

(2008) 12 KL CK 0029
In the High Court Of Kerala
Case No : Criminal Appeal No. 556 of 2001

State of Kerala

APPELLANT

Vs

Bharath Booshan Aggarwal

RESPONDENT

Date of Decision : 19-12-2008

Acts Referred:

Constitution of India, 1950 — Article 48A, 51A
Criminal Procedure Code, 1973 (CrPC) — Section 313
Kerala Forest (Amendment) Ordinance, 1992 — Section 3, 3(1)
Kerala Forest Act, 1961 — Section 2, 23, 27(1), 3, 52(2)
Kerala Forest Produce Transit Rules, 1975 — Rule 23, 3
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 54

Citation : (2009) 1 KLJ 321

Hon'ble Judges : V.K.Mohan, J

Bench : Single Bench

Advocate : Lakshmi Rani, K.L., P.P, for the Appellant; Sunny Mathew, for the Respondent

Final Decision : Allowed

Judgement

V.K. Mohan, J.—This Criminal Appeal is preferred by the State, aggrieved by the order of acquittal passed by the Sessions Court, Kozhikode Division as per its judgment dated 20-11-2000 in Criminal Appeal No. 167 of 1997. The impugned order arose out of the judgment dated 19-8-1997 in C.C. No. 237 of 1994 of the Court of Judicial Magistrate of First Class II, Thamarassery. C.C. No. 237 of 1994 was instituted upon a complaint filed by the Forest Range Officer, Thamarassery alleging commission of offence u/s 27(1)(d) of the Kerala Forest Act as amended by Section 3(iii)(d) of the Kerala Forest (Amendment) Ordinance, 1992 which was later repealed as per Kerala Forest (Amendment) Act, 1993.

2. The case of the complainant is that on 4-1-1994, on getting secret information that sandal wood oil was being illegally transported, the forest officials went to the Air Port at Karipur. From the Air Port premises, they recovered 460 kilograms of sandal wood oil which was kept for exporting to various foreign countries. On

their detection and further investigation the forest officials found that such bulk quantity of sandal wood oil is belonging to the first accused firm of which the second accused is the Managing Partner. Consequently, on the next day i.e. 5-1-1994, the office premises of the 1st accused was searched as a result of which the officials seized a further quantity of 73-6 kilograms of sandal wood oil. Thus the allegation is that the Respondent herein/accused before the trial Court kept in his possession so much quantity of sandal wood oil, which is a major forest produce, in contravention of the Kerala Forest Act and therefore he is liable to be prosecuted and punished for the said offence.

3. After collecting the materials and on completing the investigation, the Appellant/complainant preferred a complaint before the trial Court. On the appearance of the accused and after hearing him, a formal charge was framed against him u/s 27(1)(d) of the Kerala Forest Act which was read over and explained to the accused to which he pleaded not guilty. Thereafter, P.Ws. 1 to 4 were examined from the side of the complainant and Exts. P-1 to P-11 series were marked. M.O. 1, material objects were identified and marked. After the prosecution evidence, the incriminating circumstances which emerged out through prosecution evidence were put to the accused when he was examined u/s 313 of the Code of Criminal Procedure and he denied the same. It is the further case of the accused that he is a licenced manufacturer of sandal wood oil and holding valid licence issued by the Central Excise Department for the manufacture of sandal wood oil. It is also the case of the defence that the firm of the Respondent herein/accused is a registered dealer under the Kerala Sales Tax Act and Central Sales Tax Act and the firm is maintaining regular registers regarding the purchase of raw materials. It is also their contention that the firm being a licenced factory for the manufacture of sandal wood oil, the Forest Transport Rules were not applicable to them. It is also their contention that for the manufacturing of sandal wood oil, no licence is to be obtained from the Kerala Forest Department. Thus, the sum and substance of the defence is that the possession of sandal wood oil is a legitimate one and the seizure of the same by the forest officials was illegal. On the basis of the rival contentions, the trial Court formulated two issues; among them, the second one is about the punishment to be awarded. The first issue is "Is it proved that the accused was found in possession of such a quantity of sandal wood oil which is a forest produce illicitly removed from the reserve forests and thus committed an offence u/s 27(1)(d) of the Kerala Forest Act?" After an elaborate consideration of the evidence of both oral and documentary, the trial Court found that the accused was guilty of the offence charged against him. Accordingly, he was sentenced to undergo rigorous imprisonment for a period of three years and also to pay a fine of Rs. 2,000 in default to undergo simple imprisonment for a period of six months and also found that the accused was guilty u/s 3(iii) read with Section 23 of the Kerala Forest Produce Transit Rules and accordingly he was sentenced to undergo rigorous imprisonment for a period of six months. It was ordered that the substantial period of sentence shall run concurrently. In this case the

