

(1992) 08 KL CK 0023

In the High Court Of Kerala

Case No : Criminal R.P. 665 and 666 of 1991 and 832 of 1992

P. Mohammed Ali and Others

APPELLANT

Vs

The Forest Range Officer and Another

RESPONDENT

Date of Decision : 31-08-1992

Acts Referred:

Kerala Forest Act, 1961 — Section 2

Citation : (1993) CriLJ 2019

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : M.N. Sukumaran Nayar, for the Appellant; M. Ratna Singh, D.G. of Prosecution, for the Respondent

Final Decision : Allowed

Judgement

M.M. Pareed Pillay, J.—The Criminal Revision Petitions are filed against the common order in C.C. 145 of 1988 and C.C. 148 of 1988 by the Chief Judicial Magistrate, Ernakulam. The Criminal Miscellaneous Case is filed to quash O.R. 55/92 pending before the second respondent.

2. Contention of the petitioners is that sandal wood oil would not come within the definition of "forest produce" u/s 2(f) of the Kerala Forest Act. Section 2(f) of the Act defines "forest produce" thus :

"Forest produce" includes --

(i) the following whether found in or brought from, a forest or not, that is to say-- timber, charcoal, wood-oil, gum, resin, natural varnish, bark lac, fibres and roots of sandalwood and rosewood.

3. The question that arises for consideration is whether sandal wood oil is a forest produce. Petitioners contend that wood oil mentioned in Section 2(f) of the Act is an, entirely different category and sandal wood has nothing common with it. The learned Chief Judicial Magistrate held that wood oil would include sandal

wood oil as well and hence it is a forest produce.

4. Wood oil trees belong to the family of Dipterocarpus trees. They are known as Kalpine trees in Malayalam and Ennai Maram in Kannada. They grow in plenty in the western ghats including Kerala forest region. Contention of the petitioners is that the oil produced from dipterocarpus trees alone is known in scientific and commercial parlance as "wood oil" while sandal wood oil is an industrial product obtained by different methods of distillation carried out in factories set up for that purpose under licence granted by the Central and State Governments. Sandal wood oil is not extracted from a living tree. Wood oil is extracted from a living tree. The process of manufacturing sandal wood oil is entirely different from collecting wood oil from the tree. Whereas manufacturing process is there for the sandal wood oil, there is no such process for wood oil. Wood oil is a forest produce as per Section 2(f) of the Kerala Forest Act. Legislature in its wisdom included roots of sandal wood and rose wood in Section 2(f) while sandal wood oil is conspicuously omitted.

5. Wood oil is a natural product. In the Karnataka Forest Act, 1963 forest produce as it stood originally did not include sandal wood oil. The definition has been amended by Karnataka Act 1 of 1981 with effect from 23-2-1981 and sandal wood oil finds a place in the definition of forest produce u/s 2(7) of that Act. In the Kerala Act, there is no reference to sandal wood oil u/s 2(f). Karnataka Government introduced the amendment to obviate the difficult situation when contentions were raised before the Court that sandal wood oil is not a forest produce being not included in the definition of forest produce.

6. Sandal wood oil is obtained from the heartwood of *Santalum album*, an evergreen parastic trees of Tamil Nadu, Karnataka, Andhra Pradesh and Maharashtra. The oil is produced on a factory scale in the Sandalwood Oil Factory at Mysore and in various smaller units. The material consisting of stems, branches and roots is reduced to a coarse powder by chipping. This powder is placed in the stills on perforated false bottoms, through which steam is passed. On distillation with steam, the vapours of oil and steam are led through pipes into tin-lined condensers. The oil floating on the surface is skimmed off. The crude oil is then purified by heating to drive out moisture. (Page 231, A Handbook of Forest Utilisation by Tribhawan Mehta).

