

(1997) 02 PAT CK 0052
In the Patna High Court
Case No : Criminal Revision No. 724 of 1988

Dr. D.D. Sharma

APPELLANT

Vs

Hari Prasad, Prabhu Nath Sah and The State of Bihar

RESPONDENT

Date of Decision : 19-02-1997

Acts Referred:

Forest Act, 1927 — Section 2, 2(4), 2(6), 2(7), 4(4)

Citation : (1997) 2 PLJR 619

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : Shailesh Kumar Sinha, for the Appellant; Deepak Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai, J.—The present revision application has been filed against the judgment dated 29th July, 1988, passed by the Sessions Judge, West Champaran, Bettiah, in Cr. Appeal No. 42/88 dismissing the appeal of the Petitioner (Forest Department) against the order dated 30th March, 1988, passed by the Judicial Magistrate, Bagaha, West Champaran, in Trial No. 920/37/563/88, releasing the cane baskets in favour of the O.Ps.

2. On 29.8.84, the flange Officer of Forest Madanpur Range came to know through reliable source that cane baskets have been booked for transportation from Bagaha Railway Station to Gorakhpur Rly. Station. After making correspondence with the railway authority, he seized the bundles of baskets on 31st. August, 1984. In course of investigation it was found that on the basis of the forged papers showing Hari Prasad and Prabhu Nath Singh as consignor and Dwarika Das and Vishwanath Singh as consignees, 34 bundles of cane baskets were being sent to the consignees. It further transpired that no transit permit in respect of the aforesaid cane baskets was obtained under the relevant provisions of the Forest Act. It also transpired that the aforesaid cane baskets were booked by one Sheopujan Mahto who was arrested and sent to jail. On the basis of a

report submitted by The Range Officer, Forest Madanpur Range to the Officer-in-charge, Bagaha, a criminal case u/s 41, 42 and 52 of the Indian Forest Act was registered against Sheo Pujan Mahto who was acquitted by the trial Court on 25.1.88.

3. During the tendency of the trial, the aforesaid alleged consignors namely Harl Prasad and Prabhu Nath Singh filed an application for release of the cane baskets claiming the same to have been purchased by them. The learned Magistrate, by order dated 9.4.1985, ordered that the release matter would be considered after disposal of the trial. After disposal of the trial, the aforesaid two persons again prayed for release of the aforesaid cane baskets. The Petitioner filed objection on 14.3.1988 stating that the cane being a forest produce, it cannot be transported without valid permit granted by the Forest authority under the law, as such the same cannot be released in their favour. The learned Magistrate, by order dated 30.3.1988, released the aforesaid articles in favour of the opposite parties and the same has been upheld in appeal, hence this revision application.

4. The learned Counsel for the, Petitioner submitted that the cane basket being a forest produce as defined u/s 4(4) of the Indian Forest Act, 1927 (hereinafter referred to as the Forest Act), the same cannot be released in favour of the O.Ps. Unless they produce a valid transit permit in terms of the provisions of the Bihar Forest Produce (Regulation of Trade) Act, 1984.

5. The learned Counsel for the O.Ps., on the other hand, submitted that the cane baskets are not the forest produce, as defined under the Act, as such no transit permit is required.

6. There is no dispute between the parties that if the cane baskets is held to be a forest produce, the same cannot be transported through railways, unless there is a transit permit granted under the relevant provisions of law.

7. The forest produce has been defined u/s 2(4) of the Forest Act, which runs as follows:

(a) the following whether found in, or brought from, a forest or not, that is to say:

timber, charcoal, caouthouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds (Kuth) and myrabolams, and

(b) the following when found in or brought from a forest, that it to say:

(i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,

(ii) plants not being trees (including grass, creepers, reeds and moss), and all part or produce of such plants,

(iii) wild animals and skins, tusks, horns, bones silk, cocoons, honey and wax and all other parts or produce of animals, and,

(iv) peat, surface soil, rock, and minerals (including limestone, laterite, mineral oils, and all products of mines or quarries);

Timber and tree have been defined under Sections 2(6) and 2(7) respectively of the Forest Act which are as follows:

2(6) "Timber" includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not;

2(7) "tree" includes palms, bamboos, skumps, brush-wood and canes.