property involved was already released to the accused, on the basis of the order of the Chief Judicial Magistrate, Kozhikode issued in terms of the direction issued by this Court, on depositing a sum of Rs. 9,93,640 and also on furnishing bank guarantee for Rs. 5,06,360 by the accused. The trial Court as per its judgment directed that the amount so deposited and the bank guarantee so furnished were to be forfeited.

4. Challenging the above order of conviction and sentence and order of forfeiture of the money deposited and the bank guarantee, the accused therein preferred Criminal Appeal No. 167 of 1997 before the Sessions Court, Kozhikode. The lower Appellate Court by its judgment dated 20-11-2000 allowed the appeal and set aside the conviction and sentence and the accused was acquitted of the said offences. But, at the same time, the case was remitted back to the lower Court for retrial after framing a charge under Rule 3(iii) read with Rule 23 of the Kerala Forest Produce Transit Rules and to dispose of the case afresh in accordance with law and after giving an opportunity to both the complainant and the accused to adduce whatever further evidence, they deem fit to adduce. It is the above order of acquittal, challenged in this appeal by the State.

5. I have heard Smt. Lakshmi Rani, K.L, learned Public Prosecutor and also Mr. Sunny Mathew, learned Counsel for the Respondent/accused.

6. The learned Public Prosecutor submitted that the order of acquittal passed by the learned Appellate Court is absolutely unwarranted, unfounded and perverse. According to the learned Public Prosecutor, there is no dispute from the part of the defence regarding the seizure effected by the forest officials. The Public Prosecutor submits that the only contention raised by the defence is to the effect that the accused has got a manufacturing licence for the manufacture of the sandal wood oil and therefore seizure of sandal wood oil is effected from the legitimate possession. It is the case of the learned Public Prosecutor, that the trial Court, after consideration of the entire matter in its all seriousness, came into a conclusion that the accused has committed the offences which were charged against him. But on the other hand, according to the Public Prosecutor, the lower Appellate Court due to wrong notion of law and without considering the entire facts and circumstances involved in the case and overlooking the evidence adduced by the prosecution came into an erroneous conclusion that the accused has not committed the offence charged against him. According to the learned Public Prosecutor, the Appellate Court was of the opinion that the accused was liable to be proceeded only for the offence under Rule 3(iii) read with Rule 23 of the Kerala Forest Produce Transit Rules and no other offence lie against the accused. Thus the learned Public Prosecutor pointed out that the finding arrived on by the lower Appellate Court is diametrically opposed to the provisions of the Forest Act.

7. The learned Public Prosecutor pointed out that the "sandal wood oil" comes within the definition of Section 2(f) "Forest Produce", in the Kerala Forest Act, 1962, in view of the decision of the Supreme Court in *Forest Range Officer v.*

Mohammed Ali [1993 (1) KLT 886 (S.C.)]. It is also the case of the learned Public Prosecutor that the sandal wood oil being a forest produce, it is for the accused to give an exact account and convincing explanation as to how he came in possession of such quantity of article and on his failure to make proper account, the offence is attracted especially in the light of Section 69 of the Kerala Forest Act. The learned Public Prosecutor pointed out that lower Appellate Court has miserably failed to understand the applicability of Section 69 of the Act in the present case and the said Court simply has gone to the extent to say that only the provisions of the Kerala Forest Produce Transit Rules, 1975 would be attracted. The learned Public Prosecutor also pointed out that the lower Appellate Court has simply set aside the order of conviction and sentence passed by the trial Court without application of mind, especially ignoring the fact that the contraband article involved in the case is a valuable forest produce. Therefore the Public Prosecutor submitted that the order of acquittal of the lower Appellate Court is liable to be set aside and the conviction and sentence imposed by the trial Court may be restored.

