

(1992) 12 BOM CK 0015

In the Bombay High Court

Case No : Criminal Writ Petition No. 57 of 1990

State of Maharashtra and others

APPELLANT

Vs

Suresh Rameshwardas Lohiya

RESPONDENT

Date of Decision : 04-12-1992

Acts Referred:

Forest Act, 1927 — Section 2

Citation : (1993) 1 BomCR 337 : (1993) CriLJ 1557 : (1993) 1 MhLj 108

Hon'ble Judges : B.V. Chavan, J;A.A. Desai, J

Bench : Division Bench

Advocate : B.R. Gawai, Asstt. Govt. Pleader, for the Appellant; A.S. Mardikar, for the Respondent

Judgement

This Judgment has been overruled by : Suresh Lohiya Vs. State of Maharashtra and Another, (1996) 6 AD 202 : (1996) 3 Crimes 149 : (1996) 8 JT 12 : (1996) 6 SCALE 117 : (1996) 10 SCC 397 : (1996) 5 SCR 130 Supp

A.A. Desai, J.—This petition raises an intricate and somewhat important question relating to the present environmental condition as to whether the manmade products of bamboo, namely, matting are within the definition of "forest produce" as provided under sub-sec. (4) of S. 2 of the Indian Forest Act, 1927 (hereinafter referred to as "the Act").

2. The precise facts leading to this question are as thus :-

On 30-7-1986 at midnight Truck No. MTG 8987 of respondent's brother Suresh Lohiya was intercepted by the forest officers. They having noticed the excess quantity of bamboo matting than those mentioned in a transit pass, seized the vehicle with the goods. After certain formality as provided under the Act, the forest officer confiscated the matting. In revision under S. 61C of the Act, the Conservator modified the order and confiscated matting only to the extent 1240. In appeal, under S. 61D, the Additional Sessions Judge reached a conclusion that the bamboo mattings are not the forest produce and hence by order dated

11-12-1989 he directed to release all the bamboo mattings so seized. In reaching this conclusion, the Additional Sessions Judge placed reliance on a decision reported in Fatesang Gimba Vasava and Others Vs. State of Gujarat and Others, .

3. Mr. Mardikar, the learned Counsel appearing for the respondent, while supporting the reasoning and the order as passed also placed the reliance on the same authority and reiterated that bamboo mattings do not fall within the definition of forest produce under the Act. He took us through the reasoning of the decision cited supra and contended that the Division Bench of Gujarat has examined the entire scheme and purport and reached a conclusion which needs to be followed by this Court. For the purposes of appreciating the ground as advanced, we propose to reproduce the text of the decision which reads as thus Fatesang Gimba Vasava and Others Vs. State of Gujarat and Others, :-

"Now the expression "forest-produce" as defined by S. 2(4) of the Act includes tress and leaves, flowers and fruits and all other parts or produce of trees. Section 2(7) which defines "tree" includes a bamboo, therefore, bamboos are undoubtedly forest-produce. Toplas, palas and supdas are undoubtedly prepared from bamboo chips and can be described as bamboo articles, but do such articles fall within the definition of "forest produce" ? A careful look at the various clauses of the definition of forest-produce makes it clear that it takes within its fold all that is produced by nature but does not include manmade products such as topas, palas, supdas, etc., made from bamboo chips. True it is that if bamboo as a whole is forest-produce, every part thereof including chips would fall within that definition but once the chips cease to be a "produce" of nature and get merged into a "product" brought about by human labour and if the product so made is commercially new and distinct, known to the business community as a totally different commodity having a distinct character, such an article or product ceases to be a forest-produce, i.e. furniture made from timber or paper produced from bamboo-pulp. Therefore, bamboo being a tree would certainly fall within Clause (b) of the definition of "forest-produce", but topas, supdas and palas made out of bamboo chips would not fall within the definition of forest-produce."

This decision lay a stress on a test or criteria of a produce of a nature. They have, therefore, reached a conclusion that a bamboo or chips, prepared out of it would be a forest produce. However, topas or supdas which are prepared from such bamboo chips coupled with the human skill being commercially new and distinct could not fall within the ambit of forest produce. We gave our anxious consideration to the reasoning as adopted in the decision. To appreciate the ratio as laid down, we purpose to examine the purport of S. 2 of sub-sec. (4) which defines "forest-produce" and reads as thus :-

"forest-produce" includes -

(a) the following whether found in, or brought from, a forest or not, this is to say :-

timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds (kuth) (apta and tembhurni leaves) (rosha grass (including oil derived therefrom), rauwolfia, serpentina) and my-robolans, and

(b) the following when found in, or brought from, a forest that is to say :-

(i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned of trees.

