
(2012) 11 KL CK 0045

In the High Court Of Kerala

Case No : Criminal Rev. Petition No. 577 of 2002

Chandran, Rassak and Chandrasekharan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Kerala Forest Act, 1961 — Section 27(i)(d), 27(i)(e)(iii), 52, 69

Citation : (2012) 11 KL CK 0045

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : P.G. Suresh, for the Appellant; M.P. Madhavan Kutty for Special Govt. Pleader (Forest), for the Respondent

Final Decision : Dismissed

Judgement

Justice S. Siri Jagan

1. The petitioners are the accused in C.C. No. 213/1998 before the Judicial First Class Magistrate's Court, Wadakkancherri. The prosecution was under Sections 27(i)(e)(iii) and 27(i)(d) of the Kerala Forest Act. The prosecution case is as follows: Accused Nos. 1 and 2 unauthorizedly entered 1985 Elanad Bamboo Forest, which is a part of the reserve forest, cut and removed 37 chinks (kazhaka) of teak wood, bamboo and other trees and attempted to remove the same from the forest area. The 3rd accused received the same knowing to be forest produce. Thus, the Government suffered a loss to the tune of 1500/- and thereby, the petitioners committed the offences alleged against them.

2. The prosecution examined PWs 1 to 4 and marked Exts. P1 to P3 documents. The petitioners did not adduce any evidence. The Magistrate found the petitioners guilty of the offences under Sections 27(i)(e)(iii) and 27(i)(d) of the Kerala Forest Act and sentenced accused Nos. 1 and 2 to undergo rigorous imprisonment for a period of one year and to pay a fine of 500/- with a default sentence of rigorous imprisonment for a further period of six months each. The

3rd accused was convicted u/s 27(i)(d) of the Forest Act and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of 500/-, with a default sentence of rigorous imprisonment for a further period of six months. The petitioners filed Crl. Appeal No. 91/1999 before the IIIrd Additional Sessions Judge (Ad hoc) Fast Track Court No. I, Thrissur. The Sessions Judge dismissed the appeal. The petitioners are challenging the judgments of the courts below.

3. The petitioners raise several contentions. The first is that the seized material objects were not produced before the court. Secondly, no weapons were seized at the time of apprehension of accused Nos. 1 and 2 and, therefore, they could not have cut and removed any forest timber as alleged. Thirdly, they would contend that the prosecution has not proved with any reliable evidence that the area from where accused Nos. 1 and 2 were stated to have been apprehended was a forest area. They would further contend that there is no reliable evidence to connect the petitioners with any crime. It is submitted that after seizure of the chinks, the prosecution claimed to have stored it in the premises of one Thankachan, who has not been examined to prove the same. Lastly, the learned counsel for the petitioners would contend that, in any event, there was no evidence to connect the 3rd accused with the crime alleged against him.

4. On the other hand, the learned Public Prosecutor would point out that the non-production of the seized materials before the Magistrate does not vitiate the prosecution. He submits that neither Section 52 of the Kerala Forest Act nor any other provision of the Act mandates production of seized materials before the Magistrate. In this connection, he relies on the Supreme Court decision in *State of Kerala v. Ancy Phillip*, 2008 (3) KLT 477 (SC), wherein the Supreme Court has held that disposal of property in forest offences need not be after physical production of timber before the Magistrate, which would show that the production of forest produce is not mandatory for successful prosecution also. Regarding the other contention, the learned Public Prosecutor would contend that accused Nos. 1 and 2 were apprehended from an area, which is proved to be a forest area, by Ext. P3 notification and the official witnesses have given cogent evidence to prove the seizure of the forest produce from them while they were attempting to remove the forest produce from the forest. As far as the 3rd accused is concerned, the learned Public Prosecutor would point out that it is pursuant to the confession made by petitioner Nos. 1 and 2 that the forest produce cut by them were seized from the possession of the 3rd petitioner. It is pointed out that u/s 69, onus is on the petitioners to prove that the produce seized from them are not forest produce.

5. I have considered the rival contentions in detail. Section 52 of the Forest Act speaks only about the reporting of seizure to the Magistrate having jurisdiction to try the offence, on account of which, the seizure has been made. Neither Section 52 nor any other provision of the Forest Act mandates production of seized property before the Magistrate for a successful production. The decision in *Ancy*

Phillip's case (supra) also points to the said law only. Therefore, I am of opinion that for successful prosecution, for a forest offence, the Forest Act does not mandate that the seized forest produce should be produced before the Magistrate as material objects, if the other provisions of the statute are complied with. The prosecution has produced and proved Ext. P3 notification showing that the area in question is a forest. The forest officials have given cogent evidence to prove that petitioners 1 and 2 were apprehended while removing forest produce from the forest and on the basis of the confession made by petitioners 1 and 2, forest produce were seized from the premises of the 3rd petitioner as well. The petitioners were not able to produce any evidence that the seized materials are not forest produce. In such circumstances, going by Section 69 of the Act, it is for the petitioners to prove that the seized materials were not forest produce. No attempt has been made in that regard. Therefore, I am satisfied that the prosecution has succeeded in proving the guilt of the respective petitioners beyond any reasonable doubt. Therefore, I do not find any merit in this Criminal Revision Petition and accordingly, the same is dismissed.