
(2014) 12 KL CK 0044
In the High Court Of Kerala
Case No : Crl.Rev.Pet. No. 1792 of 2014

Rajan	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 16-12-2014

Acts Referred:

Kerala Forest Act, 1961 — Section 52

Citation : (2015) 5 FLT 384 : (2015) 1 KHC 370 : (2015) 1 KLT 559

Hon'ble Judges : K. Ramakrishnan, J

Bench : Single Bench

Advocate : T. Krishnanunni, Sr. Advocate and Saju S.A., Advocate for the Appellant; M.P. Madhavankutty, Spl. Govt. Pleader, Advocate for the Respondent

Judgement

K. Ramakrishnan, J.—Petitioner in C.M.P. No. 7347/2014 on the file of Judicial First Class Magistrate Court (for trial of Forest Offences), Nedumangad is the revision petitioner herein.

2. He is conducting a handicraft unit in Muttathara in Thiruvananthapuram District. On 04.03.2014, he had purchased 161 kgms of sandalwood from Marayoor Sandal Division by remitting Rs. 14,61,395/- being the value of the sandalwood purchased. On 04.08.2014, Forest Officials took away all the finished and unfinished handicrafts articles without any reason. He filed an application for interim custody of those articles as C.M.P. No. 7347/2014 stating that he was conducting the unit for long time and used to purchase sandalwood from Mysore, Salem and Marayoor Forest Depots and making handicrafts using the same and Forest Officials used to conduct inspection and they have verified the same and made endorsement in the respective registers. Only on 04.08.2014, when the Forest Officials came, they took away the articles without assigning any reason and he had not committed any offence and so, he prayed for interim custody of those articles. The Forest Officials opposed the application and the learned magistrate by impugned order, dismissed the application. Aggrieved by the same, the present revision has been filed.

3. Heard the Senior Counsel Shri. T. Krishnanunni appearing for the revision petitioner and Shri. M.P. Madhavankutty - Special Government Pleader for Forest Cases.

4. The Senior Counsel Shri. T. Krishnanunni had submitted that even prior to the inspection, he was conducting the unit and when the Forest Officials have seized the articles, he had made an application for granting permission to conduct the handicraft units and that is pending with them. Further, it cannot be said to be an illegal possession as it was purchased from a Forest Depot in a lawful manner and he is prepared to abide by any condition imposed by this court.

5. On the other hand, Shri. M.P. Madhavankutty - Special Government Pleader for Forest Cases submitted that after 2012, possession of more than 1 kgm of Sandalwood or allied products of the sandalwood will be an offence and allowing such person to keep possession cannot be permitted. Further, when they inspected and conducted inspection, it was found that stock did not tally and that was the reason why the case has been registered and the investigation is still in progress and so, interim custody cannot be granted.

6. It is an admitted fact that the revision petitioner was conducting a handicraft unit in Muttuthara dealing with handicrafts made out of sandalwood also. But, it is also in a way admitted in the counter filed by the respondent - the Forest Officials that he used to purchase sandalwood by participating in the auction conducted by the Forest Officials and purchasing sandalwood not only from Marayoor Sandalwood Forest Depot, but, also from Mysore and Salem and other Forest Depots. It is also in a way admitted by the Senior Counsel for the revision petitioner also that, he is not having the requisite permission as provided in Section 47C of the Kerala Forest Act and the Kerala Forest (Restriction on cutting and selling of Sandal Trees and grant of licence for possession and transport of Sandalwood and Sandalwood Oil) Rules, 2012. Chapter VIA has been incorporated in the Kerala Forest Act by Amendment Act 2010 and Section 47C of the Act deals with Prohibition of possession and transport of sandalwood and sandalwood oil which reads as follows:

47C. Prohibition of possession and transport of sandalwood and sandalwood oil -
(1) Notwithstanding anything contained in any law for the time being in force or in any judgment, decree, or order of any Court, no person shall,-