8. Per contra, the learned Counsel appearing for the Respondent/accused submitted that the accused is the holder of a valid licence issued by the competent authority namely the Central Excise Department of the Central Government and being a manufacturer, the accused is entitled to possess whatever quantity of sandal wood oil and such possession cannot be termed or treated as illegal or Illegitimate possession. In reply to the argument of the Public Prosecutor that Section 69 of the Act is applicable in the present case, the learned Counsel for the Respondent/accused submitted that accused cannot be shouldered with such burden in the absence of any allegation in terms of Section 27(1)(d) of the Act. Learned Counsel invited my attention to Section 27(1)(d) which runs as follows:

27. Penalties for trespass or damage in Reserved Forests and acts prohibited in such forests:

[(1) Any person who-

(a) * * * * * (b) * * * * * (c) * * * * * (d) knowingly receives or has in possession of any forest produce illicitly removed from a Reserved Forest or a land proposed to be constituted a Reserved Forest; or

(e) * * * * *

Thus according to the counsel, unless there is an allegation and proof that the accused has knowingly received or in possession of the sandal wood oil which is a forest produce, illicitly removed from a reserved forest or land proposed to be stated as the reserved forest, no offence will be attracted especially the accused has got valid licence to manufacture sandal wood oil. The learned Counsel submits that the only allegation of the prosecution is that the accused was found in possession of sandal wood oil and in the absence of further allegation and proof that such possession was in pursuance of illicit removal of forest produce

from a reserved forest or a land proposed to be constituted as reserved forest, no offence would lie. In the present case, according to the counsel as the accused is a holder of valid licence, even if such allegations are there, the accused is not liable for the said offence. It is also the case of the learned Counsel that the lower Appellate Court after considering the entire materials on record, came into the conclusion that the accused was not guilty of the offence charged against him and thus the innocence of the accused is reinforced and in such a situation this Court will not be justified in interfering with such an order of acquittal.

9. I have carefully considered the contentions advanced by both the Public Prosecutor as well as the counsel for the Respondent. I have also perused the materials and evidence on record.

10. P.W. 1, Forest Range Officer deposed before the Court in terms of the prosecution case. According to him, on getting secret information, he along with other forest officials went to the Air Port at Karipur and on searching the premises, detected 37 cartons of sandal wood oil weighing about 460 kilograms, kept in the premises of the Karipur Air Port. The said articles were seized as per Ext. P-1 Mahazar. He had further deposed that on further investigation it was revealed that, in the office premises of the accused namely Punjab Aromatics, more quantities of sandal wood oil were kept and accordingly on 5-1-1994, search was conducted in that office premises and seized about 73.6 kilograms of sandal wood oil. Ext. P-2 is the Mahazar for the second seizure. The Respondent herein/accused was arrested from there and taken to the forest office situated at Mathottam, Beypore. According to P.W. 1, the accused illegally collected sandal wood oil and possessed the same in contravention of the provisions of Kerala Forest Act. P.W. 1 is the Officer who conducted the investigation and filed Ext. P-4 charge-sheet. Exts. P-5 and P-6 are marked through P.W. 1 which are Form I report dated 4-1-1994 and 5-1-1994. Ext. P-7 is the signed statement of the accused given on 12-1-1994. P.W. 2 was the Flying Squad Range Officer of the Kozhikode Flying Squad Range, who deposed that he along with other forest officials, as per the direction of Divisional Forest Officer, Kozhikode went to the Karipur Air Port on 4-1-1994 and effected the seizure from the Air Port as well as from the Office Premises of Punjab Aromatics. P.W. 2 also deposed in tune with deposition of P.W. 1. P.W. 3 was also a Divisional Forest Officer, Flying Squad who participated in the proceedings along with P.Ws. 1 and 2. He had also deposed in terms of the prosecution case. P.W. 4 was the Divisional Forest Officer, Kozhikode. According to him, he along with other officials went to the spot in pursuance of the information received in the morning of 4-1-1994 about the illicit possession and attempt to export the sandal wood oil. According to P.W. 4, when they reached in the Karipur Air Port, he saw a person unloading paper boxes from a maruthi van in front of the Air Port. According to him, the person who was found unloading the paper boxes, ran away from the spot on seeing them. He had also deposed about the inspection and search in the office and the factory of the accused and consequent recovery of sandal wood oil from there. Through

