

(2002) 09 KAR CK 0041

In the Karnataka High Court

Case No : Criminal Rev. Petition No. 725 of 1998

C. Lakshminarayana

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 17-09-2002

Acts Referred:

Karnataka Forest Act, 1963 — Section 104 A
Karnataka Forest Rules, 1969 — Rule 127

Citation : (2003) CriLJ 2087 : (2003) 1 KCCR 437

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : G. Krishnamurthy, for the Appellant; M. Marigowda, Addl. Spp., for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedhar Rao, J.—This revision is filed against the order of the Deputy Conservator of Forests cum Authorised Forest Officer in Order No. AA:UPA:A:SAM:BEM:358:96-97 dated 30-9-1996, where under the rose wood measuring 2.583 Cft, belonging to the petitioner came to be confiscated.

2. Being aggrieved, the appellant preferred an appeal before the learned City Civil & Sessions Judge. The learned trial Judge, while dismissing the appeal confirmed the order of the Court below. Hence this revision.

3. According to the prosecution version, on 25-1-1994, on credible information, the mobile squad of the Forest Department conducted a raid on the premises bearing No. 25, situated at 4th Cross, Malleswaram, belonging to the petitioner. The Forest Authorities found that the petitioner was in possession of 2.583 cft. of rose wood pieces. He did not have necessary permit or license for such possession and he was also not able to properly account the source for possession. Accordingly, a case is registered against the petitioner and 2.583. cft of rose wood was seized and confiscation proceedings were initiated on the ground that the petitioner has contravened the provisions of Section 104 (A) of

the Karnataka Forest Act read with 127 of the Karnataka Forest Rules (hereinafter refer to as "Act" and "Rules" for short).

4. The fact that, the petitioner was in possession of 2.583 cft. of rose wood and that it is seized by the mobile squad of the Forest Department on 25-1-1994, is not in dispute. On the other hand, the petitioner explained that his father has secured the same in the year 1992 and since then they were in his possession for his future bona fide use. The petitioner has produced the certified receipts and transit permit issued by the Forest Department, Hassan, relating to the seized properties.

5. On going through the details of the items of rose wood, the Forest Officer as well as the learned Sessions Judge, found that the quantity of rose wood in the documents does not tally with the wood seized. Therefore, the explanation offered by the petitioner is disbelieved.

6. It was contended before the learned Sessions Judge, that there is no contravention of provisions of Section 104(A) of the Act R/w Section 127-A of the Rules. The said contention is negated.

7. After carefully going through the material placed by the prosecution, it is alleged that the petitioner was in possession of 2.583 cft. of rose wood, without valid license or permit. Whether such a possession amounts to contravention of the aforesaid provisions of law, is a matter for consideration in this revision. For convenience, the provisions of Section 104 (A) of the Act and Section 127 of the Rules, are extracted herein.

104A. Restrictions on trade and transport of black wood or Bite trees and timber thereof.- (1) No person other than

(a) the State Government; or

(b) the officers of the State Government not below the rank of a Divisional Forest Officer, authorised in writing in this behalf, shall purchase or transport any blackwood bite tree (*Dalbergia Latifolia*) or timber thereof:

Provided that the purchase of any such tree or timber from the State Government or the aforesaid officers shall not be deemed to be a purchase in contravention of the provisions of this Sub-section:

Provided further that the State Government may by order exempt any such tree or timber below such measurements as may be specified by it from time to time from the provisions of Sub-section (1).

127A. Cutting, felling and sale or disposal of blackwood or bite trees--

(1) person shall cut, fell, sell or transport any blackwood or bite tree or timber thereof standing on any land except in accordance with the provisions of this Rule.

8. On going through the said provisions, I find that, u/s 104(A), possession of

rose wood without valid license or permit is not prohibited and such possession does not ensue any penal consequences and u/s 104(A), purchase or transport of any black-wood or bite tree (*Dalbergia Latifolia*) or timber thereof is prohibited. The provisions do not prohibit the possession per se. The provisions of the Act and Rules, also do not contemplate grant of any license or permit for possession of the rose wood. Rule 127(A), is a corollary provision to Section 104(A). Section 104(A) prohibits cutting, felling, selling or transporting of any black-wood or bite tree or timber thereof standing on any land except in accordance with the provisions of this Rule.

9. The provisions of Rule 127 are in respect of cutch, which is the product of the cutch tree. A person dealing with the cutch is obligated to maintain accounts and to secure permits for dealing with the said product. The provisions are not made applicable for the rose wood. The prosecution miserably fails to establish the contravention of any of the provisions of the Forest Act, by the petitioner. Mere possession of above quantity of rose wood, does not amount to contravention of provisions of Section 104(A) of the Act r/w 127 of the Rules. The provisions of Rule 144, only prohibit the transport or movement of forest produce and it does not dealing with the case of possession.

10. The provisions of Rule 144 regulates the movement or transport of forest produce. In the instant case there is no transport or movement, of forest produce. In that view of the matter, the order of confiscation is bad in law and so also the order of the Appellate Court.

Accordingly, the orders of the Courts below are set aside. The properties are ordered to be released in favour of the petitioner.