

(2015) 06 MAN CK 0010
In the Manipur High Court
Case No : Cril. Appeal No. 2 of 2013

The Divisional Forest Officer

APPELLANT

Vs

Soibam Lenin Singh

RESPONDENT

Date of Decision : 04-06-2015

Acts Referred:

Forest Act, 1927 — Section 2, 2(4), 2(6), 3(4)(a), 34

Citation : (2015) 5 FLT 768 : (2015) 3 GLT 699

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : L. Gunindro, for the Appellant; H. Kenajit, Advocates for the Respondent

Final Decision : Dismissed

Judgement

N. Kotiswar Singh, J.—Heard Mr. L. Gunindro, learned counsel for the appellant and Mr. H. Kenajit, learned counsel for the respondent.

2. The present criminal appeal has been preferred against the order dated 2.12.2013 passed by the learned Sessions Judge, Manipur East in Cril. Misc. Appeal No. 19 of 2012 by which the learned Sessions Judge held that 12 teak door panels seized by the authorities of the Forest Department cannot be termed as "timber" and hence, "forest produce" as defined under the Indian Forest Act, 1927 and accordingly, set aside the proceeding initiated by the Forest Department for the alleged violation of Section 41 of the Indian Forest Act, 1927 read with Rule 33 of the Manipur Forest Rules, 1971.

3. A brief reference to the certain facts may be necessary to appreciate the issues involved in this appeal.

On 05.10.2010, 12 teak door panels which were booked for transportation to Kolkata by flight were seized by the authority of the Forest Department on duty at the Imphal Airport after the respondent failed to produce the necessary transit pass/permission from the Forest Department. Accordingly, a complaint was filed

before the learned CJM, Imphal West alleging violation of the provisions of the Indian Forest Act, 1927 and Manipur Forest Rules, 1971. The learned CJM took cognisance of the complaint and set in motion the criminal proceeding against the respondent. The learned CJM, after hearing the parties, convicted the respondent for committing offence for violating Section 41 of the Indian Forest Act, 1927 read with Rule 33(a) of the Manipur Forest Rules, 1971 and sentenced the respondent to pay a fine of Rs. 500/- and in default, to undergo simple imprisonment for one month and 12 number of teak door panels were directed to be confiscated and the Forest Department was directed to dispose of these by public auction vide order dated 30.8.2011 passed in the aforesaid Cri. Misc. Appeal No. 19 of 2012. Against the aforesaid order of conviction passed by the learned CJM, Imphal West, the respondent preferred an appeal before the learned Sessions Judge, Manipur East which was allowed by the impugned order dated 02.12.2013. The learned Sessions Judge held that the aforesaid teak door panels seized by the forest officials cannot be termed as "timber" and hence "forest produce" as defined in the Indian Forest Act, 1927 and accordingly, quashed the aforesaid order dated 30.8.2011 passed by the learned CJM, Imphal West and directed return of the said confiscated 12 teak door panels to the respondent. It is against the aforesaid order dated 02.12.2013 overturning the conviction of the respondent that the Forest Department has preferred this appeal.

4. Mr. Gunindro, learned counsel for the appellant has submitted that the learned Sessions Judge has erred in holding that the seized 12 teak door panels are not "timber" and hence, not "forest produce". According to Mr. Gunindro, the reasoning arrived at by the learned Sessions Judge in not holding the teak door panel as "timber" on the ground that a finished product having a distinct identity different from timber has emerged cannot be the decisive factor. It has been submitted that merely because a new product out of the timber has arisen will not necessarily lead to the inference that it is not a timber as the door panels are merely fashioned out of timber and hence continues to remain as "timber" within the meaning of Sec. 2(6) of the Indian Forest Act, 1927. Relying on the decision of the Hon'ble Supreme Court rendered in the case of State of M.P. Vs. S.P. Sales Agencies and Others, AIR 2004 SC 2088 : (2004) CriLJ 1832 : (2004) 4 JT 245 : (2004) 4 SCALE 52 : (2004) 4 SCC 448 : (2004) 1 SCR 640 : (2004) AIRSCW 1836 : (2004) 3 Supreme 26, it has been submitted that the Hon'ble Supreme Court in the said case held that "kattha" which is extracted and derived from "Khair tree" has been treated to be a "forest produce". According to Mr. Gunindro, "kattha" is a new product which is derived from the "Khair tree" by application of human labour. Yet, inspite of assuming a new form and different characteristic, "kattha" has been held to be a "forest produce". In other words, mere application of human labour and emergence of a new product does not necessarily mean that it has ceased to be a forest produce. Mr. Gunindro submits that in the present case also, merely because a door panel has been made out of the timber having distinct identity, it cannot be held it is not a timber. Para No.

