
(2021) 09 KL CK 0206

In the High Court Of Kerala

Case No : Writ Petition (C) No. 22429 Of 2017 & Writ Appeal No.1879 Of 2014

John.V.P., S/O.Porinchu

APPELLANT

Vs

Divisional Forest Officer, Thrissur?680001

RESPONDENT

Date of Decision : 30-09-2021

Acts Referred:

Kerala Forest Act, 1961 — Section 27(1)(e)(iii), 52, 52(1), 53, 55, 61A, 61A(1), 61A(2), 61B

Citation : (2021) 09 KL CK 0206

Hon'ble Judges : K.Vinod Chandran, J;Ziyad Rahman A.A., J

Bench : Division Bench

Advocate : M.P. Madhavankutty, Nagaraj Narayanan, Babu S. Nair, Smitha Babu

Final Decision : Dismissed

Judgement

Vinod Chandran, J

1. Whether the machinery in a sawmill is liable to seizure under Section 52 of the Kerala Forest Act, 1961 ['Forest Act' for brevity], a precursor to confiscation, on the ground that it had been used to saw timber illegally felled or removed from a reserved forest?

2. A learned Single Judge of this Court, in W.P(C)No.22429 of 2017, doubted the correctness of the decision of another learned Single Judge in Moosa v. Authorised Officer [2014 (2) KHC 731]. The Learned Single Judge who referred the matter, was of the opinion that an offence under Section 27(1)(e)(iii) of the Act would attract seizure of tools used for sawing timber in the reserved forest and not machinery in a sawmill. Confiscation, being a penal provision has to be construed strictly and when there are two views possible, the Court should lean in favour of the person on whom the penalty is to be imposed, was the observation. The legislature has failed to explain unambiguously, the 'tools used in committing offence', the implementing officer cannot seize the tools used for sawing such timber, that too in far off places and a contrary interpretation would

put to peril the prospects of a sawmill owner who will have to conduct a roving enquiry into the antecedents of every customer who approaches him. The learned Single Judge opined that such a seizure and confiscation was not intended by the legislature, from Section 52.

3. This Court in *Kallara Sukumaran v. Union of India* [1987 (1) KLT 226] held that when a learned Single Judge refers a question, then the entire case would have to be referred. The Writ Appeal is from an order which declined similar contentions by a sawmill owner. We propose to answer the reference and then consider the cases on merits.

4. Sri.M.P. Madhavankutty, appearing for the writ petitioner, asserts that Section 27(1)(e)(iii) only takes in the cutting of trees from the reserved forest, meaning the offence committed inside the forest. It is also argued that there are various other enactments and statutory rules for the preservation of trees and promotion of tree growth; which have not been invoked against the petitioner. The nominal heading of Section 27 is specifically read to point out that the penalty therein can only be for trespass or damage, occasioned in reserved forests and for committing any act within such forests which is prohibited under law. Voicing the oft-quoted proposition, it is asserted that in construing penal and taxation statutes, the Court has to apply the strict rule of interpretation as has been held in *R.Kalyani v. Janak C.Mehta & Others* [(2009) 1 SCC 516], *Govind Impex (P) Ltd. & Others v. Appropriate Authority* [(2011) 1 SCC 529] and *Achal Industries (M/s.) v. State of Karnataka* [(2019) 7 SCC 703].

5. Sri. Babu S. Nair, appearing for the appellant, painstakingly took us through the provisions to urge that Sections 52, 61A and 61B consistently uses the words 'used in committing such an offence', which lays bare the intention of the legislature to subject only the tools so used in the commission of the offence to seizure and confiscation. The use of the word 'machinery' in the Explanation to Section 52 reveals the clear intention of the legislature, which avoided that word in the body of the provision. To counter the arguments of the Special Government Pleader, it is pointed out that Section 27(1)(d) speaks only of receipt or possession and here the timber has only been sawed, which does not answer the description of either a receipt or a possession as such. Distinguishing the context in which a learned Single Judge of the Gauhati High Court held to the contrary in *Surma Valley Saw Mill (P) Ltd. v. State of Assam* [1998 KHC 1975 = AIR 1998 Gau.35], it is pointed out that there was a specific rule making the sawing, conversion and removal of timber an offence, which is absent in the Act which we are concerned with.

