

(2017) 02 KAR CK 0106
In the Karnataka High Court
Case No : 261 of 2011

H.G. Sadashiva & Anr.

APPELLANT

Vs

The State by Range Forest Officer Bhadravathi

RESPONDENT

Date of Decision : 01-02-2017

Acts Referred:

[Karnataka Forest Act, 1963](#), [Section 104\(A\)](#)
- Penalties for contravention of Act or rules

Citation : (2017) 02 KAR CK 0106

Hon'ble Judges : Budihal R.B

Bench : SINGLE BENCH

Advocate : R.S. Ravi, K. Nageshwarappa

Judgement

1. This is the revision petition preferred by petitioners/accused Nos. 1 and 2, challenging the legality and correctness of the judgment and order dated 30th January" 2010 passed by the JMFC Court at Bhadravathi in C.C.No.5571/2006 and also the order dated 29th January 2011 passed by the Fast Track Court, at Bhadravathi, in Criminal Appeal No. 11 /2010.

2. By its judgment and order of conviction, the Trial Court convicted the revision petitioners-accused No. 1 and 2 for the offence punishable under Section 104(A) of the Karnataka Forest Act. When the revision petitioners preferred the appeal which came to be dismissed confirming the judgment and order passed by the trial court.

3. Brief facts of the prosecution case before the trial court that on 16.10.2003, Gangur Section Forest officials were returning after patrolling the area of Siddarahalli Acacia Nedutopu and at that time, they heard the sound of cutting tree and on carefully watching the area, the forest officials found two persons were cutting a tree with axe and upon seeing the forest officials, they started to run away by throwing away the axe. The accused were arrested and brought to the place of spot where the tree was being cut. It was a big tree and two pieces of tree was cut and upon enquiry, the accused did not possess the valid permit or

pass for possessing the tree. Immediately the properties were seized and engrossed with a forest seal and axe was also seized. A mahazar was drawn at the spot with help of forest officials as no independent witness was available. The properties were cut tree and materials at the spot. The FOC number was obtained by contacting the office and a mahazar was drawn at 5.00 PM. The Investigating Officer has recorded the statement of witnesses and filed the charge sheet against the revision petitioners for the said offence under Section 104(A) of the Karnataka Forest Act.

4. Heard the arguments of the learned counsel appearing for the revision petitioners - accused and also the learned HCGP representing the respondent - State.

5. Learned counsel appearing for the revision petitioners during the course of arguments made the submission that looking to the materials placed before the court, firstly, the mandatory requirement of Section 62 of the Karnataka Forest Act, were not at all complied with by the forest officials. It is also his contention that looking to the evidence of PW 1 and 2 who are also the officials of the same department there is no consistency in their evidence and the evidence of PW1 and 2 is contradictory with each other. Learned counsel submitted that at one stretch, the witnesses deposed that after hearing the sound of cutting the tree, they have seen the accused persons at the distance of 150 ft. Learned counsel submitted that it is not the case of the prosecution that the accused persons were seen when they were in the process of cutting the tree or when the accused persons possessed the billets which were said to have seized from their possession. Counsel also made the submission that even with regard to the seizure mahazar which was said to have been prepared at the spot, the evidence of P.W.1 and 2 is contrary and it creates a doubt in the mind of the court. In this regard learned counsel for the revision petitioners taken the court through the evidence of prosecution witnesses. He also made the submission that the FIR was not at all produced before the court nor it was tendered in evidence during the course of the trial proceedings. But even then the learned Magistrate has taken this document into consideration while writing the judgment. Hence he submitted that this procedure adopted by the trial court itself is illegal. He also submitted that FIR is the main document, when that itself was not produced by the prosecution, then it cannot be said that the prosecution proved its case beyond reasonable doubt. He submitted that all these material aspects were not at all appreciated by the court below even though it was brought to the notice of the said court.

6. It is his further submission that entire evidence was wrongly read by the trial court as well as the first appellate court and proceeded wrongly and held that the accused persons have committed the said offence Hence the learned counsel submitted that because of such illegality in the judgment of both the courts this court can interfere into the judgments of the courts below even though the present proceeding is a revision petition.

7. Per contra, the learned HCGP during the course of his arguments made the submission that PW 1 and 2 are the official witnesses and they are not having any sort of enmity towards the present petitioners to give the false evidence before the court. He also submitted that looking to the evidence of PW 1 and 2 and other prosecution witnesses, though there is an inconsistency in their evidence but the prosecution has established its case with the help of satisfactory material and thereby proved that the accused persons have committed the alleged offence. Regarding the non-production of the FIR during the course of the trial proceedings, learned HCGP submitted that it may be because of mistake or oversight and only because of that reason the entire case of the prosecution cannot be thrown out. It is also his submission that the trial court as well as the first appellate court have taken all the aspects into consideration both oral and documentary and rightly comes to the conclusion in holding that accused committed the alleged offence and no illegality has been committed by the courts below. He also submitted that this proceeding is a revision petition. The scope is very limited and this court cannot re-appreciate the factual aspects of the matter. On this ground learned HCGP submitted that there is no merit in this revision petition and conviction order passed by the trial court and also the judgment and order passed by the first appellate court dismissing the appeal and confirming the judgment and order passed by the trial court, need not be disturbed.