8 of the aforesaid judgment of State of M.P. v. S.P. Sales Agencies and ors. (supra) relied upon by the appellants is reproduced hereinbelow:

"8. In view of the foregoing discussion and definitions extracted above from various dictionaries, catechu means any of the various dry, earthy, or resinous astringent substances extracted from wood, leaves or fruits of various tropical Asiatic plants, viz., acacia and other trees and shrubs. Khair tree is one of the types of acacia tree and log of wood of the said tree is basic raw material for the manufacture of kattha and cutch. After employing a series of activities to the log of khair wood, various substances, namely, cutch and kattha etc., are extracted which are known as one of the types of catechu. This being the position, we hold that cutch and kattha come within the sweep of expression "catechu" which has been enumerated in the definition of forest produce, as such kattha and cutch are forest produce within the meaning of Section 2(4) of the Act and the High Court was not justified in holding otherwise."

Further, Mr. Gunindro, learned counsel for the appellant has submitted that what was seized could still be used for other purposes, thus these door panels can still be considered as "timbers". It has been also submitted that though it has been described as a door panel, it was not an assembled in the form of door, it was simply wooden panel of teak which could be used for making other furnitures other than door. The seized door panels were merely fashioned out of the teak wood and Section 2(6) of the Indian Forest Act, 1927 defines timber as including trees when they have fallen or have been felled, and all wood whether cut up or "fashioned" or hollowed out for any purpose or not. Accordingly, it has been submitted that even if the said door panel has been made for the purposes of door, since it was fashioned from a timber, it is covered under the definition of "timber" under Section 2(6) of the Indian Forest Act, 1927. Accordingly, it has been submitted that the decision of the learned Sessions Judge is erroneous and liable to be interfered with. Further, Mr. Gunindro, learned counsel for the appellant has submitted that if this impugned order of the learned Sessions Judge is sustained, it will open a floodgate of illegal transportation of teak wood which would be plainly in contravention of the provisions of the Indian Forest Act, 1927 and it would encourage smuggling and transportation of teak wood in the form of finished products.

5. As opposed to this submission made by Mr. Gunindro, learned counsel for the appellant, Mr. Kenajit, learned counsel for the respondent has submitted that what had been seized were finished door panels fashioned out of timber. What had been seized were assembled door panels for use as door panels only and the said door panels have a distinct identity having a distinct characteristic and attributes different from normal teak or timber. Relying on the decision of the Hon"ble Division Bench of the Gauhati High Court rendered in the case of Sunil Sutradhar Vs. Kemkanta Talukdar and Another, (2013) 3 EFLT 632 : (2013) 2 GLD 17 : (2013) 1 GLT 797 and also referring to the decision of the Hon"ble Supreme Court in 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 , Mr. Kenajit has submitted that a finished product in this case the door panel though derived from timber, once it assumes a distinct identity with commercial value, cannot be termed as timber any longer and as such, the question of violation of the provisions of Section 41 of the Indian Forest Act, 1927 does not arise and hence, the decision of the learned Sessions Judge cannot be faulted with.

6. From the rival contentions as mentioned above, the issue which arises for consideration/decision of this Court is whether the 12 teak door panels which were seized by the Forest authorities on 5.10.2010 were "timber" or "forest produce" within the meaning of Section 2 of the Indian Forest Act, 1927 so as to attract the provisions of Section 41 of the Indian Forest Act, 1927 as well as Rule 33 (a) of the Manipur Forest Rules, 1971 as alleged by the Forest authorities.

