
(1996) 08 BOM CK 0008
In the Bombay High Court
Case No : Criminal Writ Petition No. 67/96

State of Maharashtra

APPELLANT

Vs

Mohd. Idris and Others

RESPONDENT

Date of Decision : 31-08-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 300
Forest Act, 1927 — Section 2, 69

Citation : (1996) 98 BOMLR 789

Hon'ble Judges : R.C. Vaidyanantha, J; M.B. Ghodeswar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.C. Vaidyanatha, J.—This writ petition is filed under Articles 226 and 227 of Constitution of India, challenging the order dated 1.2.96 in Cr. Appeal No.48/95 on the file of learned Sessions Judge, Bhandara. Heard learned special Counsel for petitioners and learned Counsel for first respondent.

2. The facts necessary for the disposal of this writ petition are as follows:

The first respondent is a trader in bamboo mattings. It appears that he had purchased some bamboo mattings and transported them on 3.5.95 by taking a pass from the Forest Department. By using the same pass, he again transported 170 bundles of bamboo mattings, which came to be intercepted by the police. Since there was no transport pass for transporting the bamboo mattings, police handed over the seized truck MP-23/B-4345 along with bamboo mattings to the concerned Forest Officer. The Range Forest Officer, in turn, seized the same under Panchnama. He recorded the statement of first respondent. After making enquiry, he submitted a report to the Authorised Forest Officer for confiscation of the goods and for prosecuting the first respondent and others. Since it was found that the owner of the truck had no knowledge of the truck being used for committing forest offence, the Range Forest Officer made a report that the truck

may be released to the owner. It appears that the first respondent and others agreed to compound the offence and pay penalty. Accordingly, the Authorised Forest Officer passed an order dated 30.5.95 forfeiting the seized bamboo mattings and ordered the first respondent to pay a penalty or compensation in a sum of Rs. 500/- transporting bamboo mattings without a transit pass. Even the truck driver and the truck cleaner were also directed to pay some compensation in lieu of prosecution. The truck was ordered to be released to the owner.

Being aggrieved by the order of confiscation of bamboo mattings, the first respondent preferred an appeal before the learned Sessions Judge, Bhandara.

3. After hearing both parties, the learned Sessions Judge held that the order of the Authorised Forest Officer is not sustainable in law and accordingly allowed the appeal and quashed the order of the Authorised Forest Officer only regarding confiscation of the goods or its value to be given to the first respondent. Being aggrieved by this order, State has come up with the petition.

4. The learned Special Counsel appearing for the State has questioned the correctness and legality of the impugned order. It was submitted that the order of the learned Sessions Judge is erroneous and liable to be set aside. While supporting the impugned order, the learned Counsel for the first respondent seriously contended that the seized goods are not forest produce and hence Authorised Forest Officer has no right to take action against the first respondent.

5. The learned Sessions Judge has based his finding mainly on the ground that there is double Jeopardy in first respondent being asked to pay compensation and further the goods being confiscated, which is contrary to Section 300 Cr.P.C. The learned Sessions Judge has observed that this procedure adopted by the Authorised Forest Officer amounts to punishing the offender doubly, which is illegal and contrary to the explicit bar provided in Section 300 Cr.P.C. In our view, this reasoning of the learned Sessions Judge is fallacious. His placing reliance on Section 300 Cr.P.C. is misplaced.

Section 300 Cr.P.C. provided that a person once convicted or acquitted should not be tried for the same offence again.

In the present case, it is no body's case that the first respondent was once tried and was convicted or acquitted and again he is being tried for the same offence. We are unable to see as to how the learned Sessions Judge observed that this is a case of fresh trial in respect of accused, who has been once acquitted or convicted. In fact, the first respondent has not been prosecuted before the Criminal Court for committing this offence to invoke Section 300 Cr.P.C.