P.W. 4, Ext. P-3 series of invoices seized from the Air Port were marked. P.W. 4 has categorically stated that accused was not able to convince the forest officials regarding the source of the sandal wood oil. Ext. P-8 is the sanction order to prosecute the accused which is produced through P.W. 4. Exts. P-9 and P-9(a) were also marked through P.W. 4. Subsequently P.W. 1 was recalled and the grading reports No. 34 of Agmark, 35 of Agmark, 36 of Agmark, 37 of Agmark, Kozhikode are marked as Ext. P-10 series. The reports received from the Senior Marketing Officer, Directorate of Marketing and Inspection, Kochin were marked as Ext. P-11 series(3 in number). The sample bottle containing sandal wood oil was marked as M.O. 1.

11. As I indicated earlier, the contention raised by the defence is that he is a licenced manufacturer of sandal wood oil and holding valid licence issued from the Central Excise Department. According to the accused, he can manufacture and possess whatever quantity of sandal wood oil he wants and being a licenced manufacturer of sandal wood oil, the Forest Transit Rules are not applicable and no licence is required from the Forest Department for manufacture of sandal wood oil. Thus the possession of sandal wood oil is permissible and legal and no action can be taken at the hands of the forest officials. D.W. 1 is the Inspector of Central Excise, Kozhikode Range and through him Ext. D-1 photocopy of the manufacturing licence was marked. D.W. 2 is the Office Manager of the accused firm through whom Ext. D-2 was marked which is a receipt issued by the D.F.O. for receipt of certain documents seized from the office of the accused.

12. I have carefully perused the depositions of the witnesses, both prosecution and defence and also perused the documentary evidence. As pointed out earlier, the first issue framed by the trial Court is in terms of Section 27(1)(d) of the Act. Prosecution witnesses had categorically stated that the sandal wood oil, recovered from the possession of the accused was, forest produce, which was illicitly removed from the reserve forest. In Ext.P-4 charge the allegation is as follows:

1. Name of offence and under what section and the liable:

Kerala Forest Act Section 27(1)(d), Kerala Forest (Amendment) Ordinance, 1992 Section 3(1)(d).

2. Scence and date of offence: 5-1-1994

Both in Ext. P-1 and Ext. P-2 Mahazar the allegations are specifically stated. As per Ext. P-1:

(emphasis supplied.)

Ext. P-2:

(emphasis supplied.)

In this juncture it is apposite to peruse the charge framed in the trial Court, which reads thus:

That you on 4th January 1994 at the entrance of the Airport at Karipur, kept in your possession, without any valid licence or any other valid documents, 37 cartons of sandal wood oil weighing 460 kg. and also in your premises viz. Punjab Aromatic at Kozhikode, kept in your possession 73.6 kg. of sandal wood oil which is a major forest produce, illicitly removed from reserve forest and thus committed an offence punishable u/s 27(1)(d) of the Kerala Forest Act as amended by Section 3(1)(d) of the Kerala Forest Amendment Ordinance, 1992, with in my cognizance. I hereby direct that you be tried before this Court on the said charge.

(emphasis supplied)

In the light of the above discussion and the above materials it can be seen that the specific case of the prosecution is that the seized sandal wood oil is a forest produce which is illicitly removed without any authority from the reserve forest and thereby the accused has committed the offence as charged against him. Therefore, the contention of the defence that there is no pleading and proof in terms of Section 27(1)(d) of Kerala Forest Act is untenable.

13. As pointed out earlier the accused did not dispute the allegation that the accused was found in possession of the seized sandal wood oil. Therefore the question to be considered is now very specific and clear as to the legal right of the accused to possess such quantity of sandal wood oil. The learned Counsel submitted that the accused has got valid licence for manufacturing sandal wood oil and therefore it cannot be treated as illicit or illegal possession but it is legitimate possession on the basis of licence issued by the competent authority. But the learned Public Prosecutor submitted that merely because of the fact that the accused is holder of manufacturing licence, the same does not authorise the accused to possess and handle or transport or export unaccounted quantity of sandal wood oil without disclosing the source of such raw material of sandal wood oil or refined oil.