In this connection, let us first ascertain as to what were seized because only when the nature of the seized article has been adequately identified, the question of application of the provisions of the Indian Forest Act, 1927 will arise. Though the lower Court records are not present before this Court, there are sufficient indications of the nature of the articles seized from the records. The impugned order of the learned Sessions Judge as well as the related order passed by the learned CJM, Imphal West clearly described the seized articles as door panel of teak wood. The said seized articles have been described merely as wooden door panels thereby indicating these are wooden panels meant for use as doors. Further, there is a reference to it in the impugned order of the learned Sessions Judge. It has been recorded by the learned Sessions Judge in the impugned order that during the course of the hearing before the learned Sessions Judge, the counsel for the appellant (respondent herein) produced photographs of the teak door panel seized by the Forest official and after observing the said photographs, the learned Sessions Judge held that it is clear that the seized teak wood are nothing but completely assembled door panels. Therefore, in view of the above factual recorded in the relevant judgment, the contention of Mr. Gunindro, learned counsel for the appellant that these were not assembled as doors but are merely fashioned wooden panels cannot be accepted. The records clearly indicated that what were seized were door panels made of teak wood. If the seized articles were door panels, which are to be used for the purpose of door, the question which requires to be decided is whether such door panels made of teak wood can be said to be "timber" or not. True, the aforesaid door panels have been made out of the timber by fashioning the teak wood but as clearly indicated in the impugned order, the said teak wood had assumed the form of door panels as a result of application of human labour. Therefore, in the proceeding before the learned Sessions Judge as well as the learned CJM, these articles have been described all throughout as door panels of teak wood.

7. In this connection, one may refer to the decision of the Hon''ble Supreme

Court in Suresh Lohiya (supra). The Hon"ble Supreme Court while dealing with a case as to whether bamboo mat is a forest produce or not under the Indian Forest Act, 1927 indicated the principle to decide as to whether an article or produce will be "forest produce" or not. In para No. 8 of the aforesaid case of Suresh Lohiya (supra), Hon"ble Supreme Court held that when a new product from a forest produce is created by application of human labour which is commercially different from the original forest produce and taken as a distinct product in the common parlance, it would cease to be a forest produce as quoted below:--

"8. We may also state that according to us the view taken by the Gujarat High Court in Fatesang Gimba Vasava and Others Vs. State of Gujarat and Others, AIR 1987 Guj 9 : (1987) 1 GLR 219 is correct, because though bamboo as a whole is forest-produce, if a product, commercially new and distinct, known to the business community as totally different is brought into existence by human labour, such an article and product would cease to be a forest-produce. The definition of this expression leaves nothing to doubt that it would not take within its fold an article or thing which is totally different from forest-produce having a distinct character. May it be stated that where a word or an expression is defined by the legislature, courts have to look to that definition; the general understanding of it cannot be determinative. So, what has been stated in Stroud's Judicial Dictionary regarding a "produce" cannot be decisive. Therefore, where a product from bamboo is commercially different from it and in common parlance taken as a distinct product, the same would not be encompassed within the expression "forest-produce" as defined in Section 2(4) of the Act, despite it being inclusive in nature. That bamboo mat is taken as a product distinct from bamboo in the commercial world, has not been disputed before us, and rightly."

In the said of Sunil Sutradhar (supra), the Hon"ble Gauhati High Court had also considered the issue whether wooden frames for window and ventilator are forest produce within the meaning of Section 34 of the Indian Forest Act, 1927 or not. The Gauhati High Court by relying on the principle laid down by the Hon"ble Supreme Court in Suresh Lohiya (supra) observed as follows:--

"[8] We are of the view that the principle laid down in the aforesaid case of Suresh Lohiya (supra) will be applicable in the present case also. Before we proceed further, it may be required to ascertain as to what actually were seized by the Authorised Forest Officer. A perusal of the records produced (which include the affidavit in opposition on behalf of the respondents in the writ petition) reveals that the following wood products were seized.

1. Window - 5" x 7" - 1 piece.
2. Window - 5" x 5" - 1 piece.
3. Window - 4" x 3" - 2 pieces.
4. Window - 5" x 3" - 1 piece.