What has happened is that the first respondent has pleaded guilty or in other words admitted the offence and sought composition of the offence, which is permissible in law. It is an admitted case that the first respondent had no transport pass for transporting the goods on 5.5.95. The one pass he had was for transporting the goods on 3.5.95 and that too for a particular quantity. That pass

could be used for transporting the goods on only one day and that too on 3.5.95. Admittedly, there was no pass to transport the goods on 5.5.95. Further the quantity of goods shown in the pass dated 3.5.95 is less than the quantity that is seized in this case. Further from the statement of first respondent, recorded during the enquiry it is seen that he had already transported the goods once on 3.5.95 on the basis of the pass that day and by using the same pass, he transported one more consignment on 5.5.95, when the lorry with goods was seized. In these circumstances, the first respondent admitted his offence and wanted composition of the offence. The learned Authorised Forest Officer granted composition of the offence and directed the first respondent to pay compensation of Rs. 500/ and also ordered confiscation of the goods. What the learned Sessions Judge points out is that for the same offence, there can not be composition of the offence and further confiscation of the goods since it amounts to double Jeopardy.

6. In our view, the reason given by the learned Sessions Judge can not be sustained. There are many laws where there are separate provision for conviction and confiscation of goods. In the Indian Forest Act itself, there are provisions for convicting the accused who commits offence under the Forest Act and for confiscation of the goods seized. In the Essential Commodities Act, there is a provision for prosecuting the accused for committing offence and simultaneously taking parallel proceedings for the confiscation of the seized goods. Even in the Customs Act, there is a provision for prosecution of an accused and also for confiscation of the goods. Therefore, by any stretch of imagination ,conviction of an accused and confiscation of the goods seized can not be termed as a double jeopardy.

7. Therefore, we hold that the order of the learned Sessions Judge that the order of the Authorised Forest Officer directing confiscation of the goods amounts to double jeopardy can not be sustained and is liable to be set aside.

8. Now we have to consider the next question as to whether the seized goods in this case were forest produce or not. We have already seen that the first respondent has pleaded guilty and had paid the compensation and had not challenged that part of the order in appeal before the learned Sessions Judge. Therefore, the order of the Authorised Officer holding that the first respondent has violated the provisions of the Indian Forest Act and is liable to pay the compensation has become final and can not be questioned now. The argument is that the seized goods are bamboo mattings and, therefore, they are manufactured articles and do not come within the meaning of the forest produce.

The learned Special Counsel for the State invited our attention to State of Maharashtra and others Vs. Suresh Rameshwardas Lohiya, , where a Division Bench of this Court has held that bamboo mattings come within the meaning of forest produce as defined in Section 2(4) of the Indian Forest Act, 1927. The learned Counsel for the first respondent submitted that this decision in Suresh's case requires reconsideration and, therefore, contended that the matter may be

referred to a larger bench for deciding this question. In the normal course, the decision of a Division Bench is binding on us, unless for any reason, another Division Bench does not agree with a view of the earlier Division Bench, then alone, the latter Division Bench must refer the point to a larger bench. Now let us see whether the argument of the learned Counsel for the first respondent that the decision in Suresh's case requires reconsideration is well founded or not.

9. There is also an earlier decision of a learned Single Judge of this Court reported in AIR 1991 Bom 398 *State of Maharashtra v. Kisan*, where the learned Single Judge has held that bamboo mattings come within the definition of forest produce.

The learned Counsel for the first respondent placed strong reliance on a decision *Fatesang Gimba Vasava and Others Vs. State of Gujarat and Others*, , where no doubt the Gujrat High Court has taken a view that articles like bamboo mattings etc. do not come within the meaning of forest produce. A perusal of this judgment shows that it was a case, where tribal people were allowed to reside in the forest area and were given bamboos at a concessional rate and allowed to manufacture goods. In those circumstances, it was held by the Gujrat High Court that the goods actually prepared by the tribals did not come within the definition of forest produce. It may be mentioned here that this decision of the Gujrat High Court was considered and not followed by both the learned Single Judge and the learned Division Bench of this Court in the two decisions referred to above.

