
(1989) 04 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 22 of 1986

State of Himachal Pradesh	Vs	APPELLANT
Surinder Lal Sood and Others		RESPONDENT

Date of Decision : 18-04-1989

Acts Referred:

Forest Act, 1927 — Section 41, 42
Himachal Pradesh Forest Produce Transit (Land Routes) Rules, 1978 — Rule 11

Citation : (1989) 1 ILR HP 241

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bhawani Singh, J.—By this appeal, the State challenges the order of acquittal by Judicial Magistrate, 1st Class(II), Shimla, in Case No. 118/1 of 1983 decided on 30-10-1985 for offences under Sections 41 and 42 of the Indian Forest Act, 1927 read with Rule 11 of the Himachal Pradesh Forest Produce Transit (Land Routes) Rules, 1978.

2. The facts, briefly stated, are that truck No. HPS-5639 while coming from Shogi to Shimla was found at Police Barrier Boileauganj, Shimla. It was loaded with timber~68 scants of Deodar, out of which 14 scants having khudan mark of "SZ" and on one property mark "BD" and two scants were without any mark and 51 scants having Khudan mark "V and property mark "V.T", 58 scants, out of which over one scant there was Khundan mark "SL" and three scants with Khudan mark "AX" and over 53 scants Khudan Mark v. and one scant over which property mark VD" and two goals without any mark, which were taken into possession by the police. The accused were challenged under the aforesaid provisions and the trying Magistrate acquitted all of them vide the impugned judgment. The State, therefore, assails this judgment.

3. It is contended by Shri M.S. Guleria, learned Assistant Advocate General, that the trial court did not minutely examine permit Ex. P.W. 6/B and erred in holding

that the accused was carrying timber under a valid permit. This permit, Shri Guleria alleges, is in the name of one Shri Gian Singh, Contractor of Balson, and the forest produce regarding which export permit was issued was to be exported from Badhal to Shimla and outside Himachal Pradesh. The timber in question was being carried from Shogi to Shimla which required a pass for that purpose. The accused having failed to produce the permit when checked at the Barrier, acted in violation of Sections 41 and 42 of the Indian Forest Act read with Rule 11 of the Himachal Pradesh Forest Produce Transit (Land Routes) Rules, 1978.

4. Before proceeding further to examine the submissions of the learned Counsel appearing for the State, it is important to know as to what exactly is alleged by the prosecution against the accused. Obviously, reference to the amended charge framed in the case is the way to know it.

5. The prosecution allegation is that on 28-7-1982, the accused transported 128 scants of Deodar and Kail, out of which two Golas and two scants were bearing no marks, from Shogi in Solan Forest Division to Boileauganj in Shimla Forest Division without any permit and thereby violated the provisions of Rule 11 of the Himachal Pradesh Forest Produce Transit (Land Routes) Rules, 1978 which is punishable u/s 42 of the Indian Forest Act, 1927. In order to prove these aforesaid allegations, a few witnesses have been examined.

6. Shri Birbal Ram (P. W. 1) submits in his examination-in-chief that the accused had no permit for this timber with different marks when it was checked but in his cross-examination he cannot specifically decipher as to the nature of these marks. He is not clear about the execution and nature of Ex. P.W. 1/A (recovery memo.) although the same has been signed by him.

7. Shri Goverdhan Dass (P.W. 2) is Deputy Ranger, Forest Check Post, Dhalli, who in his cross-examination states that if timber is to be taken from one Forest Division to another, it may require a permit but not in case it is taken from Shogi to Shimla as both places fall within Shimla Forest Division. This Statement clinches the issue. The case against the Petitioner, as revealed in the charge-sheet, is the transport of timber from Shogi to Shimla without permit. So, in view of the statement of Shri Goverdhan Dass (P.W. 2), there is no requirement of such a permit. To the same effect is the statement of Shri Bhoop Ram (P.W. 6).

8. Reference to the statement of Shri Rohali Ram (P.W. 9) indicates that this timber was exported unto Shogi under a valid permit.

9. Shri M.S. Guleria, learned Assistant Advocate General, with his usual vehemence, asserts that the nature, number and kind of timber described in Ex. P.W.1/A does not tally with the timber authorized to be transported vide Ex. P.W. 6/B. Reference is made to Item No. 7 (property Khudan mark "GR" of Ex. P.W. 6/B) and "to Ex. P.W. 1/A indicating fundamental difference. In this respect, the explanation of the accused is also relevant. Needless to reemphasize that the case of the prosecution is not v. t this against the accused. It is limited to the export of timber of -4 any variety, size and number from shogi to Shimla.

10. The accused explained that they trade in forest timber with sale depots at Shogi and Lakkar Bazar, Shimla. They purchase and stack timber at either of the places and transport of timber in between the two points is quite frequent depending upon the requirement at either of the two depots of sale. The export permit Ex. P. W. 6/B is in the name of Shri Gian Singh from private sale. Timber described therein was purchased by the accused and stacked along with other timber at Shogi depot and this was not the only timber purchased by them, rather timber from various contractors had been purchased and stacked there. Timber, in question, was being shifted from Shogi to Shimla which is within the same Forest Division. In between these two points, there is no forest check-post requiring interception and examination of the timber. Boileauganj is only a police Barrier and not a Forest Barrier under the Himachal Pradesh Forest Produce Transit (Land Routes) Rules, 1978. Obviously, under these circumstances, they allege through their counsel Shri Ajay Kumar Sood that this timber purchased from various owners/proprietors was, in fact, rejected timber as described in Ex. P.W.8/C, though reference to permit Ex. P.W. 6/B has been mentioned.

11. After analyzing the submissions made by the learned Counsel for the parties, I am of the opinion that the explanation of the accused appears to be quite satisfactory convincing and honest. This conclusion is further strengthened in view of the statements of number of prosecution witnesses, as discussed above, that between Shogi and Shimla, there is no requirement of pass for the transport of timber. It is, therefore, absolutely unnecessary, as contended by Shri M.S. Guleria, learned Assistant Advocate General, to examine the variations in the nature, number and size of timber mentioned in various documents. Rule 11 is not attracted in the present case.

12. The net result of the aforesaid discussion is that there is no merit in this appeal and the same is accordingly dismissed. Personal bonds" and surety bonds, if any, executed by the accused at any stage of the case are hereby cancelled.