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(1995) 01 SC CK 0066

In the Supreme Court Of India

Case No : Criminal Appeal No. 71 of 1995

State of Andhra Pradesh — APPELLANT

Vs

Korrapati Subrahmanyam and others — RESPONDENT

Date of Decision : 13-01-1995

Acts Referred:
Andhra Pradesh Forest Act, 1967 — Section 20, 29, 44

Citation : AIR 1995 SC 961 : (1995) 1 SCALE 238 : (1995) 1 SCC 483 Supp : (1995) 1 SCR 246

Hon'ble Judges : S. C. Sen, J;K. Ramaswamy, J

Bench : Division Bench

Advocate : G. Prabhakar, for the Appellant; V.G. Pragasam, for the Respondent

Final Decision : Allowed

Judgement

1. Mr. V.G. Pragasam. learned counsel for the respondents, states that though on; the, last occasion he had undertaken to file Vakalatnama for respondent Nos. 1 and 6, despite his best efforts, he could not contact them and obtain instructions for filing vakalat. Therefore, we deem that respondent Nos. 1 and 6 are not interested in contesting the matter. They are set ex-parte.

2. Leave granted.

3. On the intervening night of February 14 and 15, 1978, the lorry - APD 3156, was being loaded with 28, logs of red sander-wood at, tri-junction road, one mile away from Sanipaya near Marrimanu in Cuddapah District of Andhra Pradesh State. The officers of the forest department, who were in watch, proceeded to the place and seized the 28 sander-wood logs loaded in the lorry under a Panchnama-Ex.p8. They also seized 118 logs which were kept on the road side for being loaded into the lorry. The Statements of the accused 2 to 7 who were apprehended on the spot, were recorded under Ex.P1 to P7, The lorry trip sheet Ex. P-19 was also seized. Thereafter , they were charged for the offence u/s 20 read with Section 29 of the A.P. Forest Act, 1967, (for short, 'the Act') read with

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Rule 3 of the A.P. Sandel-wood and Red-sanders Wood Transit Rules, 1969, (for short, 'the Rules') The Trial Court after appreciation of the evidence found the respondents guilty and convicted and sentenced them to undergo imprisonment for three months and imposed fine of Rs. 100 on each of them, in default to suffer simple imprisonment for a further period of one week. Both the sentences were directed to run concurrently. The lorry MO-1 was also ordered to be confiscated, if not it was done by the competent authority u/s 44 of the Act. On appeal, learned Addl. Sessions Judge, by his judgment dated October 1, 1985 confirmed the conviction and confiscation. In criminal revision case No. 465/84 when the matter had come up before a Single Judge, on 13.8.86 the learned Judge, following the decision of another Single Judge reported in Chennupati Vazeer v. State of A.P. (1980) 2 ALT 391, held that Rule 3 is inapplicable to the facts in this case; it is only a preparatory for transit and that, therefore, rule does not create any offence. Accordingly, he set aside the conviction and sentence. Thus, this appeal, by special leave.

4. Subsequently, when the matter was referred to the Division Bench in Government of Andhra Pradesh Vs. Chekuri Satyanarayana Raju, Lorry Owner and Another, , the Division Bench of the High Court held that the red-sanders when attempted to be transported by loading, it would amount to an offence of forest produce in transit within the meaning of Rules 2(3) of the Rules read with Rules 3 and 4 and that, therefore, the confiscation of the lorry was held to be valid. The Division Bench expressly overruled the ratio in Vazeer's case. Even otherwise, we are of the view that the Single Judge was not right in his conclusion that it is not in transit.

Rule 2(3) of the Rules provides that :

Forest produce in transit" includes forest produce found stored in any place or in the margin of any public road or cart tract or footpath whether or not loaded in carts or other vehicles and forest produce found in any river, canal or water course whether in rafts or not

The definition clearly states that a forest produce found stored in any place or in the margin of any public road or a cart track or footpath whether or not loaded in cart or other vehicle is a forest produce in transit. The distinction preparation or completion of the act of forest bears no relevance. The prohibition contained in Rule 3, namely, that no forest produce shall be moved into or from or within the State by land or water, unless such produce is accompained by a permit therefore issued under Rule 5 and produced for check immediately on demand is a contravention u/s 20 read with Section 29 of the Act which is a forest offence. Therefore, the High Court was not right in holding that it is not in transit and that, therefore, the offences under Rule 3 read with Sections 20 and 29 of the Act have not been made out.

5. Accordingly, we hold that the loading of 18 logs of red sander-wood and storage of 118 read sander-wood on the road margin for loading into the lorry,

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but for the interception, would be forest produce in transit within the meaning of Rule 3(2) of the Rule. Admittedly, no permit was issued by the competent authority for transit of the red sanders wood seized from the lorry owner and the persons were found in possession at the time of loading. Thereby the offence under Rule 3 read with Sections 20 and 29 of the Act was rightly found by the Court below. Accordingly, minimum sentence has been awarded. The appeal is accordingly allowed. The acquittal by the Single Judge is set aside and the conviction and sentence recorded by the trial court as confirmed by the appellate court are upheld. The confiscation of the lorry also is upheld, if not already confiscated by any order of the competent authority u/s 44 of the Act.

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