6. Sri. Nagaraj Narayanan, Special Government Pleader (Forests) appearing for the State, would emphasize Section 27(1)(d) and argue that the mere receipt or possession of illegally felled timber, even if it is for sawing purposes, the offence is attracted. The State relies heavily on the judgment of the learned Single Judge in *Moosa (supra)*, which is now doubted. Sri. Nagaraj Narayanan also relies on *Surma Valley Saw Mill (supra)* and the decision of the Bombay High Court in

Kantilal Prekjit Patel v. Range Forest Officer and Another [1987 CrLJ 1373]. The Hon'ble Supreme Court in State of Karnataka v. K.Krishnan [(2000) 7 SCC 80] has dealt with seizure and confiscation proceedings and dilated upon how the proceedings for release, pending confiscation, is to be dealt with. The Hon'ble Supreme Court found any release leading to the very frustration of the provisions of the Act to be bad in law. The learned Special Government Pleader also urged the intention of the legislature in bringing out the enactment, which is for the preservation of forests.

7. We bow to the proposition that a penal statute which makes an act, a penal offence and imposes penalty is to be strictly construed and if two views are possible, one favourable to the citizen should ordinarily be preferred. The proposition has been carefully worded and it arises in situations where two views are possible. In analysing the provisions under the Forest Act, we have to necessarily keep the intention of the legislature in mind and adopt a purposive interpretation to further the object and never to frustrate it. The preamble itself speaks of protection and management of forests in the State of Kerala, the depletion of which, because of expanding human communities, has put the very planet in trouble and nature in turmoil, with unprecedented climatic changes and natural calamities.

8. In this context, we specifically refer to the decision of the Hon'ble Supreme Court in Balram Kumawat v. Union of India [(2003) 7 SCC 628] where the question raised was whether 'mammoth ivory' imported into India answers the description of the words 'ivory imported in India' contained in Wildlife (Protection) Act. Mammoth is a prehistoric animal that is extinct and such ivory is distinguishable from the extant elephant ivory was the contention raised. We specifically extract paragraphs 20 and 23:

"20. Contextual reading is a well-known proposition of interpretation of statutes. The clauses of a statute should be construed with reference to the context vis-a-vis the other provisions so as to make a consistent enactment of the whole statute relating to the subject matter. The rule of 'ex visceribus actus' should be resorted to in a situation of this nature.

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23. Furthermore, even in relation to a penal statute any narrow and pedantic, literal and lexical construction may not always be given effect to. The law would have to be interpreted having regard to the subject matter of the offence and the object of the law it seeks to achieve. The purpose of the law is not to allow the offender to sneak out of the meshes of law. Criminal Jurisprudence does not say so".

The Court observed that it would be unnecessary to go into the question of whether scientifically mammoth ivory can be deciphered from elephant ivory since there is a complete prohibition of the ivory trade. It was held that what

requires to be considered, in the teeth of the clear prohibition, is the dictionary meaning of the term and the commercial or technical meaning is taken recourse of only when the requirements of the particular enactment necessitate it. We also extract a quote made by the Hon'ble Judges from *Tinsukhia Electric Supply Co. Ltd. v. State of Assam* [AIR 1990 SC 123]:

"In *Whitney v. IRC* 1926 AC 37, Lord Dunedin said: (AC p.52) 'A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable.' "

It was so observed in *Balram Kumawat* (supra):

"26. The courts will therefore reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. [See *Salmon v. Duncombe* [1886 (11) AC 627 at p.634).] Reducing the legislation futility shall be avoided and in a case where the intention of the legislature cannot be given effect to, the courts would accept the bolder construction for the purpose of bringing about an effective result. The courts, when rule of purposive construction is gaining momentum, should be very reluctant to hold that Parliament has achieved nothing by the language it used when it is tolerably plain what it seeks to achieve. [See *BBC Enterprises v. Hi-Tech Xtravision Ltd.*, 1990 (2) All ER 118 at 122-3.