5. Ventilator- 7" x 1 1/2 " - 1 piece.
6. Ventilator - 5" x 1 1/2" - 1 piece.
7. Ventilator- 4" x 1 1/2 " - 3 pieces.
8. Dining Table - 1 piece

What were thus seized were not mere loose "fashioned wood", but assembled wooden frames. The said seized materials have been prepared out of the wood or timber by cutting and fashioning by applying human labour to give certain shape in the form of frame for window and ventilator for use as such. A new product has emerged out of tree or timber or wood which was not available in the forest. The tree or timber or wood has undertaken certain transformation brought about by application of human labour with a new identity with commercial value. A new identity has evolved. The wooden frames for window and ventilator, though are derived from wood or tree, have acquired new attributes. In other words, these are finished products of wooden frames for window and ventilator known in the commercial parlance as substances having distinct characters and attributes, different from the normal tree or timber or wood or any other fashioned wood and as such, can no longer be treated as "forest produce".

[9].....

.....

The seized wooden products were not mere wooden pieces or stumps which were fashioned but fashioned wood subsequently assembled and taken the shape of window and ventilator frames, having assumed a distinct form with new commercial identity. In other words, the seized articles which are more than mere "fashioned wood" with new additional attributes and transformed into new distinct product, can no longer be treated as "forest produce".

[10] In our opinion, in the light of the decision in Suresh Lohiya (supra) the decisive factor would be that, if any "forest produce", on application of human labour acquires a new form or shape with distinct commercial identity, the same would no longer remain a "forest produce" by virtue of the new and distinct character and form assumed with input of human labour. Accordingly, we hold that the seized wooden frames for window and ventilator which, though initially may be fashioned wood, having assumed a distinct form, shape and character with commercial identity in the popular parlance because of application of human labour, would no more be covered by the definition of "forest produce" as defined under section 3(4)(a) of the Assam Forest Regulation, 1891."

8. If the aforesaid principle adopted by the Hon"ble Supreme Court in the Suresh Lohiya (supra) case is applied in the present case, what comes out is that the seized articles which are door panels meant to be used for door, have not only assumed a new commercial identity but also have certain additional attributes which are not found in a normal teak timber. Certain new qualities have been

added to the teak timber to make door panels which obviously have been done by addition of human labour. Therefore, this Court is also of the view that the seized door panels of teak wood cannot be considered to be "timber" or "forest produce" any more. In this connection, one may distinguish the decision of the Hon"ble Supreme Court relied on by the appellant, rendered in the case of State of M.P. v. S.P. Sales Agencies and ors. (supra) where the Hon"ble Supreme Court held "kattha" which is derived and extracted from "khair tree" to be a forest produce. What is to be noted in that case is that "kattha" though extracted from "khair tree" and has assumed a new form and characteristics has been held to be covered by the expression "catechu" which has been defined as a "forest produce" under section 2(4) of the Indian Forest Act, 1927. Therefore, in the said case, even though "kattha" is derived from "khair tree" and as such different from "khair tree" and may have attained certain attributes different from the original tree, yet, since it continues to be treated as "forest produce" within the fold of "catechu". "Kattha" inspite of having different attributes continues to be treated as a forest produce. Such is not the case in the present case as there is no such provision under the Act which treats any wooden door panel to be within the definition of "timber" or "forest produce". Therefore, this Court is of the view that that the decision relied on by Mr. Gunindro Singh, learned counsel for the appellant in State of M.P. v. S.P. Sales Agencies and ors. (supra) cannot be applicable to the present case.

9. For the reasons discussed above, this Court is of the view that there is no merit in the appeal and accordingly, the same is dismissed. Dismissal of the impugned order would normally entail reviving the order impugned of the learned Sessions Judge. In the present case, though the order of the learned Sessions Judge directed for returning the seized and confiscated 12 teak door panels to the respondent, it has been stated that these teak door panels had been already sold off by public auction in terms of the order passed by the learned Chief Judicial Magistrate, Imphal West. Hence, it would not be possible to return the seized and confiscated 12 teak door panels to the respondent. However, the proceeds so received from the auction sale can be paid to the respondent, which this Court directs to do so to the appellant, which may be done within a period of one month from the date of receipt of a certified copy of this order. Since the respondent has been unlawfully deprived of the said articles, this Court is of the view that respondent would be entitled to receive interest @ 6% per annum on the said sale proceeds if the same is not paid to the respondent within the aforesaid stipulated time of one month.