14. The learned Public Prosecutor on the strength of the decision of this Court reported in *Baby v. Forest Range Officer and Ors.* ILR 1986 Ker 57] submitted that it is for the accused to give proper account as to how he came into possession of that much quantity of sandal wood oil, otherwise, in view of Section 69 of the Forest Act, it is to be held that such forest produce is Government property. Relying upon the decision in *Easwaran Kochukunju v. Sirkar* 1928 (18) K.L.J. 123, the learned Public Prosecutor submitted that the burden is on the accused to show that he has got authority to possess that much quantity of sandal wood oil which is recovered from his possession. According to the learned Public Prosecutor Section 69 is incorporated in the Act with a view to fix the burden, on the accused to give an account regarding the possession of the forest produce. On the other hand, learned Counsel for the accused submitted that there is no such allegation that the article which was seized was illicitly removed from the forest and in the absence of such allegation especially, the accused has got a valid licence from the competent authority, he is not bound to

account for the possession. I am afraid to accept such contention. Section 69 of the Act reads:

69. Presumption that timber or forest produce belongs to Government.-When, in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest produce is the property of the Central or State Government, such produce shall be presumed to be the property of the Central or State Government, as the case may be, until the contrary is proved.

From the words used in Section 69 namely "until the contrary is proved" and on reading other part of Section which runs, "it shall be presumed that the forest produce is the property of the Central or State Government when the question arises as to whether any forest produce is the property of the Central or State Government in any proceedings taken under this Act or consequences are shown under this Act", it is for the person/accused, against whom proceedings are taken under the present Act, to prove that the forest produce is belonging to him or he has authority for the possession or ownership or to deal with the same. The object of the Act, itself is clear from the preamble which has been declared in an unequivocal language, it is crystal clear that it is an Act to unify and amend the law relating to the protection and management of forests in the State of Kerala. This Court in Baby's case(cited supra) has held:

8. The statutory scheme of the Act also would not support the contention of the writ Petitioner. Special provisions had been made into the Forest Act, by an amendatory process, to effectively contain the loot of the forest. Important provisions were introduced under the Amendatory Act of 1975, (Act 28 of 1975). Section 69 provides for a statutory presumption that the forest produce belongs to the Government and casts the burden on the person proceeded against to establish the contrary. In the present case, a confiscation can be avoided if the owner of the vehicle satisfies the officer that the timber belonged to him. u/s 61B(2), to avert confiscation, he has to satisfy the authorities that the transport of the illicit timber was without the knowledge or connivance of the owner, his agent or the person in-charge of the vehicle. In that attempt, the Petitioner had signally failed. The confiscation cannot therefore be characterised as in any way unjustified or even unduly harsh.

9. The objective behind a particular legislation, has necessarily to be taken note of while construing its provisions, and in adjudicating the honest action of the officials in the course of the implementation of such well-meant social legislation. A statute with such stringent provision may be enacted to save the national economy: such as the Customs Act or the Foreign Exchange Regulation Act. The legislative measure may again be conceived in the larger public interest such as the Essential Commodities Act intended to ensure equitable distribution of commodities essential for the sustenance of the community at large. The background in which legislation regarding forest had been made, and had been improved from time to time, both by the Parliament and by the State

Legislatures, has to be viewed in the larger background. When the legislature has taken note of the colossal depredation of the forest wealth, and when it is scientifically established that such wanton waste of forest-cover would take the country perilously near desertification and a total disturbance of the ecology and environment, the Court should be slow to give a narrow interpretation to such well-meant statutory provisions. It is useful in that background to bear in mind the importance assigned by the Constitution for the protection of the forest, by incorporating a positive duty on the State in that behalf under Directive Principles of State policy (Article 48A), and also casting a Fundamental Duty on the citizen (Article 51A) for such protection and preservation of the forest, (emphasis supplied)

10. The recognition of the importance of the forest by the Parliament by a constitutional amendment, in a sense, is the result of a world-wide movement for the protection of the environment. As for this part of the country, such a concern for the protection of forest had been evinced even by administrators of an alien regime. The custom of persons in possession of adjacent lands keeping guard over the forests as a means of preventing their destruction had been recognised as far back as 1858. In a proclamation of August, 1854, where the rights of a Government to the forest and hills had been reiterated, an obligation in relation to the protection of forests was provided in the following terms:

Therefore in future each should guard the forest in the neighbourhood of his lands as ordered above, only the leaves, grass, dry leaves and fuel necessary for the aid of cultivation of his lands should be used and other people should not enter that forest.