8. Looking to the materials placed on record, as it is rightly submitted by the learned counsel appearing for the revision petitioners herein, the FIR was not at all produced before the court. It is only the seizure mahazar produced under Ex.P1 and the photograph of the wooden billets were produced as Ex.P2. Except these two documents, the prosecution has not produced any other documents during the course of the trial. When it is the case of the prosecution that on the said date and time, the petitioner herein involved in committing the said offence and on the basis of which the forest officials proceeded in the matter, it is the bounded duty of the forest officials or the prosecution to produce the document FIR before the court and tender the same in evidence when the evidence was going on before the trial court. But even according to the learned HCGP, it was not produced during the course of the trial nor it was tendered in evidence by the prosecution. It is also clear from annexures to the judgment and order of the trial court. But however, looking to the judgment of the trial court, the trial court looked into the FIR and discussed about the same and held that only because it was not tendered in evidence and exhibited in the evidence of the prosecution witness that itself is not fatal to the prosecution case, but this view taken by the trial court is not correct. The object of producing the document by tendering them during the course of the trial is to give fair opportunity to the other side to cross-examine the witness of those documents which were tendered in evidence. But when the said document was not at all tendered in evidence and it was not got marked during the evidence of the prosecution witnesses, there was no occasion for the accused to cross-examine on such documents. Therefore by

such process the accused was deprived of his right of fair cross-examination of all the materials placed by the prosecution. It affect the right of the accused person to have the effective cross-examination of the prosecution witness. Therefore in the absence of production of such document during the course of trial which goes to the root of the case, it affects the case of the prosecution.

9. Apart from that, looking to the oral evidence of the prosecution witnesses more particularly, PW 1 and 2, accused persons cutting the tree and after seeing them they started to run away by throwing the axe there itself. But at another stretch, they deposed that they have seen the accused persons at the distance of about 150 ft. and after seeing them the accused started to run away towards Tarikere Road and they chased them and apprehended them. It is the case of the prosecution that seizure mahazar was prepared at the spot as per Ex.P1. PW 1 deposed in his evidence during the course of cross-examination that contents of the mahazar were written by Lesappa. But the said Lesappa was not examined before the court by the prosecution. Looking to the evidence of PW2, he deposes in his cross-examination that contents of the said mahtizar was written by one Halappa i.e., PW1. This itself clearly goes to show that these two witnesses who are said to be the eyewitnesses to the said incident, they deposed that they were very much present at the spot. Mahazar was drawn in their presence. They themselves were not confident actually who wrote the contents of Ex.P1, seizure mahazar. Their evidence in that regard is totally contradictory. Not only that the prosecution has produced another document Ex.P2, the photograph and the witness PW1 during the course of cross-examination deposed that the property mentioned in Ex.P2 appears to be old one. This is again contrary to the case of the prosecution. Because it is the case of the prosecution that the revision petitioners - accused when cutting the tree they heard the sound, went there and apprehended them and immediately they have seized the cut wooden billets who were two in number. If that is so, the evidence of PW1 that the properties seen in Ex. P2 photograph appears to be the old property itself is contrary to the case of the prosecution. This aspect is also not looked into and appreciated by the trial court as well as the first appellate court.

10. Looking to the materials placed on record it is not the case of the prosecution that the revision petitioners - accused were apprehended when they actually involved in the process of cutting the tree or it is also not the case of the prosecution that they have seized wooden billets when they were in possession of the accused.

11. As I have already discussed about the oral evidence of PW1 and 2, and the contradictory version with regard to the material facts, the evidence of those witnesses creates reasonable doubt in the mind of the court whether really the accused were caught when they were cutting the tree as alleged by the prosecution. The trial court as well as the first appellate court have not discussed about these aspects and as I have already observed above, the trial court while writing the judgment refers to the FIR and comes to the conclusion that

prosecution proved its case as against the accused persons. But when the said document, was not at all produced during the course of the evidence, same cannot be looked into without giving an opportunity to the accused persons to cross-examine on that aspect. Not only that, it is not the evidence of the prosecution witnesses that, immediately after the said seizure mahazar of the billets, they have informed the same to the concerned Magistrate Court or to their superior officers. In such circumstances, the judgment and order of conviction passed by the trial and confirmed by appeal Court are patently illegal and not sustainable in law.

12. Perusing the materials placed on record, the judgment and order of conviction passed by the trial court, it is not in accordance with the materials placed on record. Perusing the judgment and order of the first appellate court also, these important aspects were not re-appreciated by the first appellate court and it simply endorsed its views to the views taken by the trial court. The revision petitioners herein have made out a case as shown from the prosecution materials itself, the evidence placed on record is not worth believable in order to base the conviction passed by the trial court. The prosecution fails to prove the case beyond all reasonable doubts. Looking to materials, reasonable doubt arises in the mind of the court as to the prosecution case. Hence benefit of doubt shall have to be given to the revision petitioners-accused.

13. in view of my above discussion, revision petition s allowed. The judgment and order of conviction dated 30th January, 2010 passed by the JMFC Court at Bhadravathi in C.C.No.5571/2006 and so also the order dated 29th January 2011 passed by the Fast Track Court at Bhadravathi, in Criminal Appeal No. 11/2010 are hereby set aside. The revision petitioners - accused Nos. 1 and 2 are acquitted of the alleged offence under Section 104(A) of the Karnataka Forest Act. The bail bonds executed by the revision petitioners accused stand cancelled. The penalty amount if any, deposited by the revision petitioners accused be refunded to them.