(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

(iii) wild animals and skins, tusks, horns, silk, cocoons, honey and wax and all other parts or produce of animals,

(ix) XX XX XX XX"

4. It is apparent from the definition that it is inclusive and the legislature could not exhaustively enlist all those items which could be a forest produce or could partake a colour or a character of the forest produce. From the portion on which we lay emphasis, it is explicit that besides the produce of forest which has a natural growth, the legislature has also included within the definition such product out of a forest-produce with the aid of human skill. In view of the clear indication of the legislature, we are unable to agree with the learned Counsel Shri Mardikar that the forest produce is confined and restricted to only those produce naturally grown in the forest. The definition as reproduced also indicates a charcoal or oil derived from certain forest produce. This has a definite indication that where the human skill is deployed to prepare or produce certain items - could also be a forest produce though not naturally grown in the forest. Suffice it to indicate animal is considered within the definition as a forest produce. But any product such as skin etc. are also included within the definition.

5. Sub-clause (b) of sub-sec. (4) of S. 2 set apart the forest produce from sub-clause (a). Sub-clause (b) in contra-distinction has confined to the produce which are found or brought from a forest. In this sub-clause, the legislature has also included a produce of trees, leaves etc. other than those mentioned in clause (a). It appears that this phraseology of vital importance and indication did not find place while considering the scheme of the Act by the Gujarat High Court.

According to us, the purport of the definition clause is quite wider and it includes natural produce and the product prepared out of such produce with a human mechanism. Gujarat High Court considers chips prepared out of bamboo as a forest produce. Chips according to us could not be held to be a natural produce. Certainly to involves a human agency. The matting, supdas, or toplas prepared out of bamboo chips might have commercially different utility. However, we do not hold such articles ultimately prepared and known as finished goods loses its identity as held by Gujarat High Court. The finished product would be definitely identified with its source which has been used as a raw material. We, therefore, find ourselves difficult to render agreement with a view as expressed by Gujarat

High Court in a case cited supra Fatesang Gimba Vasava and Others Vs. State of Gujarat and Others, .

6. The bamboo matting in our conclusion being a product to an article prepared out of forest produce comes well within the scope and ambit of sub-sec. (4) of S. 2 of the Act. We seek support for our reasoning from a decision reported in Kishan Lal Vs. State of Rajasthan, :-

"No distinction was made on method of production, namely, by modern plant and machinery. To say, therefore, that sugar being produced in mill or factories could not be deemed to be agricultural produce is both again the statutory language and judicial interpretation of similar provisions Act of the in statutes of others States. Rice or dal produced in mills have been to be agricultural produce."

Sub-sec. (7) of S. 2 of the Act defines "tree" which includes palms, bamboos, stumps, brush-wood and canes. Sub-section (6) of S. 2 defines timber to which the Gujarat High Court has not adverted. Includes trees when they have fallen or have been fell and all wood whether cut up or fashioned or hallowed out for any purpose or not. In view of this that bamboo is included within the meaning of tree and which forms a part of a timber so any item fashioned in any manner of a timber would come within the definition of forest produce.

7. Mr. Mardikar lastly urged that if bamboo matting is put within a definition laid down under sub-clause (b) of sub-sec. (4) of S. 2 then in that eventuality it was not brought from the forest. The truck was intercepted and the goods were seized on the National Highway. We are unable to agree with this submission. Sub-clause (b) as reproduced above says "found in forest or brought from forest". Even if the truck was seized on the National High way, it was passing through forest. More pertinent is that the respondent obtained transit pass for the part of the goods. In view of this, the impugned order passed by the Additional Sessions Judge dated 11-12-1989 cannot be sustained.

8. Petition is allowed. Impugned order dated 11-12-1989 directing the release of matting seized from the respondent is hereby quashed. The forest authorities shall take action in accordance with law. Rule made absolute accordingly.

Mr. Mardikar orally prayed for leave to appeal to Supreme Court. We heard him at length but we do not find any sufficient ground. Hence the prayer is rejected.

9. Rule made absolute.