(2024) 10 KL CK 0068

High Court Of Kerala

Case No: Criminal Revision Petition No. 632 Of 2012

Kunjeppu		APPELLANT
	Vs	
State Of Kerala		RESPONDENT

Date of Decision: Oct. 10, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 397, 401
- Kerala Forest Act 1961 - Section 27(1)(e)(iii), 27(1)(e)(iv)

Hon'ble Judges: Johnson John, J

Bench: Single Bench

Advocate: N.K.Subramanian, Athul Tom

Final Decision: Dismissed

Judgement

Johnson John, J

1. The revision petitioners are the accused and they are challenging the judgment rendered by the Additional Sessions Judge, Thodupuzha in Crl.

Appeal No. 265 of 2010 upholding the verdict of the Judicial First Class Magistrate Court-I, Idukki in C.C. No. 236 of 2008, whereby the petitioners

are convicted and sentenced for the offences under Sections 27(1)(e)(iii) and 27(1)(e)(iv) of the kerala Forest Act.

2. The prosecution case is that the accused persons trespassed into Keeriplavu reserve forest on 07.03.2008 and cut down a kambakam tree and

attempted to remove the same and thereby, caused a loss of Rs.5000/- to the Government.

3. After completion of the investigation, final report was filed in O.R. No. 16 of 2008 before the Judicial First Class Magistrate Court, Idukki and the

learned Magistrate took cognizance of the offence.

4. In the trial court PWs 1 to 3 were examined and Exhibits P1 to P3 and MO1 were marked from the side of the prosecution. No evidence was

adduced from the side of the defence.

5. After trial and hearing both sides, the trial court found the accused persons guilty of the offences under Sections 27(1)(e)(iii) and 27(1)(e)(iv) of the

Kerala Forest Act and they were convicted and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.1000/- each and in

default of payment of fine, to undergo simple imprisonment for three months for the offence under Section 27(1)(e)(iii); and to undergo simple

imprisonment for one year for the offence under Section 27 (1)(e)(iv) of the Kerala Forest Act.

6. The petitioners filed appeal against the trial court judgment and the appellate court, as per the impugned judgment dated 04.02.2012 in Crl. Appeal

No. 265 of 2010, confirmed the conviction and sentence passed by the trial court against the petitioners. Aggrieved by the above concurrent findings

of the trial court and appellate court, the petitioners filed this revision petition inter alia contending that there is no convincing evidence regarding the

identity of the accused persons and that the prosecution has failed to establish beyond reasonable doubt that the place of occurrence is a reserve

forest.

7. Heard the learned counsel for the revision petitioners and the learned Public Prosecutor.

8. The learned counsel for the revision petitioners argued that the evidence of PW1, forest guard, regarding the occurrence and the identity of the

accused persons is not at all reliable and that there is no convincing evidence to show that the place of occurrence is within the reserve forest covered

under Exhibit P3 notification. It is pertinent to note that the trial court and the appellate court found the evidence of PW1 regarding the occurrence and

identity of the accused persons reliable and trustworthy.

9. PW2 is the Forester who verified the mahazar prepared by PW1 and PW3 forest Range Officer also produced Exhibit P3 notification to show that

the place of occurrence is a reserve forest covered by Exhibit P3 notification.

10. It is well settled that the revisional court cannot act as an appellate court and the power of the revisional court under Sections 397 to 401 Cr.P.C

cannot be equated with the power of an appellate court. In StateÂ ofÂ KeralaÂ v.Â PuttumanaÂ IllathÂ JathavedanÂ Namboodiri Â[(1999)

2 SCC 452 = 1999 SCC (Cri) 275], the Honourable Supreme Court held thus:

â€œ5. â€¦ In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness,

legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting

miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate

jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the

evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High

Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we

have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the

oral evidence. ...â€

11. In Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke [(2015) 3 SCC 123 = (2015) 2 SCC (Cri) 19], the Honourable Supreme Court

held thus:

Â â€œ14. â€¦ Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any

relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible.

The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in

accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal.

Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable

or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the

courts may not interfere with decision in exercise of their revisional jurisdiction.â€

12. As noticed earlier, in the present case, the trial court and the appellate court found that the evidence of PW1, forest guard who witnessed the

occurrence on 07.03.2008, is reliable and trustworthy. Further, the prosecution has also produced Exhibit P3 notification to show that the place of

occurrence is a reserve forest. The revision petitioners were not able to bring out anything to show that the judgment under challenge is vitiated due to

any illegality, irregularity or error of law.

13. It is well settled that the High Court, in exercise of revisional jurisdiction, shall not interfere with the impugned judgment, unless it is perverse or

wholly unreasonable or there is non-consideration of any relevant material. It is also well settled that the impugned judgment cannot be set aside

merely on the ground that another view is possible.

14. Â In the present case, the trial court and the appellate court after considering the evidence on record, arrived at the finding that the prosecution

has succeeded in establishing beyond reasonable doubt that the petitioners trespassed into Keeriplavu reserve forest on 07.03.2008 and cut down a

kambakam tree causing a loss of Rs.5000/- to the Government and I find that there is no justification to interfere with the said finding by exercising the

revisional jurisdiction. The trial court has awarded only the minimum sentence and therefore, considering the facts and circumstances, I find that this

revision petition is devoid of merit and is liable to be dismissed.

In the result, this Crl. R.P is dismissed.