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37. We are, however, not oblivious of the fact that potential public mischief cannot be a ground to invoke the court's interpretative role to make a new offence. Making of legislation is not the job of the judiciary. Making of a penal legislation by the judiciary is strictly out of its bound. However, when the law working in the field is clear then what is necessary for it is to find out as to whether any offence has been created or not. Once it is held that the subject-matter comes within the purview of the law, the court may not go further and say by interpretive reasoning that the same is not so created".

9. We keep these principles in mind while embarking upon the interpretative exercise we are called upon to. At the outset, we cannot but observe that a provision cannot be interpreted by its nominal heading when the statute itself has to be considered as a whole without looking at the provisions in isolation. In the statute we are concerned with, the object is the preservation of forests, highly necessary not only for the survival of human beings, but also for the continued existence of the very planet itself. Any interpretation should be consistent with the object of the enactment, the intention of the lawmakers, the context of the statute and its dominant purpose; applying the explicit words employed and without doing any violence to the language.

10. The first contention is concerning the definition of 'tool' and whether it brings

within its ambit machinery in a sawmill. We approvingly notice the consideration made in Kantilal Prekjit Patel (supra), which extracted the meaning of the word 'tool' from the Webster's Dictionary of the English language, which reads as under:-

"... an instrument employed in manual labour for facilitating mechanical operations; the cutting part on various machines driven by power, as a drill or lathe, a machine tool; the entire machine".

The tools used by human communities have evolved with the communities themselves from handheld tools to machines driven by power. Earlier, sawing of timber was facilitated, by cumbersome and time consuming manual labour, with a saw blade. Now sophisticated machinery are available, which carry out the sawing within no time. Considering the girth of the timber, the machinery is also large and the sawmills are established; to which location the felled trees are brought as such, to saw them into boards, planks and rafters. It cannot at all be said that tools include only handheld ones and in the present circumstances, it includes machinery also within its ambit since, otherwise, sophisticated machinery used to cut timber as distinct from handheld ones would be taken out of the purview of tools which are liable to seizure. The interpretation has to go with the times, again to advance the purpose for which the enactment is brought. As observed in Balram Kumawat (supra) we need only look at the dictionary meaning and "The rule of strict construction does not also prevent the court in interpreting a statute according to its current meaning and applying the language to cover developments in science and technology not known at the time of passing of the statute" (sic). What was intended is any tool used in the commission of a forest offence and there is no warrant for us to assume that the legislature intended only the conventional handheld tools; even when it brought out the enactment, much less could the interpretation be restricted, looking at the advancements made on the mechanical sphere. In fact, the use of machinery in the Explanation, of those mounted on vehicles and vessels, is a clear indication that the tools referred to in the body of the section included machinery. The contrary argument raised by the appellant cannot be countenanced since the explanation to a provision could not have included things excluded in the main body.

11. The next contention is concerning the seizure being possible only when it is used in committing any such offence. To buttress the contention, the learned Counsel has also referred to the nominal heading of Section 27 which brings in 'penalties for trespass or damage in Reserved Forests and acts prohibited in such forests'. It would be fallacious for us to hold that only those acts which are committed within the boundaries of the reserved forest would fall under the rigour of the provisions of Sections 27 and 52. If we hold so, then, only if an illegal felling is caught red-handed within the forest, would the offence be attracted. The offences enumerated under subsection (1) of Section 27 would command us to hold to the contrary. When a tree is illegally felled inside the

