitioner/A2 and others, in his chief examination stated that he caught hold of the revision petitioner-A2-Udayakumar. In his cross-examination, he stated that Ravi (A1) and Udayakumar (A2) have come in a vehicle.

19. Considering the above evidence of P.Ws.1 to 3, it is clearly proved that all the accused were possessed of the bags of sandalwood chips and that each person possessed more than 5 Kgs. of sandalwood chips.

20. In the above discussed decision of this Court reported in 1991 Cri.L.J. 2355 (cited supra), 12 accused have taken 64 sandalwood billets totally weighing 471.300 kgs. and since there were 12 accused, the appellate Court in that case came to the conclusion that each could not have carried sandalwood weighing not less than 5 kgs. But in the present case, there are about six accused who possessed the sandalwood chips in nine gunny bags and some of the accused carried one bag and others two bags, and in such circumstances, each accused have carried and possessed more than 5 Kgs. and so, I am of the view that the petitioner/A2 carried and possessed more than 5 Kgs. since he carried and possessed one bag of sandalwood chip. Hence, I am of the view that both the Courts below in the present case, have considered this aspect and came to the correct conclusion that the revision petitioner/A2 is guilty of the offence under Section 36-A of the Tamil Nadu Forest Act.

21. Therefore, it could be concluded that the revision petitioner/A2 along with the other accused, trespassed into the forest and strips off the bark and damaged the sandalwood tree and removed the forest produce weighing more than 5 Kgs. of sandalwood, and hence, both the Courts below are correct in holding that the revision petitioner/A2 is guilty of the offence under Section 21(d)(e)(f) and Section 36-A of the Tamil Nadu Forest Act read with Rule 3(1) of the Tamil Nadu S.P. Rules and is liable to be penalised under Section 36-E of the Tamil Nadu Forest Act.

22. With regard to the quantum of sentence imposed on the revision petitioner/A2, this Court finds that the same is justified and it does not warrant interference by this Court.

23. For the foregoing reasonings:

(a) The Crl.R.C. is dismissed.

(b) The conviction and sentence imposed by the Courts below are confirmed.

(c) Since the revision petitioner/A2 is on bail, the trial Court is directed to secure his custody to undergo the remaining period of sentence.

(d) The period of sentence already undergone by the revision petitioner/A2 shall be set off under Section 428 Cr.P.C.

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