

(1989) 10 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No. 34 of 1986

Kamal Kishore and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 04-10-1989

Acts Referred:

Forest Act, 1927 — Section 41, 42

Citation : (1989) 2 ILR HP 1387 : (1989) 2 ILR HP 1379 : (1989) 2 ILR HP 1376

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : Harish Behal and Om Patkash Sharma, for the Appellant; M.S. Guleria, Assistant A.G., for the Respondent

Judgement

Bhawani Singh, J.—This is a revision petition by the Petitioners after having failed to secure acquittal before the courts below in a case under Sections 41 and 42 of the Indian Forest. Act. They were sentenced to undergo simple imprisonment for a period of one month and confiscation of the timber to the State Government. The Petitioners have assailed these decisions by way of this revision petition.

2. Briefly, the case is that on the night intervening 6/7 June, 1982, Station House Officer, Shri Milap Singh, Police Station, Amb, along with Assistant Sub-Inspector, of Police, Shri Dharam Singh, and Constables Diwan Chand, Prem Chand and Charanjit Singh, inspected truck No. HPG-769 nearby Mubarakpur while traveling in jeep No. HPG-5 at about 1.30, It contained 50/60 quintals of logs and fuel wood and was going towards Mubarkpur. It was being driven by Kamal Kishore and was owned by Shri Varinder Kumar who was sitting in it. Rattan Chand, Sukhdev Singh, Shushil Kumar, Ram Lal and Kesar Singh were also in the Truck. They were asked to, produce documents regarding transportation of timber and having failed to do so, the property was taken into possession vide memo. Ex. PA and Ruka (Ex.P.W 7/A) was sent to the police station for the registration of a case. Accordingly, First Information Report (Ex. P.W. 7/B) was registered and documents of the truck were taken into possession, vide memo. Ex. PW. 2/A.

Site plan (Ex. P.W. 8/A) was prepared by the investigating officer. During the investigation it came out that the timber belonged to Smt. Kamlesh Kumari, wife of accused Rattan Chand. She had cut two mango trees from her land without the permission of the authorities, as required. Damage, report No. 59/022 was issued by the Forest Guard Shri Shanti Sarup on 2-6-1982 and it was directed by the Forest Guard that, the timber should not be taken to any saw mill without permission. The matter was compromised by Smt- Kamlesh Kumari and compensation was paid. This is the first part of the matter.

3. The second part of the matter relates to the initiation of the present case when the accused were transporting the timber during the night in violation of the law. The accused have admitted that they were transporting the timber without any lawful permit in the evening of 6-6-1982. The tire of the truck punctured with the result that it was parked for getting the tire repaired on the next morning. It is also stated that they did not know that there was no permit for the transport of the timber and since Rattan Chand was also in the truck, they, in good faith, believed that there was requisite permission to transport the timber. The trial court convicted the accused and their appeal was also dismissed by the Sessions Judge, Una, on 15-3-1986.

4. Perusal of the records reveals that the explanation of the accused does not appear to be genuine and correct. They were transporting the timber stealthily. It was being done during night time intentionally. Their version that the truck was parked due to the tire having got punctured is incorrect. Milap Singh (P.W. 8) categorically states, that the truck was intercepted during the night and was brought to the police station at the same time. His version is supported by Dewan Chand (P.W. 1) and Dharam Singh (P.W. 2). An effort has been made to prove that the tire of the truck got punctured but the version of Kailash Kumar Motor Mechanic (R.W. 1) produced by the accused, is thoroughly baseless and unbelievable. Moreover, it is a fact that the accused were transporting timber without any permit. Although it has been explained that they believed that Rattan Chand was having the permit to transport the same, but this explanation cannot help the accused in any manner, as rightly held by the courts below, that the log book of the Vehicle could very easily demonstrate and establish this defense of the accused but the same was not placed before the court to exonerate them of the liability. This fact indicates that the timber being carried by the vehicle in question was not even entered in the log book. Had it been done, the accused could have easily come to know as to whether Rattan Chand had valid permit for the transport of the timber or not, as the same is required to be mentioned in the log book of the vehicle. The assessment of the evidence and the conclusions drawn by the courts below on this aspect of the matter are absolutely correct and there is no ground to take a view different than the one already taken by the courts below which have come to concur with findings in this case.

5. Lastly, Shri Harish Behal submitted that this Court may take compassionate

view of the guilt of the accused since the accused were only transporters and laborers. They just believed that Rattan Chand, who was sitting in the vehicle, had permit to transport the timber. It is very difficult to believe this version. Rattan Chand had, in fact, no permit to transport the timber. It was being transported during the night time which obviously indicates that everyone involved in this case knew very well that the timber was being transported stealthily without any permit and the same was not intentionally recorded in the log book of the vehicle. In these circumstances. Shri M.S. Guleria, learned Assistant Advocate General, has very seriously and strenuously contended that such like offences have to be dealt with seriously and the culprits should be awarded exemplary punishments. It is further contended that trees worth cores of rupees have been cut stealthily by unscrupulous persons there, .by causing loss not only to the. Ecology of the nation but immense loss to the revenue of the State. Such activities had been carried on in the State in the past due to the active co-operation of the transporters and laborers. But for their co-operation, Shri Guleria urges, trees can neither be cut nor its timber transported to. Anywhere I agree with these submissions of Shri M.S. Guleria. However, in the present case, although the timber was being transported without permission, but the same was out of the land owned by Smt. Kamlesh Kumari; wife of Rattani Chand. That offence had been compounded by payment of. Compensation and for feature of the timber ultimately to the State. No evidence of past involvement of the accused in illicit felling of trees and transport thereof stealthily has been shown. The accused appears to be the first offender

6. Keeping in view the aforesaid circumstances of this case, the interest of justice would be served in case the accused, are called upon to pay fine instead of jail sentence. Accordingly, the convictions are maintained and instead of jail sentence as awarded, the accused are ordered to pay fine of Rs. 500/- each to be deposited in the trial court within a period of two months from today and in case they fail to do so within this period, they, will undergo the jail sentence as already awarded by the trial Court.