
(2017) 11 KL CK 0003
In the High Court Of Kerala
Case No : 2223 of 2004 (C)

REJIMON, S/O.KUNJU

APPELLANT

Vs

THE STATE OF KERALA

RESPONDENT

Date of Decision : 14-11-2017

Acts Referred:

[Kerala Forest Act, 1961](#), Section 27(1)(E)(III)

Citation : (2017) 11 KL CK 0003

Hon'ble Judges : P.Ubaid

Bench : SINGLE BENCH

Advocate : GILBERT GEORGE CORREYA, J.VIMAL, A.VELAPPAN NAIR,
C.K.PRASAD

Final Decision : Allowed

Judgement

The revision petitioners herein are the accused Nos.2 to 4 in C.C No.112/2000 of the Judicial First Class Magistrate Court-I, Thodupuzha. The case against the 5th accused was split up and refiled when he absconded from legal process.

2. The prosecution case is that on 22.12.1997, the five accused trespassed into the Government reserve forest (settled) and tried to cut and remove two Anjili trees, thereby causing a loss of 5000/- to the Government. The accused Nos.1 to 4 pleaded not guilty to the charge framed against them in the trial court and they claimed to be tried. The prosecution examined five witnesses and proved Exts.P1 to P4 documents in the trial court. The

accused did not adduce any evidence in defence.

3. On an appreciation of the evidence, the trial court found the accused Nos.1 to 4 guilty under Section 27 (1)(e) (iii) of the Kerala Forest Act. On conviction, they were sentenced to undergo simple imprisonment for one year and to pay a fine of 2000/- each by judgment dated 14.3.2003. Aggrieved by the judgment of conviction, the accused Nos.1 to 4 approached the Court of Session with Crl.A No.105/2003. In appeal, the learned Additional Sessions Judge confirmed the conviction and sentence and accordingly dismissed the appeal by judgment dated 3.7.2004.

4. Pending the revision, the 4th accused died and his death was recorded in the proceedings.

5. On a perusal of the materials, and on hearing both sides, I find that the prosecution has in fact failed to prove the essential aspects. The prosecution case is that the accused trespassed into the Government reserve forest and tried to cut and remove two Anjili trees. PW1 and 4 are the material witnesses relied on by the prosecution. These witnesses have no case definitely in evidence that the alleged act of offence was committed in the reserve forest. Their evidence is that they detected the offence at the property in the possession of the accused. They do not say in evidence that it is a settlement area or part of the Government reserve forest. When the prosecution, or the main witnesses have no such case that the property in question is vested forest or reserve forest, a prosecution under the Forest Act cannot be sustained.

6. The Form-I report (occurrence report) in this case

was registered by the Forest Range Officer, and the complaint was also made by him in court. The Forest Range Officer who preferred complaint and who registered the occurrence report is one M.V Joseph. The Forest Range Officer who made complaint or who registered the crime is not seen examined in the trial court. This is in fact a serious infirmity. The evidence given by the Forest Guards can be looked into by the court only when the proper person who registered the crime and who made complaint is examined in court. The prosecution has no explanation why the Forest Range Officer who registered the crime and who submitted complaint in this case was not examined. Anyway, on a perusal of the evidence given by PW1 and PW4, I find that their evidence is not satisfactory on facts to prove the offence under Section 27(1)(e) (iii) of the Kerala Forest Act. I find that the revision petitioners are entitled for acquittal in the absence of proper materials for a prosecution under Section 27 of the Kerala Forest Act, that the alleged offence was committed in a Government Forest; reserved or vested. In the result, this petition is allowed. The revision petitioners 1 and 2 are found not guilty of the offence under Section 27(1) (e) (iii) of the Kerala Forest Act and they are acquitted of the said offence in revision. Accordingly, the conviction and sentence against them in CC 112/2000 of the court below and confirmed in appeal will stand set aside and the revision petitioners will stand released from prosecution.