

(2015) 03 KAR CK 0305

In the Karnataka High Court

Case No : Criminal Revision Petition No. 713 of 2010

Chandrappa

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Forest Act, 1963 — Section 104(A), 104(a)(d), 24, 80

Citation : (2015) 03 KAR CK 0305

Hon'ble Judges : G. Narendra, J

Bench : Single Bench

Advocate : Umesh P. Hakkarki, Advocate for Mylaraiah Associates, for the Appellant; K.R. Keshav Murthy, SPP-II, Advocates for the Respondent

Final Decision : Allowed

Judgement

G. Narendra, J.

1. The above criminal revision petition is preferred by the petitioner who is the first accused in C.C.NO.411/2000.

2. The facts in brief are that on 31.12.1999 at about 8.00 a.m., CWs 1 to 4 were on forest beat duty in the Kukwada Ubrani Manna Jungli, near Handiguddi lake pathway. Accused Nos. 1 and 2 without possessing any valid permit or licence were found carrying bete log worth Rs. 750/-. The same was seized and the accused were booked for offences under Sections 24, 80 and 104(a)(d) of the Karnataka Forest Act (for short hereinafter referred to as "the Act"). The said log was seized under mahazar. Forest Offence Case No. 237/99-2000 dt.31.12.1999 was registered and a certificate-Ex. P5 came to be issued by the Competent Officer i.e. the Range Forest Officer Channagiri certifying that the material seized from the accused is bete mara, a forest produce, and that it values Rs. 750/-. The Trial Court and the Appellate Court have heavily relied on Ex. P5- certificate issued by the Competent Officer to convict and uphold the order of conviction.

3. From a perusal of Ex. P5 it is found that apart from stating the value of the

material, there is no description, by which the seized goods could be identified. Even as per the case of the prosecution the value is very negligible but that alone cannot be a ground for acquittal.

4. Learned counsel for the petitioner would submit that the prosecution has miserably failed to demonstrate the allegation that the petitioner was in possession of a forest produce. Apart from making a bald allegation that the petitioner was possessing the log, the prosecution has not let in any evidence to show that either the said piece of wood was removed from the forest area or that the accused were aware that it is a forest produce and the removal of which is prohibited under the Act. He would also point out the fact that the accused is an illiterate and a coolie doing agricultural work. The petitioner's counsel would also point out that the whole conviction is based on interested witnesses i.e. CWs 2 to 4, who are all employees of the Forest Department, who have merely repeated the testimony of each other.

5. The learned counsel for the petitioner would also take this Court through the judgment and order rendered by the Court below. The court below apart from referring the bete log worth Rs. 750/- has nowhere stated as to how the Officer has arrived at the value or as to how and on what basis the Officer has issued the certificate certifying the piece of wood to be a forest produce. In the light of these lacunas he prays that the certificate-Ex. P5 and the testimony of the interested witnesses be eschewed from consideration while deciding the case of the accused.

6. The petitioner's counsel would further submit that the courts below have been carried away by the fact that the accused was carrying an axe and that is held to be a clinching factor for the courts below to convict and sentence the accused.

In this context the petitioner's counsel would point out that it is not even the case of the prosecution that accused have cut and removed the piece of wood from the forest area. That being so, the courts below erred in relying heavily upon the possession of the axe by the accused to uphold the allegation and convict him for the offence under the Karnataka Forest Act.

7. The petitioner's counsel would point out yet another factor which has gone against the accused, is, the fact, that the courts below have believed the versions of the interested witnesses that the accused ran away on seeing them. The petitioner's counsel would state that the accused being an illiterate villager and being in awe of the authority, it was natural for him to take to his heels on being threatened by the officials and it is not different in character for a simple villager to try and remove himself from the presence of any authority.

8. The petitioner's counsel would state that even the allegation of the petitioner running away cannot be believed for the very reason that, the first accused was held, detained and produced before PW2, who examined accused No. 1, the petitioner herein, and he in turn furnished the details of the second accused. That being the case, the allegation that the accused ran away is prima facie a

wrong assertion that has been believed upon by the trial Court. He would further draw attention of this Court to Paragraph 14 wherein certain details are discussed by the Court below (trial Court). The court has arrived at the conclusion that the accused has not at all given sufficient account for the possession of the forest produce. As stated earlier, the petitioner's counsel would rightly point out that the assertion that the same is a forest produce has not at all been demonstrated by the prosecution in a manner known to law. The certificate Ex. P5 issued does not describe or identify the piece of wood which was alleged to have been possessed by the accused. It is not the case of the prosecution that they have been able to demonstrate as to where or from which tree this piece of wood was cut and removed and even in their own words, the value is only Rs. 750/-. It is common knowledge that even a cubic feet of this variety of wood is expensive and costs several thousands. That being the case, it is hard to believe that a log of bete mara was possessed by the accused. Even though Ex. P5 has been issued, it is of no assistance to the prosecution as there are no defining marks or characteristics described to identify the said piece of wood and in the opinion of this Court the prosecution must fail and the accused must succeed. It is also brought to the notice of this Court that this Hon'ble Court by its order dated 10.3.2008 rendered in Criminal Revision Petition No. 1363/2005 was pleased to acquit the second accused. Hence, the court passes the following

ORDER

"i) The revision Petition is allowed;

ii) The order of conviction and sentence convicting the petitioner under Sections 24 and 104(A) of the Karnataka Forest Act passed by the Trial Court in C.C.NO.411/2000 dated 29.10.2004 and the order in Criminal Appeal No. 97/2005 dated 22.4.2010 are hereby set aside and the petitioner is acquitted of the offences alleged against him. The bail bonds stands cancelled and the sureties are discharged."

In the facts and circumstances of the case there shall be no order as to costs.