

**(2024) 02 KL CK 0092**

**In the High Court Of Kerala**

**Case No :** Regular First Appeal No. 257 Of 2004 & CO No. 115 Of 2004

N.K.Sasidharan

APPELLANT

Vs

K.R.Ramakrishnan (Died)

RESPONDENT

**Date of Decision :** 12-02-2024

**Acts Referred:**

Kerala Forest Act, 1961 — Section 52, 61A, 74

**Citation :** (2024) 02 KL CK 0092

**Hon'ble Judges :** Sathish Ninan, ?J

**Bench :** Single Bench

**Advocate :** Nagaraj Narayan, K.R.Jinan, G.G.Manoj, Philip Mathew, M.A.Shaji

**Final Decision :** Dismissed

## Judgement

Sathish Ninan, J.

1. A decree for damages is under challenge in this appeal and cross objection, by the defendants and the plaintiff respectively.

2. A tractor-cum-trailer owned by the plaintiff was seized on 06.11.1992, alleging involvement in the forest offences. The vehicle was released by the authorities only on 08.02.1994. According to the plaintiff, by that time, damages were caused to the vehicle. It was alleged that the 1st defendant, who was the then DFO, sought for payment of bribe for the release of vehicle. The suit was filed claiming damages under various heads, including cost of repairs, loss of earnings, mental agonies, etc.

3. The 1st defendant, who was the then DFO, filed a written statement, denying the allegations levelled against him, including the alleged demand for bribe. It was contended that the seizure of the vehicle was for the involvement in illicit transport of rosewood and teak logs. Confiscation proceedings were initiated under Section 61A of the Kerala Forest Act, 1961, immediately after the seizure. The plaintiff got release of the vehicle in good condition. On these contentions, it was prayed that the suit to be dismissed. The 2nd defendant adopted the said

contentions.

4. The trial court turned down the claim for damages for the vehicle. It, however, granted a decree for Rs.35,000/- towards loss of earnings, mental agony and legal expenses. The decree for damages is challenged in the appeal by the defendants, and the plaintiff through the cross objection, challenges the liability.

5. I have heard Shri.Nagaraj Narayan, the learned Special Government Pleader, for the appellants and Shri.Philip Mathew, the learned counsel for the respondents.

6. The points that arise for determination are;

i) Was the seizure of the vehicle illegal?

ii) Was there inordinate delay on the part of the defendants in releasing the vehicle?

iii) Is the appeal filed by defendants 1 and 2 jointly, maintainable?

iv) Is the finding of the trial court that there is no evidence to find damages of the vehicle, sustainable?

v) Is the quantum of damages granted by the trial court liable to be varied?

7. Ext.A17 is the confiscation file, which contains the report of the Range Officer. The report is to the effect that the vehicle is liable to be confiscated as involved in forest offence. Accordingly, the confiscation proceedings were initiated. Section 52 of the Forest Act provides for seizure of vehicle involved in forest offence, in connection with the investigation. It is simultaneous thereto that the confiscation proceedings were also initiated. The trial court was right in having held that the confiscation was legal. Point 1 is answered accordingly.

8. The plaintiff alleges inordinate delay in the release of the vehicle. The seizure was on 06.11.1992 and the vehicle was released on 08.02.1994. According to the plaintiff, he had made applications as per Exts.A3 and A4 for release of the vehicle. Since the same was not considered by the defendants, the plaintiff had to approach this Court in O.P.No.11701 of 1993 and O.P.No.17360 of 1993. It is only pursuant thereto that the vehicle was released on 08.02.1994. Even then, the 1st defendant had made demand for cash payment of Rs.10,000/- for early release of the vehicle, it is alleged.

9. Ext.A3 is dated 11.11.1992. Ext.A3 is the carbon copy of an application alleged to have been submitted. There is no material to show that Ext.A3 was in fact submitted to the defendants. Ext.A3 does not contain any endorsement to the said effect. So also, there is no postal receipt or acknowledgment. Ext.A4 is the application dated 14.07.1993. The postal acknowledgment in respect of the same is produced. The learned counsel for the respondent-plaintiff would rely on the fact that Ext.A4 makes reference to Ext.A3 application, which would probabalize the submission of Ext.A3 application. However, the mere fact that

Ext.A4 application makes a reference to Ext.A3 application by itself is not sufficient to find that Ext.A3 was submitted. Here, it is relevant to note the time gap between Exts.A3 and A4, i.e., from 11.11.1992 to 14.07.1993. If Ext.A3 was submitted on 11.11.1992, under normal circumstances the plaintiff would have followed it up by giving subsequent representations. There being no evidence to find the submission of Ext.A3 application or any other applications apart from Ext.A4, it could only be held that the plaintiff made application for release of the vehicle only on 14.07.1993.