If any one cuts trees and forests contrary to the order given above, the same shall be attached and those cut the same shall be punished according to law.

The details of such measures and the history of the law relating to forest have been sketched in a classic judgment of the Madras High Court, *The Secretary of State of India v. M. Krishnayya*.

15. In the decision in *Mohd. Ashique v. State of Maharashtra* 2008 (8) SCC 192, the Apex Court has held that the forest is a national wealth which is required to be preserved. In the above case, the relevant provision is Section 61B of the Forest Act. In paragraph 6 of the above decision it is held:

6. While considering the present controversy, the purpose behind erecting the Forest Act cannot be ignored or allowed to be defeated. In *State of West Bengal and Others Vs. Sujit Kumar Rana*, this Court has made the following observations in paras 19 and 20:

19. The provisions of law referred to herein before leave no manner of doubt that upon seizure of forest produce, timber or vehicles etc. the concerned authority has an option to report the factum of such seizure both to the concerned Magistrate as also the authorised officer, save and except in the cases which

would fall within the purview of the proviso appended to Sub-section (2) of Section 52 of the Act, as amended by the State of West Bengal. The report in relation to such seizure is required to be made either for (1) confiscation of the seized property; (2) prosecution of the offender; or (3) for both.

20. The legislature has inserted the aforementioned provisions with a loudable object Forest is a national wealth which is required to be preserved. In most of the cases, the State is the owner of the forests and forest produce. Depletion of forests would lead to ecological imbalance. It is now well-settled that the State is enjoined with a duty to preserve the forest so as to maintain ecological balance and, thus with a view to achieve the said object forest must be given due protection. Statutes which provide for protection of forest to maintain ecological balance should receive liberal construction at the hands of the superior Courts. Interpretive exercise of such power should be in consonance with the provisions of such statutes not only having regard to the principle of purposive construction so as to give effect to the aim and object of the legislature; keeping the principles contained in Articles 48A and 51A(g) of the Constitution of India in mind. The provisions for confiscation have been made as a deterrent object so that felling of trees and deforestation is not made.

From the above decision of the Supreme Court and the decisions referred to therein, it is crystal clear about the policy to be adopted by the Court of law when it interprets the provisions of the Forest Act. According to the above decision it is the duty of the Court to give effect and materialise the object behind the purpose of very enactment. Our forest wealth and treasure are not exclusively for the present generation, but the coming generation has also got a traditional and ancestral right over it for its enjoyment and therefore it is our hereditary obligation and duty to protect and preserve the same for the coming generation. Thus it is the constitutional obligation of the State to protect and preserve the forest and forest produce, not only for the present time but for the coming generation also.

16. In the light of the above discussion it can be seen that Section 69 requires to draw a presumption that the forest produce is belonging to the Government and thus casts the burden on the person, against whom proceedings initiated including prosecution, to establish the contrary. The very purpose of Section 69 itself is the protection of the forest produce. Otherwise, as in this case, after obtaining or procuring illicitly raw materials from the forest the same will convert into either crude sandal wood oil or purified sandal wood oil. Such illicit removal from the forest may be either a current one or it may be years back, but at any rate either the Government or the forest authorities may not be in a position to trace back the offences to its initial stage and to connect the accused with such offence and in the meanwhile, the evidence might have been destroyed. A few among our society under crazy pursuit to mint money and during such pursuit they ignore, the constitutional values and social morality. Thus they have chosen to exploit our national wealth like forest and forest produce stealthily and by

illegal means and in violation of legal and statutory limitations. Unless and until such provision like Section 69 is incorporated, the Government will not be in a position to protect the forest and forest produce thereby to discharge its constitutional obligations. Thus, undoubtedly it is the burden of the accused "to prove the contrary". In this juncture, I would like to observe that it is desirable to legislate and incorporate a special provision in the Kerala Forest Act, 1961 similar to that of Section 54 of the Narcotic Drugs and Psychotropic Substances Act, 1985(61 of 1985) with respect to certain "forest produce" to be specifically notified.

