
(1988) 06 MAD CK 0011

In the Madras High Court

Case No : Criminal Miscellaneous Petition No. 5533 of 1984

Alangaraj, Marudai and Sandanalakshmi

APPELLANT

Vs

Assistant Conservator of Forests, Trichy

RESPONDENT

Date of Decision : 13-06-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1988) 06 MAD CK 0011

Hon'ble Judges : P.K. Sethuraman, J

Bench : Single Bench

Advocate : V. Gopinath, for the Appellant; A.N. Rajan, Government Advocate (Crl. Side) on behalf of Respt., for the Respondent

Final Decision : Allowed

Judgement

P.K. Sethuraman, J.—The three petitioners are the accused in C.C. No. 217 of 1981 on the file of the Judicial First Class Magistrate, Trichy. The third petitioner is stated to be the wife of the first Petitioner. This is a petition filed under S. 482, Crl. P.C., praying to call for the records and quash the proceedings in C.C. No. 217 of 1981 on the file of the Judicial First Class Magistrate-I, Trichy.

2. According to the petition, the respondent originally filed the complaint on 24th June, 1981 against the first and second Petitioners for the offences under Ss. 35 and 36 of the Tamil Nadu Forest Act read with S. 3(1) of the Tamil Nadu Sandalwood Possession Rules 1970, and, according to the prosecution, the house of the first Petitioner was searched on 8th July, 1980 at about 8 a. m. and sandalwood weighing about 23 kgs. Were seized from his house. At that time the first petitioner was not present.

3. On the same day at about 2 p.m. when the house of the second petitioner was searched by the forest officials sandalwood weighing about 238 kgs. had been seized.

4. The complaint against petitioners 1 and 2 had been filed on 24th June, 1981

before the Judicial First Class Magistrate 1. Trichy, and it had been taken on file and the petitioners 1 and 2 also appeared on receipt of summons. While so, long after, viz., on 23rd April, 1982 the third petitioner had been impleaded as an accused in the case and, in such circumstances, the petition had been filed by all the three petitioners contending that the petitioners cannot be tried jointly and there is no averment in the complaint that possession of sandalwood by petitioners 1 and 2 in their house was in the course of a single transaction, especially when the house of the first and second petitioners were different and there had been no relationship whatsoever between them.

5. I have gone through the case records and as contended by the learned Counsel for the petitioners, originally the complaint had been filed in Form A as against petitioners 1 and 2 only and subsequently, long after on 24th April, 1982 summons had been ordered to be issued against accused No. 3 also. I find from the records that the Assistant Conservator of Forests had filed a memo simply stating that, according to the amended form A enclosed by him with the memo. Accused No. 3 had been included by him and therefore summons had been prayed to be issued to petitioner No. 3 also. Apart from that there is absolutely no allegation whatsoever as to how accused No. 3 was sought to be impleaded long after. In this connection, it is to be pointed out that the learned Counsel for the petitioners himself contended that no doubt the houses of petitioners 1 and 2 were searched one and the same day and when the house of the first petitioner was searched, he was not available in his house but the third petitioner who happens to be his wife was present. One fails to understand as to why accused No. 3 was omitted at the first instance but made an accused long after. There is also no whisper about the possession of sandalwood by accused Nos. 1 and 2 being in the course of the same transaction. It will also be relevant to point out that in the trial court a petition had been filed on behalf of the petitioners stating that there had been clubbing of different transactions, that the time and place of occurrence are different in the two transactions and, therefore, it had been prayed that the case could be split up and the cases could be tried separately. On that petition I find an endorsement has been made on behalf of the prosecution that they have no objection. But an order had been passed by the learned Magistrate that the case could be split up at the time of framing of charges which may be said to be after recording of evidence.

6. It is to be seen when the respondent has come forward with the case that houses of petitioners 1 and 2 were searched and sandalwood had been seized and that when the house of the first petitioner was searched he was not there and his wife, the third petitioner alone was present, the case could have been filed against the first petitioner and third petitioner and likewise there could have been a separate complaint as against the second petitioner. In the absence of any averment to reveal that the offence by the first and second petitioners was in the course of the same transaction, I feel the contention put forward on behalf of the petitioners has to be accepted. Accordingly the proceedings as against the petitioners in C.C. No. 217 of 1981 are directed to be quashed. It is open to the

respondent to file separate complaints, one against petitioners 1 and 3 and another against the second petitioner separately. In this connection it is also to be pointed out that the learned Counsel for the petitioners submitted that at any rate the third petitioner cannot at all be complained of any offence. In case there are allegations against her, which the respondent may be aware of, she also can be impleaded but, in the absence of any such material, the first petitioner alone could be proceeded with. In case there had been any service of copy of any "attakshi" since she was stated to have been present at the time when the house of the first petitioner was searched and if any statement had been obtained, she could be shown as an accused along with the first petitioner.

7. With this observation, this petition is allowed quashing the said proceedings against the petitioners. The case records are directed to be sent to the trial court without any delay, along with copy of the order.