10. That apart, the plaintiff had approached this Court by filing O.P.No.11701 of 1993 and O.P.No.17360 of 1993. A copy of the judgments are not produced. On verifying the copies of the judgments it is seen that, O.P.No.11701 of 1993 was disposed of by this Court as per judgment dated 13.10.1993, directing interim release of the vehicle on furnishing bank guarantee for Rs.1,50,000/- and on executing a bond. Thereafter he approached this Court in O.P.17360 of 1993 contending that he is unable to furnish bank guarantee and that the vehicle may be released on furnishing adequate immovable property. This Court accepted the prayer and as per judgment dated 17.12.1993, directed release on the petitioner furnishing adequate security by way of immovable property. In *State of Karnataka v. K. Krishnan* [(2020) 7 SCC 80], the Apex Court has held that, release of a vehicle involved in forest offence is not the rule but the exception. In due compliance with the directions of this Court in the original petitions, the DFO ordered release of the vehicle. There is no material to find that there was any inordinate delay on the part of the defendants in ordering release of the vehicle.

11. Though it is alleged that the 1st defendant demanded an amount of Rs.10,000/- for early release of the vehicle in spite of the directions of this Court in the Original Petitions, it has been pointed out by the defendants that the 1st defendant had relieved the office on orders of transfer on 05.01.1994, and the order for release was passed by the successor in office on 08.02.1994. The judgment of this Court in O.P.No.17360 of 1993 was on 17.12.1993. But for a mere statement regarding the alleged demand for money by the 1st defendant, no details are pleaded or proved. So also, as noticed supra, the evidence on record does not disclose any inordinate delay having been caused by the defendants with regard to release of the vehicle.

12. The learned counsel for the appellants would rely on Section 74 of the Forest Act, which provides indemnity to the officials for acts done in good faith in under the Forest Act. There is no plea that the seizure was not in the course of duty. Therefore, it is for the plaintiff to allege and prove lack of good faith. There is no allegations regarding lack of compliance with the procedure for seizure. I have already found that the plaintiff had failed to establish the allegation of inordinate delay caused by the defendants for release of the vehicle. Hence, the defendants are entitled for protection under Section 74 of the Forest Act.

13. With regard to the allegation of damages to the vehicle, Ext.B1 is the kychit executed by the plaintiff at the time of release of the vehicle, vouching that the

vehicle is in good condition. Though the plaintiff would contend that, at the time of release of the vehicle he was made to sign a blank paper on which the kychit has been fabricated, it is to be noticed that Ext.B1 contains two witnesses. That apart, in Ext.A6 representation of the plaintiff dated 16.02.1994, specific reference is made to Ext.B1 kychit dated 31.01.1994, and stating that, in Ext.B1 it was written that the vehicle was returned in good condition. This cuts at the root of the plaintiff's challenge against Ext.B1. In the light thereof, the trial court was right in having declined the claim.

14. Thus, on the above findings it can only be held that the plaintiff is not entitled for any damages. The decree and judgment of the trial court to the extent it granted damages for loss of earnings, mental agony and legal expenses are liable to be interfered with.

15. The learned counsel for the respondents would contend that the 1st defendant having been impleaded in his personal capacity, defendants 1 and 2 could not have maintained a single appeal. Moreover, relying on Order I Rule 12 of the Code of Civil Procedure, the learned counsel would contend that, unless there is due authorisation by the 1st defendant, the 2nd defendant could not appear, plead or act on behalf of the 1st defendant. In spite of personal allegation having been levelled against the 1st defendant, he did not care to mount the witness box. This is fatal, it is argued. Adverse inference is to be drawn against him, it is contended. In support of his argument he relied on the judgment of the Apex Court in *Iswar Bhai C.Patel alias Bachu Bhai Patel v. Harihar Behera and another* (1999) 3 SCC 457.

16. Defendants 1 and 2 had filed separate written statements. As could be noticed from the written statement of the 2nd defendant, the 2nd defendant had adopted the contentions of the 1st defendant, who was in the office during the relevant time. The evidence to be adduced in the case is essentially with regard to the official acts based on official records. The 1st defendant in his personal capacity could not have produced the same. At any rate, the evidence on record establishes that the allegation levelled personally against the 1st defendant and of the inordinate delay allegedly caused by the defendants are unsubstantiated. In the light thereof, the non-examination of the 1st defendant, cannot have any significance in the instant case. So also, with regard to the objection to the filing of a joint appeal, there is no prohibition under law, prohibiting the same. The 1st defendant is an employee of the 2nd defendant. The allegations are in relation to the acts done while on duty. Filing of a single appeal could not be faulted in the said circumstances. So also, no objection with regard to the maintainability, if at all any, was raised by the respondents till the final hearing of the appeal. The respondents had even filed cross objections in the appeal. At any rate, it does not affect the jurisdiction of this Court. The contention lacks merit.

In the result, the appeal is allowed. The decree and judgment of the trial court are set aside and the suit will stand dismissed. The memorandum of cross objection is dismissed. No costs.