10. We have come across two decisions of the Apex Court, which throw some light on the point in question.

In a case reported in 1993 S.C.C. (Cri) 1070 *Forest Range Officer v. Mohammad Alt*, the Apex Court had occasion to consider the question whether Sandalwood oil comes within the meaning of wood oil or not. That was a decision arising from Kerala. In Kerala Forest Act, forest produce has been defined in Section 2(8), which is in part materia with the definition of forest produce in Section 2(4) of Indian Forest Act, 1927, which is applicable in the State of Maharashtra. In the definition of forest produce in Kerala Act, apart from timber, char coal etc. one of the items mentioned was "wood oil" but the subject matter of that case was seizure of sandal wood oil. It was pressed before the Apex Court that wood oil directly extracted from trees by making a hole and it is not an oil extracted by mechanical process. Even though the Apex Court pointed out that generally wood oil directly extracted from a tree by making a hole, still they held that sandal wood oil also come within the broader definition of wood oil, though sandal wood oil is manufactured by mechanical process in a factory. Even the Gujrat High Court's decision referred to above, viz. *Fatehsing's* case was referred to by the Apex Court and it was distinguished on facts.

Then we may make useful reference to another recent decision of the Apex Court reported in *Karnataka Forest Development Corporation Ltd. Vs. M/s. Contreads Private Limited and others*, . Even in that decision, the Apex Court had to

consider the definition of forest produce under the Karnataka Forest Act. We find that the definition clause in Section 2(7) of the Karnataka Forest Act is almost in part materia with the definition of forest produce in the Indian Forest Act, 1927. One of the clauses in definition was that forest produce includes caoutchouc. This caoutchouc means latex, which is a milky fluid obtained from a rubber tree by making a hole in the tree but what was seized in the case was rubber sheets. The argument before the Apex Court was that rubber sheet which is obtained by treating the latex with sulphuric acid and then made into a sheet and then dried with the help of smoke cannot be treated as a forest produce. The Apex Court rejected this argument and held that though rubber sheets are formed by treating latex with sulphuric acid and by manual labour etc. still it was held to be forest produce and it was not a different and distinct product from latex. In fact, in that case, Karnataka High Court had held that the rubber sheets were not directly obtained from trees but they were obtained after treating latex chemically and mechanically. The Apex Court reversed the finding of the High Court and allowed the appeal by holding that even rubber sheets come within the definition of cautious as defined in the forest produce.

11. From the above discussion, we find that forest produce is not confined to several categories mentioned in the definition clause. The definition is not exhaustive definition. It is an inclusive definition. The Legislature has not included and could not include all items which could be brought within the meaning of forest produce. The argument that only natural products from the forest should only be treated as forest produce has no merit. In fact, the definition of forest produce in Section 2(4) of the Act shows that it includes char coal, which is by no means a natural product. Char coal is obtained by burning wood and then preparing char coal. Forest produce includes timber as defined in Section 2(4) of the Act. Timber includes trees as defined in Section 2(1) of the Act. In our view, bamboo sheets or bamboo mattings are crudely done by interweaving the bamboo chips. Hence in our view no case is made out for reconsideration of the decision of the Division Bench of this Court in the case of Suresh mentioned above. Accordingly, we hold that bamboo mattings come within the definition of forest produce as defined in Section 2(4) of the Indian Forest Act.

12. Admittedly ,the first respondent had no pass to transport the goods on 5.5.95. The one pass he had taken was for a different date i.e. 3.5.95 and for a different quantity. It is also admitted fact that the first respondent had used the pass on 3.5.95 to transport one consignment of goods and again he was using the same pass to transport one more consignment when the lorry was intercepted and the goods came to be seized. First respondent has pleaded guilty and compounded the offence by paying compensation. It is too late in the day for him now to turn round and say that he had not committed any forest offence and the goods in question are not forest produce. The learned Sessions Judge erred in setting aside the order of the Authorised Officer, who had confiscated the goods. We may also notice that as far as forest produce is concerned,

presumption in Section 69 of the Act provides that every forest produce is presumed to be the property of the Government unless contrary is proved. The first respondent has not placed any material on record to show that this forest produce does not belong to the Government. In the above circumstance, we are constrained to hold that the order of the learned Sessions Judge is not sustainable and is liable to be set aside.

13. In the result, the petition is allowed. The impugned order of the learned Sessions Judge dated 1.2.96 in Cr. Appeal No. 48/95 is hereby set aside. The original order of Authorised Officer is hereby restored. Rule made absolute accordingly.