

(2011) 07 KL CK 0004

In the High Court Of Kerala

Case No : Writ Petition (C) No. 25400 of 2010

State of Kerala

APPELLANT

Vs

Chokkanathan

RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60
Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 451
Kerala Forest Act, 1961 — Section 61A, 61A(1), 61A(2)

Citation : (2011) 3 ILR (Ker) 703 : (2011) 6 RCR(Civil) 230

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : P. Vijaya Bhanu (Senior Advocate), Smt. M. M. Deepa and Sri V. A. Johnson (Varikkappallil), for the Respondent

Judgement

Mr. Justice Thomas P. Joseph

1. Is a material used for concealed transportation of timber or such other article in respect of which a forest offence is committed a "tool" as understood in Section 61A of the Kerala Forest Act (for short, "the Act") liable for confiscation?

2. A resume of facts of the case is necessary for a decision of that question. On July 10, 2003, lorry bearing Reg. No.TN 21/T-5599 carrying red sandalwood logs kept concealed among 350 cartons of biscuit was seized by the Sales Tax Inspector, Walayar. He handed over the vehicle and other materials to the Range Officer, Walayar. The Range Officer on July 13, 2003 registered O.R. No. 13 of 2003 for offence under the Act and seized the vehicle, red sandalwood logs and the cartons of biscuit Respondent who claims to have hired the vehicle for transportation of biscuits filed C.M.P. No.4727 of 2003 before the Jurisdictional Magistrate under Sec.451 of Code of Criminal Procedure for interim custody of the cartons of biscuits. Learned Magistrate allowed that application on condition of executing bond for Rs. 35,000. The State challenged that order in this Court in

Crl. M.C. No. 4248 of 2003. This Court fixed the amount of bond to be executed by the respondent at Rs. 75,000. Accordingly, the bond was executed and the cartons of biscuit were released to the respondent. Later the Range Officer on completing investigation submitted a report to the Authorised Officer for initiating proceeding for confiscation under Sec.61A of the Act. That resulted in Ext. P-1, order dated January 28, 2005. The Authorised Officer confiscated the cartons of biscuit. Respondent challenged that order in C.M.A. No. 80 of 2006 in the court of learned District Judge, Palakkad. Learned District Judge allowed the appeal as per Ext. P-2, judgment dated January 13, 2009. Learned District Judge took the view that the expression "tool" meant an instrument such as a hammer, screwdriver, saw, etc., which one can hold in his hand for making/repairing things and hence the 350 cartons of biscuit cannot be termed as a "tool" liable for confiscation under Sec.61 A of the Act. The judgment of learned District Judge setting aside the order of confiscation is under challenge.

3. Learned Special Government Pleader for Forests contended that on the factual situation in the case learned District Judge was not correct in giving a narrow interpretation to the expression "tool" based on the dictionary meaning of the word and that having regard to the facts and circumstances of the case and the objective sought to be achieved by carrying the cartons of biscuit in the vehicle, i.e., concealed transportation of red sandalwood logs learned District Judge ought to have given a purposive interpretation to the expression and given the expression its popular meaning. Learned counsel for respondent contended that in view of Sec.61A of the Act the expression "tool" cannot be given an extended meaning particularly when other materials used for transportation of timber or other forest produce are given specific mention in Sec.61 A of the Act. According to the learned counsel respondent had no intention to carry timber in the lorry concealed by the cartons of biscuit.

4. Question for consideration is whether the cartons of biscuit among which the red sandalwood logs were kept concealed and transported unauthorisedly could be described as a "tool" in the way that word is understood in Sec.61A (1) and (2) of the Act. The expression "tool" is not defined in the Act. Learned District Judge in Ext. P-2, judgment observed in paragraph 9 that the dictionary meaning of the word "tools" means "an instrument such as a hammer, screwdriver, saw, etc., one can held in his hand and used for making things, repairing things, etc". Section 61A of the Act reads:

61A. Confiscation by Forest Officers in certain cases.--Notwithstanding anything contained in the foregoing provisions of this chapter, where a forest offence is believed to have been committed in respect of timber, charcoal, firewood or ivory which is the property of the Government, the officer seizing the property under sub-section (1) of Section 52 shall, without any unreasonable delay, produce it, together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence, before an officer authorised by the Government in this behalf by notification in the Gazette, not being below the rank of an Assistant

Conservator of Forests (hereinafter referred to as the authorised officer).

(2) Where an authorised officer seizes under sub-section (1) of Section 52 any timber, charcoal, firewood or ivory which is the property of the Government or, or where any such property is produced before an authorised officer under sub-section (1) of this section and he is satisfied that a forest offence has been committed in respect of such property, such authorised officer may, whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of the property so seized together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence.