7. Wood oil is produced from a species of Dipterocarpus. Wood oils are usually classed as cleo-resins, consisting of a volatile oil holding in solution a resin. Under the name of wood oil or Gurjun balsam, an cleoresin is procured in India and Indonesia from several species of dipterocarpus, chiefly *D. turbinatus*, which has the odour and properties of copaia and has been used for the same purpose. Wood oil is also used as a varnish in India and forms an effective protection against the attacks of while ants. (Encyclopaedia Britannica). Gurjun oil is used for mixing with rotten wood to make torches, as a preservative of wood and bamboo work, for the manufacture of paint and varnish, and in medicine. In tapping for Gurjan oil a semicircular hole is cut from 3 to 5 feet from the

grounds, the width of the cut being about 1 foot 6 inches; this cut slopes down wards into the trees, being hollowed out to a depth of about a foot in order to hold the wood oil exudes. The hollow is filled with dry leaves and grass which are set alight and kept burning for about a quarter of an hour, after which the fire is extinguished and the oil commences to exude. (Encyclopaedia of Chemical Technology by Kirk-Othmer).

8. Learned Director General of Prosecutions made reference to page 230 of A Handbook of Forest Utilization by Tribhuwan Mehta and contended that sandal wood oil from *Santalum album*, agarwood oil from *Aquilaria agallocha*, deodar oil from *Cedrus deodara* and pine oil from *Pinus* species would come under the category of "Wood Oils". He also invited my attention to page 671 of Indian Forest Utilization Volume II where mention is made to wood oil as hereunder :

Essential oils, distilled from woods are not numerous. Among the Indian wood oils of importance are (i) sandalwood oil from *Santalum album*, (ii) agar-wood oil from *Aquilaria agallocha*, (iii) deodar oil from *Cedrus deodara*, and (iv) pine oil from *Pinus* species. Of these, sandalwood oil is produced on a factory scale and is largely exported, the value of exports in recent years being more or less on a par with that of lemon-grass oil.

The above references are based on any authoritative scientific text books and so the mere statement that sandal wood oil would come within the definition of wood oil under the Act cannot be accepted.

9. In this context, the evidence of expert (D.W. 1) assumes importance. He deposed that he had occasion to study about the chemistry and composition of wood oil. He stated that wood oil is extracted from the living tree, species of the genus "*Dipterocarpus*". According to him, the sandal wood oil is an essential oil distilled from heart wood of sandal trees by mechanical process.

10. As the extraction of both these oils is made by different processes and as the wood oil is an exudation of a living tree in the forest whereas sandal wood oil cannot be produced from a living tree, it is not possible to hold that both come under the same category. The categories of forest produce set out of Section 2(f) of the Kerala Forest Act positively indicate that only natural products available in the forest are included in the definition. As wood oil is directly extracted from the living tree by expediting the process of exudation of the "oleoresin", whereas sandal wood oil is produced by mechanical process of steam distillation utilising the wood of sandal wood tree as a raw material and as the former alone is specifically included in the definition of forest produce, the latter cannot keep company with the former. The chemical composition of wood oil is entirely different from that of sandal wood oil. As there is ocean of difference between sandal wood oil and wood oil in its production and in its composition and as sandal wood oil is specifically omitted in the definition of forest produce in Section 2(f) of the Kerala Forest Act, it is beyond comprehension to hold that it is a forest produce.

11. For the foregoing reasons, the orders of the Chief Judicial Magistrate in C.C. 145 of 1988 and C.C. 148 of 1988 are set aside. Proceedings in O.R. No. 55/92 taken against the petitioners in CrI. M.C. 832 of 1992 stand quashed.

12. The imperative necessity for suitable amendment in Section 2(f) of the Kerala Forest Act to include sandal wood oil also within the fold of forest produce cannot be lost sight of Karnataka State has done so as early as in 1981. State Government's immediate attention is necessary in this regard. A copy of this order will be forwarded to the Chief Secretary, Kerala State by the Registrar.

Criminal Revision Petitions and Criminal Miscellaneous Case are allowed.