

**(2013) 08 KAR CK 0142**

**In the Karnataka High Court**

**Case No :** Criminal Revision Petition No. 1252 of 2010

Sri. S. Lokesh and Sri B. Srinivasa

APPELLANT

Vs

State of Karnataka

RESPONDENT

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**Date of Decision :** 08-08-2013

**Acts Referred:**

Karnataka Forest Act, 1963 — Section 104A, 62-C  
Wild Life (Protection) Act, 1972 — Section 51

**Citation :** (2013) 08 KAR CK 0142

**Hon'ble Judges :** B.V. Pinto, J

**Bench :** Single Bench

**Advocate :** D. Nagaraj, for the Appellant; Rajasubramanya Bhat, HCGP, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

B.V. Pinto, J.—This revision petition is filed challenging the Judgment dated 21.08.2010 passed by the Fast Track and Additional MACT (11), Bhadravathi in Crl. A. No. 112/2009 dismissing the appeal filed against the Judgment dated 16.10.2009 passed by the learned Civil Judge (Junior Division) and Additional JMFC, Bhadravathi in CC No. 5595/2006 convicting the petitioners/accused for the offence u/s 104A of the Karnataka Forest Act r/w Section 51 of the Wild Life Protection Act and sentencing each of them to undergo simple imprisonment for six months and to pay fine of Rs. 1,000/-, in default of payment of fine, to undergo simple imprisonment for three months. The parties are referred to as per their rankings before the trial Court for the purpose of convenience and clarity.

2. It is the case of the prosecution that, on 29.05.2001, when the Forest Guard of Aldar Branch was on a routine gust duty within Tamadihalli Forest Area and was coming along with his staff near Mannajangli, Bandigudda, he saw two persons carrying two wooden sizes. Therefore, he apprehended them and found that they were carrying two sizes of beetle wood. He asked accused to lead to

the place where the said wood was cut and removed. He verified that the said logs were removed from the reserve forest, but since he could not get any panchas nearby, he seized the wooden sizes. After seizure, he drew the mahazar by taking the witness of his own staff as panchas. Thereafter, the complaint came to be lodged.

3. Accused were arrested and put on trial. During the trial, the prosecution in order to prove the case has examined in all two witnesses and got marked Exs. P1 to 6 and produced MOs. 1 to 3. The defence of the accused was one of total denial. However, by the impugned Judgment, the trial Court convicted the accused as aforestated and sentenced them accordingly. The Sessions Court in appeal also dismissed the appeal filed by the appellants. Hence, the accused are before this Court.

4. Heard Sri. D. Nagaraj, learned Counsel for the accused and Sri. Rajasubramanya Bhat, learned HCGP for the State.

5. Learned Counsel for the accused submits that, the place where the alleged trees were cut is different from the place where the accused are alleged to have been apprehended. The complainant has not drawn the mahazar at the place where the stumps were observed to attract the provisions of the Karnataka Wild Life Act. He also submits that, apart from the evidence of PW. 1 who is the forest guard, there are no other corroborative witnesses to show that the petitioners were found in the possession of rose wood at the time of their apprehension. He also submits that, the prosecution has got marked Exs. P2 and 3 which are the voluntary statements of the accused and the Court could not have got them marked as exhibits and could not have relied upon Exs. P2 and 3 which are incriminating in nature. He also submits that, since there are no independent witnesses, the learned Magistrate could not have convicted the accused. He further submits that, the documents Exs. P4 and 5 also do not enure to the benefit of the prosecution since the documents do not comply with the provisions of the Karnataka Forest Act to prove that the material seized is rose wood. Hence, he submits that, the accused is entitled for an order of acquittal.

6. Sri. Rajasubramanya Bhat, learned HCGP on the other hand submits that, the evidence of PW. 1 is clear in establishing that the accused were in possession of trees belonging to the Government and the document as per Ex. P5 indicates that the said forest produce is rose wood which is a property belonging to the Government. Hence, the order of conviction may be sustained.

7. I have carefully gone through the orders passed by the Courts below. It is seen that, to prove that the seized property is a forest produce a certificate as envisaged u/s 62-C of the Karnataka Forest Act has to be produced. Section 62-C of the Karnataka Forest Act reads as follows:

62-C. Certificate of Forest Officer to be an evidence-Any document purporting to be a certificate under the hand of a Forest Officer not below the rank of a Range Forest Officer who has undergone training in the examination of forest produce

and who is so authorised by the State Government in this behalf in respect of forest produce, submitted to him for examination and report, may be used as evidence of the facts stated in such certificate in any proceedings under this Act; but the Court may, if it thinks fit, and shall on the application of the prosecution or the accused person summon and examine any such Forest Officer as to the subject matter of his certificate.

8. As per the above provision, the Authorised Officer of the Government has to certify that the wood seized in this case is a rose wood. In this case no such authorisation certificate has been produced to show that the Forest Range Officer is authorised by the State Government to issue such a certificate. In that view of the matter, the prosecution has failed to prove that the materials seized is rose wood and is a forest produce. It is also to be seen that, though PW. 1 has admitted in the cross-examination that there is a village nearby, but no independent witnesses have been examined and the evidence of PW. 1 is not corroborated either by the evidence of any witnesses nor by any documents, except Exs. P2 and 3 which are the voluntary statements of the accused. No voluntary statement of the accused can be used against himself. Therefore, there is absolutely no evidence in this case to hold that the accused have committed the offence u/s 104-D of the Karnataka Forest Act r/w Section 51 of the Wild Life Protection Act. In that view of the matter, this revision petition is allowed. The order of conviction passed by the learned Magistrate as confirmed by the learned Sessions Judge is hereby set aside. Accused are acquitted of all the charges leveled against them. Bail bond executed by them is discharged. Fine amount if any deposited shall be refunded to the accused.