17. In the present case, though the accused was holding licence for manufacturing the sandal wood oil, he failed to give an account for the possession of that much quantity of sandal wood oil. If he is engaged in the manufacturing of the sandal wood oil, he is bound to show proper account of the raw materials collected and utilized for the manufacturing of the sandal wood oil. During the examination of P.W. 4, he had categorically stated that accused miserably failed to furnish the datas and details with respect to the crude sandal wood and crude sandal wood oil. They have also miserably failed to give the details of the persons with correct address from whom the alleged purchase of crude sandal wood and crude sandal wood oil was made. The above falsity of the defence version is sufficient to hold that he had illicitly removed forest produce or knowingly received and kept in possession of such forest produce after having illicitly removed from the forest. Therefore, in view of Section 69 of the Forest Act, I have no hesitation to hold that the seized sandal wood oil, a forest produce, is the property of the State Government. It is equally important to note that Ext. D-1 licence produced by the accused just authorising the holder of licence to manufacture sandal wood oil does not permit or authorise to possess unaccounted and unlimited or excessive quantity of finished or purified sandal wood oil. If that be so, the accused being authorised person to manufacture sandal wood oil, it is for the accused to give the account regarding the raw materials collected and used for the manufacture of purified sandal wood oil. Learned Public Prosecutor submitted that for manufacturing 5430 kgs. of sandal wood oil at least 5600 kilograms of crude sandal wood oil is required. For the purpose of manufacturing 5600 kilograms of crude oil, at least 200 metric tons of sandal woods are required. According to the learned Public Prosecutor, from the above figures, for the purpose of producing 5600 kilograms of pure sandal wood oil, large quantities of sandal woods are required. The learned Public Prosecutor submitted that during the relevant period, sandal wood trees and its wood could not be planted and sold without the permission and authority from the Government, especially in the background that sandal wood trees are mainly planted and nursed only in the sandal wood plantation of the State Government. Therefore, the seizure of this large quantity of sandal wood oil has to be viewed very seriously and in the absence of any proper account it has to be presumed that the same are forest produce belonging to the State which is illicitly removed from the reserve forest. Therefore merely because the accused is holding a

licence for the manufacture of sandal wood oil it cannot be treated as licence for illicit removal and possession of either sandal wood oil or raw materials for the manufacturing of sandal wood oil. In the light of the above factual and legal position there was no scope for interference with the order of conviction and sentence passed by the trial Court.

18. The Apex Court, in the decision reported in Ghurey Lal v. State of U.P. [2008 (4) KLT 17 S.C.], has held that the Appellate Court can interfere with the order of acquittal passed by the Court below only for very substantial and compelling reasons. In the present case, the trial Court has actually convicted the Respondent/accused which according to me, is perfectly legal and valid. In the above case, the Apex Court has enumerated seven circumstances which are treated as very substantial and compelling reasons for the interference of the Appellate Court while exercising its jurisdiction. The second circumstance mentioned therein is "the trial Court's decision was based on an erroneous view of law". The third circumstance is "the trial Court's judgment is likely to result in grave miscarriage of justice". In the light of the above discussion, regarding the scope of Section 69 of the Forest Act and the constitutional obligation of State to protect and preserve the forest, the lower Appellate Court was not justified in interfering with the order of conviction and the sentence. Therefore, I am of the view that there are substantial and compelling reasons to interfere with the order of acquittal passed by the lower Appellate Court. Having regard to the above statutory provisions and in view of the above decisions, I am of the view that the lower Appellate Court has miserably failed to realise the legislative intention behind the very enactment of the Forest Act, particularly Section 69 of the Forest Act, and thus the order of acquittal was passed upon a wrong understanding of the scope of Section 69 of the Act. Consequently, the order of acquittal passed by the lower Appellate Court is liable to be set aside.

In the result, this appeal is allowed, setting aside the judgment of the lower Appellate Court and the order of acquittal passed thereon. Thus the order of conviction and sentence passed by the trial Court is restored. The Respondent/accused is directed to appear before the Trial Court to receive the sentence passed by it as per its judgment dated 19-8-1997 in C.C. No. 237 of 1994, within one month from the date of receipt of a copy of this judgment. If the accused/Respondent fails to appear before the trial Court to receive the sentence as directed herein, the trial Court is free to take further steps to procure the presence of the accused and to implement the sentence. The Registry is directed to forward a copy of this judgment to the Chief Secretary to the Government of Kerala for their consideration.