- (i) possess or transport any quantity of sandalwood in excess of one kilogram; or
- (ii) possess or transport any quantity of sandalwood oil in excess of one hundred millilitre:

Provided that the authorised officer may issue licence for the possession or transport of sandalwood in excess of one kilogram to religious institutions, artisans, licensed manufacturers and registered practitioners of indigenous medicines or any corporation or society owned or controlled by the Government for their bona fide purposes, on payment of such fees, in such manner and

subject to such restrictions and conditions as may be prescribed:

Provided further that the authorised officer may issue licence for the possession or transport of sandalwood oil in excess of one hundred millilitre to the licensed manufacturers of cosmetics, drugs and other material in which sandalwood oil is an essential ingredient, for their bona fide purposes, on payment of such fees, in such manner and subject to such restrictions and conditions as may be prescribed.

(2) Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any Court, no person except the Government or public sector undertakings owned by Government shall disintegrate or attempt to disintegrate sandalwood in mills or by other contrivance, manufacture or distil, or attempt to manufacture or distil oil from sandalwood or re-distil, refine or sell oil extracted from sandalwood.

(3) The authorised officer may cancel or suspend any licence granted under subsection (1), if he is satisfied, after giving an opportunity to the holder thereof being heard, that the licensee has contravened, or failed to comply with any of the provisions of this Chapter or the rules made thereunder or any of the terms and conditions of the licence.

(4) Any person aggrieved by the decision of the authorised officer refusing to grant or renew a licence or cancelling or suspending such a licence under this section may, within such time as may be prescribed appeal to the Government and the Government may make such order as they may think fit.

7. Section 47D, E, F, G and H deals with the declaration of stock to be made by the person in possession or the licensee, price to be paid by the authorised officer, restriction on purchase, sale, penalty for offences in regard to the sandalwood and seizure of sandalwood, sandalwood oil etc., and confiscation thereon. Section 52 of the Kerala Forest Act deals with confiscation of seized property under this Act.

8. Rule 6 and 7 of Kerala Forest (Restriction on cutting and selling of Sandal Trees and grant of licence for possession and transport of Sandalwood and Sandalwood Oil) Rules, 2012 deals with the procedure for application etc., which reads as follows:

6. Grant of licence for possessing sandalwood or sandalwood oil:- (1) Application for licence for the possession of sandalwood shall be submitted in Form III along with a fee at the rate specified in the Schedule to the Authorised Officer, who shall, on receipt of such application, inspect or cause such inspection to verify the genuineness of the contents of the application and if satisfied grant a licence in Form IV appended to these rules, within thirty days from the date of receipt of the application. In case the application is declined, the same shall be intimated to the applicant in writing.

(2) Licence under sub-rule (1) for possession of sandalwood and sandalwood oil

in excess of the permitted quantity as provided under sub-section (1) of Section 47C may be issued to those mentioned under the first and second proviso to sub-section (1) of Section 47C on payment of licence fee at the rate specified in the Schedule.

7. Grant of licence for transporting sandalwood or sandalwood oil:- (1) Application for licence for the transport of sandalwood shall be submitted in Form III along with a fee at the rate specified in the Schedule to the Authorisd Officer who shall, on receipt of such application inspect or cause such inspection to verify the genuineness of the contents of the application and if he is satisfied, issue a licence in Form IV appended to these rules, within thirty days from the date of receipt of the application. In case the application is rejected, the same shall be intimated to the applicant in writing.

(2) Licence under sub-rule (1) for transporting sandalwood and sandalwood oil in excess of permitted quantity as provided under sub-section (1) of Section 47C may be issued to those mentioned under the First and second proviso to sub-section (1) of Section 47C on payment of licence fee at the rates specified in the Schedule.

(3) In the case of licences issued under this rule, the route of transport shall invariably may be noted in the licence with a specific instruction to get the materials checked at the forest check posts or forest offices enroute.

(4) In granting the licence, the Authorised Officer shall have due regard to the following matters, namely:-

(i) capacity of the applicant to fulfill the purpose for which licence is granted with reference to the factories, equipments, production and suitability of premises for such business.