5. The expression "tool" is not defined in the Act. In Websters Dictionary the expression "tool" is given the meaning "aid in, equipment for, intellectual work: Books are the tools of a Scholar: the tools of one's trade. A person used by another to perform actions, especially of a discreditable character, on his behalf, without the real mover appearing". In Concise Oxford English Dictionary that word is given the meaning as a "device or implement, typically hand held, used to carry out a particular function; a thing used to help perform a job, a person exploited by another". P. Ramanatha Aiyar "Advanced Law Lexicon" 3rd Edn., gives the meaning for the said expression, as "things designed to help the hand in work, especially in industrial operations". Useful reference can also be made to P. Ramanatha Aiyar's Law Lexicon, 2nd Edn., where it is stated that the expression "tool" cannot be restricted to simple implement used by artisans for purpose of their trade (referring to T.R. Punnavanam Pillai Vs. V. Muthuswami Achari,). The author also states that law books are the common tools of trade of lawyer. It is explained by the Author that a barber's chair and mirror when used by him in his business are exempt (from attachment u/s 60 of the Code of Civil Procedure) as being "tools" of a mechanic used in his occupation. Normally, one may not say that a chair or mirror is a "tool" but when it is used by a barber in connection with his business it must be taken as the "tool" of the barber. In other words, the popular meaning the expression "tool" can be given is as an instrument or object used in aid of a work or designed to help the hand in work, or a thing used to help perform a job.

6. The Supreme Court in U.P. State Agro Industrial Corporation Ltd. Vs. Kisan Upbhokta Parishad and Others, has held that having regard to the context in which an expression is used in the statute the court has to give in appropriate cases the popular meaning for the expression. There, question considered was whether an animal drawn vehicle (ADB) could be taken as an agricultural implement. In paragraph 10 it was pointed out that one word can have several meanings and several words can have the same meaning (synonyms). Certain examples are also given to illustrate the said observation. In paragraph 12, referring to Mimansa Rules of Interpretation it is held that the said principle means "the popular meaning overpowers the etymological meaning" where the legislature has used an expression bearing a well-known legal connotation, it must be presumed to have used such word in which it is so understood. In

interpreting a statute court must adopt a purposive approach rather than a literal approach. The popular meaning of the expression "tools" occurring in Sec.61 A of the Act should therefore, overpower its etymological meaning.

7. I must keep in mind the objective behind the legislature enacting Sec.61 A of the Act and providing that tools, etc., used for illicit transportation of timber or other forest produce in respect of which a forest offence is committed are liable for confiscation. The intention is that every material used for commission of a forest offence with respect to timber, etc., are to be confiscated. I am unable to say that the expression "tool" used in Sec.61 A of the Act should be confined to hammer, screwdriver, saw, etc., as the plain dictionary meaning of the expression may say. When timber or other article mentioned in Sec.61 A of the Act is kept concealed in the vehicle under cartons of biscuit and transported unauthorisedly, I must understand the cartons of biscuit used used for such concealment to facilitate the ultimate object of illicit transportation of timber or such other article as a "tool" as understood in Sec.61 A of the Act.

8. Viewed in the above line and considering the alleged objective for which the cartons of biscuit were used, I am unable to accept the interpretation given by the learned District Judge to the expression "tool" occurring in Sec.61A of the Act. I am inclined to think that having regard to these aspects the cartons of biscuit involved in the case on hand were used as a "tool" for illicit transportation of red sandalwood logs. In the light of my above view, I hold that a material used for concealed transportation of timber or such other article in respect of which a forest offence is committed is a "tool" as understood in Sec.61A of the Act, liable for confiscation.

9. It is pointed out by learned counsel for respondent that respondent is only an agent for transportation of biscuits he having hired the vehicle from its owner for the said purpose. It is contended by learned counsel that respondent had no knowledge of the alleged transportation of red sandalwood logs in the lorry, concealed among the cartons of biscuit. It is contended that this aspect was not considered by the learned District Judge. According to the learned counsel, if respondent had no intention to transport red sandalwood logs in the vehicle the cartons of biscuit cannot be seized. In response, learned Government Pleader argued that having regard to the rigor of provisions of Sec.61 A of the Act, respondent had to show that he had taken all precautions to avoid illicit transportation of the timber in the vehicle and in the absence of that, the cartons of biscuit are liable for confiscation. Reliance is placed on the decision in *State of Kerala v. Mathew* 1995 (2) KLT 772.

10. I have gone through Ext. P-2, judgment and find that learned District Judge has not adverted to that aspect of the matter. Necessarily learned District Judge had to consider whether respondent could be imputed with knowledge of illicit transportation of red sandalwood logs, whether he was required to take all precautions and if so, such precautions were taken. Since learned District Judge has not gone into that question I do not consider it appropriate to decide that

matter in this proceeding under Article 227 of the Constitution. I leave that matter for the decision of learned District Judge.

Resultantly, Writ Petition is disposed of in the following lines:

(a) Exhibit P-2, judgment of learned District Judge, Palakkad and the finding therein that the cartons of biscuit does not answer the description of "tools" occurring in Sec.61 A of the Act are set aside.

(b) The CM. Appeal is remitted to the learned District Judge for decision on the question whether the cartons of biscuit are otherwise liable for confiscation in the light of the contentions that learned counsel for respondent and learned Government Pleader have raised and referred to in paragraph 9 of this judgment.

Parties shall appear before learned District Judge, Palakkad on August 17, 2011.