According to the said definition of tree, cane is a tree and the definition of forest produce includes trees, leaves, flowers and fruits and all other parts or produce not hereinbefore mentioned of trees. Thus, it is clear that the cane is forest produce.

8. The only question for determination is as to whether the cane basket prepared of canes is a forest produce or not.

9. The Forest Act has been enacted to consolidate the law relating to forests, the transit of forest produce and the duty leviable on timber and other forest produce. The conservation of forest is necessary to maintain the environmental and ecological balance. The Parliament has enacted the Forest Conservation Act, 1980, for the conservation of forest with the sole object to maintain the ecological balance. There is an elaborate provision under the Forest Act for preservation of forest and the removal of the forest produce controlled by transit permit etc. in terms of the rules framed thereunder.

10. The definition of forest produce came for consideration before the Apex Court in the case of The Forest Range Officer and others Vs. P. Mohammed Ali and others, . The question for consideration was as to whether the sandal wood oil is wood oil as defined u/s 2(f)(i) of the Kerala Forest Act. The forest produce was defined u/s 2(f) of the said Act and it included wood oil. The Kerala High Court held that Sandal wood is not a wood oil. The wood oil includes only the oil which is a natural produce directly derived as an exudation from living trees in the forest belonging to the family of the dipterocarpaceae trees while sandal wood oil is a by-product from sandal wood by industrial process. Disagreeing with the view of the Kerala High Court the Apex Court held in paragraph-8 of the judgment at page 633 that the word include in the definition u/s 2(f) would show that it did not intend to exclude what would ordinarily and in common parlance be spoken of as wood oil. The expression being technical. and being part of an elusive definition has to be construed in its technical sense but in an exhaustive manner, it cannot be restricted in such a manner so as to defeat the principle object and purpose of the Act. The process by which the oil is extracted is not decisive as oil may be extracted by natural process of exudation or it may be extracted by subjecting to chemical and mechanical process and sandal wood is cut into pieces. It was further held that the word wood oil used in the Act will require purposive interpretation drawing upon the context in which the words are

used and its meaning will have to be discovered having regard to the intention and object which legislature seeks to sub serve. The restricted meaning sought to put up by the accused would frustrate the object and the literal interpretation would defeat the meaning and accordingly held that sandal wood is a forest produce as defined u/s 2(f) of the Act.

11. In the case of Karnataka Forest Development Corporation Ltd. Vs. M/s. Contreads Private Limited and others, , the question before a Bench consisting of three Hon"ble Judges "of the Apex Court for consideration was as to whether rubber sheet of various grades was forest produce within the meaning of the Karnataka Forest Act. The word caoutchouc was included within the definition of the forest produce. From the facts of the case, it appears that the Respondent company in that case entered into an agreement with the State of Karnataka for supply of 60 tones of natural rubber of grades RMA I to v. per month for a period of five years. After constitution of the State Forest Corporation, the State Government transferred the liability of supply of the quota of rubber to the Corporation. In the meantime, a notification was issued by the Chief Conservator of Forest fixing seigniorage on raw smoked rubber. The Company was informed that the supply of rubber would be made at the rate, mentioned by the Chief Conservator of Forest in the notification issued by him fixing seigniorage. The Company challenged the fixation of seigniorage on the ground that the natural rubber which the company has agreed to purchase being in the shape of the RMA sheets the same is not a forest produce. The learned Single Judge accepted the contention and the same was upheld in appeal. It was urged on behalf of the Respondent company before the Apex Court that the article which was sold to it was not a rubber obtained from the trees but sheets or blocks of rubber which were chemically and mechanically processed, as such RMA is not a forest produce. The Apex Court held that "Latex is the modern name for caoutchouc. It is noting but natural rubber. Caoutchouc or latex means not only milky substance obtained from the trees but it included all milky substance processed, till it is made marketable. Since the processing does not result in bringing out a new commodity but it preserves the same and renders it fit for being marketed, it does not change its character. It was caoutchouc or latex when it was obtained from the trees, it continued to be caoutchouc or latex when it was treated" by sulphuric acid and continued to be so even after it is dried with smoke to obtain the shape of sheets."