forest, it is only for a commercial purpose and it would have to be brought outside the forest to put it to use commercially. It is hence, in addition to cutting and felling of trees, the receipt or possession of a forest produce, sawing or converting it and removal of such trees, including fallen or felled, are brought under the ambit of a prohibited act by Section 27, which also imposes a penalty. The trees removed from the forest in a vehicle, if later transported in another vehicle from outside the boundaries of the reserved forest; then both vehicles would be equally liable for the consequences of the prohibited act and will invite both penalty and confiscation proceedings. Likewise, any sawmill which receives timber for sawing has to ensure that it is not illegally removed from a forest or obtained by a prohibited act under the Forest Act, which, otherwise, would be liable to the proceedings under the Act. The offence attracted in an illegal felling inside a forest would not cease on such felling having been concluded. The transportation of such illegally felled trees, the measures employed to convert it into boards, planks or rafters, by sawing, cutting or otherwise and the receipt or possession of such timber also would be encompassed in the offence and would attract penalty with equal rigour. There is no warrant for us to assume that legislature intended only tools, vehicles and other materials used for the acts committed inside the reserved forest to fall under the words employed of 'used in committing any such offence' under Section 52 of the Act.

12. We cannot also agree with the learned Counsel for the appellant that, while in the Assam Forest Regulation, 1891 there is a specific offence of sawing, conversion and removal of timber, it is not available under the Kerala Forest Act. The Kerala Forest Act by Section 27(1)(e)(iii) makes sawing, conversion and removal of any tree including fallen or felled in a reserved forest to be an offence, for which penalty is also specified. As has been rightly argued by the learned Special Government Pleader, both Section 27(1)(d) and (e) are attracted. It would be puerile to contend that the receipt and possession intended by the enactment is a receipt for ultimate possession. Receipt and possession are disjunctively used in the clause and it cannot be argued that the receipt should be for enduring possession. Even persons who receive such illegally felled timber for onward transport or to saw or convert it or for subsequent sale or ultimate possession would all be treated as an offender under the above provision. What absolves an individual be it a transporter, sawmill owner or ultimate possessor is the diligent care in ensuring that the timber is not one involved in any offence under the Forest Act. In this context, we would refer to the procedure by which confiscation proceedings can be taken.

13. Section 52 deals with the seizure of property liable for confiscation. When there is reason to believe that a forest offence has been committed in respect of timber or other forest produce, such timber or produce and anything used in the commission of such offence including tools, ropes, chains, boats, vehicles and cattle are liable to seizure by the Forest Officer. By subsection (2), such officer shall place a mark indicating the factum of seizure on the object and report seizure of such goods to the Magistrate and if the offender is unknown, to the

official superior. Section 53 confers power on the Forest Officer of a rank not inferior to Ranger, to release any objects seized under Section 52 with a bond to ensure production when required by the Magistrate having jurisdiction. Section 54 speaks of the trial of the accused and the disposal of property in accordance with law by the Magistrate on receipt of a report under Section 52. Section 55 empowers the Magistrate to confiscate the objects seized when the trial ends in a conviction.

14. A parallel machinery for confiscation by Forest Officers was created by incorporating Sections 61A to 61F by Act 28 of 1975. By the Amending Act, a separate procedure for confiscation is contemplated even when the offender is not prosecuted by the Department, with respect to specific items, one of which is timber. Under Section 61A, after seizure under Section 52, the officer seizing the property under subsection (1) of Section 52 shall produce it before the authorized officer. Sub-section (2) of Section 61A empowers the authorised officer who has seized any property under Section 52(1) or before whom it is produced under Section 61A(1), to confiscate the same, whether or not a prosecution is instituted. Section 61B speaks of a show-cause notice before the confiscation under Section 61A. Sub-section (2) prohibits any order confiscating the seized property under Section 61A if the owner of the tool, rope, chain, boat, vehicle or cattle proves to the satisfaction of the authorized officer that, it was used in the particular act upon which an offence has been charged; without his knowledge or connivance or even that such owner had taken all reasonable and necessary precautions against such use. Here, we pertinently observe that subsection (2) absolves from confiscation, only the materials or vehicles used in the commission of the offence and does not save the timber or the other specified forest produce, which is the subject of the offence, since that, in any event, is the property of the Government.