(ii) past record of the applicant as a dealer or manufacturer in the business which he desires to carry on; and

(iii) whether the applicant was involved in or convicted of any offence under any of the forest laws for the time being in force.

(5) Licence shall be granted only if the bona fide possession of sandalwood or sandalwood oil is proved.

(6) Where the Authorised Officer refuses to grant licence, he shall record reasons for the same in writing and communicate the same to the applicant within thirty days of receipt of the application.

9. A reading of these Sections and Rules will go to show that after the coming into force of these provisions, possession of sandalwood or sandalwood oil more than 1 kilogram without licence or permission is an offence and it is liable to be proceeded with. Person in possession or person who contravenes the same is liable to be prosecuted for the offences mentioned therein and if any article is seized, in connection with the same, then, those articles are also liable to be

confiscated.

10. It is true that the documents produced by the revision petitioner before the court below shows that, it was purchased from Forest Depot by lawful means by participating in the auction conducted by the Forest Officials. It is quite unfortunate that, there is no rule prohibiting the persons participating in the auction who does not have any licence to possess the same. The counter statement filed by the Forest Officials reiterate this fact that, they need not consider as whether he is having any possession of licence or not for the purpose of participating in the auction. But, it is high time for the Government to make certain restrictions on this aspect even for permitting to participate in the auction especially when possession exceeding a particular quantity has been made an offence under Section 47C of the Act without licence or permission. Further, obtaining licence for that purpose has been made compulsory by virtue of the rule that has been framed in the year 2012. The purchase in this case from the Forest Department was in the year 2014 when these Section and Rule were in force.

11. But, that will not absolve the responsibility of a person to possess an article in excess of the quantity mentioned under the respective Act and Rules without obtaining a licence. In this case, though the Senior Counsel appearing for the revision petitioner has submitted that an application has been made for getting permission for that purpose, it is seen from the counter file by the department that, it was not in tune with Rule 6 of the above said Rules and it was not in the form 32 provided therein also. It was in a way admitted by the Senior Counsel appearing for the revision petitioner that, it was not filed in the form provided, but, a casual application has been made and necessary fee has been paid for that purpose. When an enactment provides that the things will have to be done in a particular form, that will have to be followed and unless it is done, it cannot be said that the proper application has been filed for the purpose mentioned under the Rules.

12. It is true that in the decision reported in State of Karnataka Vs. K. Krishnan, , it has been observed by the Hon''ble Supreme Court that in exceptional cases and for exceptional reasons, a court inclined to release the vehicle during such pendency, furnishing a bank guarantee should be the minimum condition. But, even in that decision, it has been observed that, if the article is involved in the commission of the offence and possession of that article itself is an offence under the Act, then, court must be slow in releasing the articles. As regards the vehicles which have been used for commission of the offence or tools which have been used for commission of the offence, some relaxation can be made as ultimately if the confiscation ordered, there must be safeguard for realisation of the amount of the value of the article to be confiscated if at all the same is not available at the later point of time and also considering the fact that keeping the articles like vehicle will only deteriorate its condition making it useless for any of the persons including the department if

the confiscation proceedings is delayed. So, that not the case here. Even if this court permits to keep the article as interim custody with the petitioner, that will amount to commission of an offence under Section 47C of the Act as he is not having the requisite licence for keeping the article in excess of the quantity mentioned in that provision. So, under the circumstances, this court feels that, it is not proper for this court to now to grant the interim custody to the revision petitioner. But, this will not prevent the revision petitioner applying for necessary permission under Rule 6 of the above said rules and on making such application in the prescribed form, the Forest authorities considering the same and dispose of the same without delay. If such a licence is granted, then, the revision petitioner is at liberty to move the court below for possession of these articles as interim custody and at that time, the learned magistrate can consider and dispose of that application afresh in accordance with law though the earlier application for custody has been dismissed by that court and confirmed by this court for the reasons stated above.

With the above observation and directions, the revision petition is disposed of.