12. Thus, the Apex Court while interpreting relevant, provisions of the different Forest Acts has held that the word forest produce has to be interpreted in an exhaustive manner so as not to defeat the purpose and object of the Act. Giving a restrictive meaning to the forest produce; would frustrate the object of the Act in the sense that it will encourage illegal felling of forest produce.

13. The learned Counsel for the opposite parties on the other hand drew my attention to a judgment of the Apex Court rendered by two Hon"ble Judges in the case of Suresh Lohiya Vs. State of Maharashtra and Another, . In that case

the question for determination was as to whether bamboo mat is a forest produce as defined under the Forest Act or not. The Apex Court held that though bamboo as a whole is forest produce, if a product, commercially new and distinct, known to the business community as totally different is brought into existence by human labour, such an article and product would cease to be a forest produce. Their lordships held in paragraph-8, of the said judgment as follows:

We may also state that according to us the view taken by the Gujarat High Court in *Fatesang's* case is correct because though bamboo as a whole is forest produce, if a product, commercially new and distinct, known to the business community as totally different is brought into existence by human labour, such an article and produce would cease to be a forest produce. The definition of this expression leaves nothing to doubt that it would not take within its fold an article or thing which is totally different from, forest-produce, having a distinct character. May it be stated that where a word or an expression is defined by the legislature, Courts have to look to that definition; the general understanding of it cannot be determinative. So, what has been stated in *Stroud's* Judicial Dictionary regarding a "produce" cannot be decisive. Therefore, where a produce from bamboo is commercially different from it and in common parlance taken as a distinct product, the same would not be encompassed within the expression "forest produce" as defined in Section 2(4) of the Act, despite it being inclusive in nature. That bamboo mat is taken as a product distinct from bamboo in the commercial world, has not been disputed before us and rightly.

It is clear from the aforesaid judgment that Bamboo mat which was brought into existence by human labour was not treated as a forest produce on the ground that the word produce as mentioned in Section 2(4)(a)(i) includes only those produce which is a natural growth or product like flowers and Ors.. If the produce is brought into existence by human labour from the forest produce as defined under the aforesaid Section, the same is not a forest produce. An admitted position in that case was that bamboo mat was taken to be a product distinct from bamboo in the commercial world.

14. In the case of *Forest Range Officer Ors.* (supra) a Division Bench of the Supreme Court held that word includes in the definition of forest produce intended to enlarge the meaning of the word and the sandal wood oil which is a by-product of sandal wood by industrial process was held to be a forest produce. Again in the case of *Karnataka Forest Development Corporation Ltd.* (supra) a Bench of three Hon'ble Judges also gave a wider meaning of the word forest produce and included within the definition of caoutchouc or latex the rubber sheets.

15. So far as the present case is concerned, cane is a forest produce. Timber is one of the forest produce and Section 2(6) defines timber which includes trees and Section 2(7) defines tree which includes canes.

16. According to the learned Counsel for the opposite party the cane baskets made of canes are not included in the forest produce on the ground that cane basket is made by human labour and it is a different commodity. If this interpretation is accepted then that will frustrate the object of the Act. It will amount to giving a limited meaning to the word "forest produce". The object of the Act can be easily frustrated by cutting the cane in the forest and making the cane basket and claiming thereafter that as it being not a forest produce there is no restriction in removing it. There is nothing on the record to show that the cane baskets are commercially known as a distinct product from the cane as noticed in the case of Suresh Lohiya. It is settled law that earlier decision is binding on the subsequent co-equal or co-ordinate Bench and earlier decision cannot be over-ruled by a equal Bench See Indian Oil Corporation Ltd. Vs. Municipal Corporation and Another, . It is equally well settled that decision of the larger Bench is binding on smaller Bench Commissioner of Sales Tax, J and K and Others Vs. Pine Chemicals Ltd. and Others, . In view of the judgment of the Apex Court as mentioned above I am of the view that the word "forest produce" is to be given a wider meaning with a view to achieve the object of the Act. The cane being the forest produce its baskets made by human labor Is a forest produce as no material change is made in cane by making baskets of it. Thus, the cane baskets are also forest produce and without transit permit the same cannot be transported and as the opposite parties have not produced any transit permit, both the courts below wrongly ordered for release of the baskets in favour of the opposite parties.

17. In the result, this application is allowed. Both the orders of the Courts below are set aside. If the transit permits are produced the articles may be released in their favour.