15. A sawmill owner is regulated by the Kerala Forest (Regulation of Sawmills and Other Wood-based Industrial Units) Rules, 2012. While the said Rules provide for penalties by way of suspension or cancellation of license, that does not absolve the owner from being proceeded with under the Kerala Forest Act 1961, the Biological Diversity Act, 2002 and the Wildlife (Protection) Act, 1972; the commission of offences under which enactments invite a penalty of suspension or cancellation of license under the Rules of 2012. The suspension or cancellation of license would be in addition to the penalties for the commission of offences under the respective enactments.

16. We do not agree with the order of reference made by the learned Single Judge that there are two possible views going by the words employed in Section 27(1)(e)(iii). The offence of cutting or felling of trees or removal, sawing or converting of a felled or fallen tree is not confined to the act committed inside a reserved forest. When such felled or fallen timber is brought out and transported, the vehicle which is detained outside the forest would definitely be liable to seizure under Section 52 and a proceeding for confiscation, either before a

Magistrate after trial and conviction or before the authorized officer as contemplated in Section 61A. The order of confiscation passed by an authorised officer is not final and can be subjected to a revision or appeal under Section 61C or 61D. Likewise, timber, of the fallen trees illegally removed and that of illegally felled trees, if received or possessed, in connivance with the offender who felled or removed the timber from the reserved forest or without exercising due diligence required, such sawmill owner would equally be liable for the offence and the tools used in the sawmill, including the machinery, would be liable for seizure and attract confiscation proceedings. Just as the distance from the reserved forest would be irrelevant insofar as a vehicle transporting timber or forest produce belonging to Government; the factum of the sawmill being situated at a place far off from the reserved forest would not by that reason alone be absolved from the offence or the confiscation proceedings. We are in perfect agreement with the decision of the learned Single Judge in Moosa (supra) from which we extract paragraph 9:

"9. On a plain reading of the expressions 'saws' and 'converts' employed under S.27(1)(e) (ii) in juxta position, it can also be held that tools take in its fold machinery used for converting the timber or other items and it not only means tools used for cutting or felling or removing the tree from the area within the forest but also tools or machineries used for sawing and converting the timber at a place far away from the forest area in a sawmill. So, it is incumbent on the owner of the mill or his agent to make sure that the timber which has been brought to the mill for sawing is not a timber, illicitly cut and removed from the forest. He can take reasonable and necessary precaution as contemplated under S.61B(2) of the Act by requiring the production of necessary documents which would show that the timber is not a Government property".

We answer the reference respectfully affirming the view taken by the learned Single Judge in Moosa (supra).

17. In both the appeal and the writ petition the seizure proceedings have not been finalised. In the appeal the contention is that, there is evidence to show that the timber is sawed in another mill and even the statements of the accused do not inculcate the appellant. In the writ petition, the contention is of due diligence having been employed in sawing the timber. Both these contentions would have to be established in the confiscation proceedings initiated. Insofar as the petitioner and the appellant are concerned, we notice that the proceeding for seizure and confiscation were stayed by this Court and they were functioning all this while; the appellant from 2014 and the petitioner from 2017. In that circumstance, we direct the officer to proceed with the seizure and also carry out an inventory of the materials subjected to seizure without actual removal from the premises of the sawmill. The authorised officer would then issue a show-cause notice and conclude the proceedings of confiscation after hearing the parties. The Empowered Officer is also entitled to proceed under the Rules of 2012. If proceedings of seizure are taken, then the mill shall not be operated and

we direct that the confiscation proceedings shall be finalised within a period of six months from seizure. The question referred is answered against the petitioner and in favour of the State. The judgment impugned in the appeal is upheld for the reasons stated above.

The writ petition and appeal are dismissed with the above reservations and observations.