

(2024) 12 KL CK 0048

High Court Of Kerala

Case No: Criminal Miscellaneous Petition No. 164 Of 2014

Smt.Sosamma

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: Dec. 11, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 482
- Kerala Forest Act, 1961 - Section 2(e), 2(k), 27(1)(e)(iii), 6, 27(1)(e)(iv), 52, 61(a)
- Kerala Promotion of Tree Growth in Non Forest Areas Act, 2005 - Section 6(3)

Hon'ble Judges: G.Girish, J

Bench: Single Bench

Advocate: Sujin S, Nagaraj Narayanan, Aravind V. Mathew

Final Decision: Dismissed

Judgement

G.Girish, J

1. The accused Nos.1 to 3 in C.C.No.3869/2014 on the files of the Judicial First Class Magistrate Court-III, Thrissur, have filed this petition under

Section 482 of the Code of Criminal Procedure, 1973(in short, "Cr.P.C.") to quash the proceedings in the said case.

2. The petitioners were earlier booked by the Assistant Wildlife Warden, Peechi-Vazhani Wildlife Sanctuary for the commission of offence under

Section 6(3) of the Kerala Promotion of Tree Growth in Non-Forest Areas Act, 2005, in connection with the cutting and removal of two teakwood

trees which existed in the land over which their predecessor-in-interest had obtained patta. The petitioners challenged the above prosecution

proceedings by instituting CrI.M.C.No.1151/2008 before this Court. As per the judgment dated 04.06.2008, this Court allowed the above petition and

quashed the proceedings in that case. However, it was made clear in the aforesaid judgment that the Forest Department will be at liberty to take

appropriate further action against the petitioners under the Forest Act, and that the petitioners shall be liable to compensate the Government or Forest

Department if ultimately it is found that the trees in question were cut from Reserved Forest.

3. The Investigating Agency, thereafter filed a report dated 24.09.2008 before the Jurisdictional Magistrate informing that prosecution proceedings

commenced against the petitioners for the offences under Sections 2(e)(k), 27(1)(e)(iii)(iv), 52 & 61(a) of the Forest Act, 1961. The petitioners

challenged the above report by filing CrI.M.C.No.4684/2008 before this Court. As per the order dated 06.12.2012, this Court dismissed the above

petition with the observation that the judgment dated 04.06.2008 of this Court in CrI.M.C.No.1151/2008 had reserved the right of the Forest

Department to take further action against the petitioners, and hence the challenge raised against the report dated 24.09.2008 booking the petitioners

for the commission of offences under Sections 2(e)(k), 27(1)(e)(iii)(iv), 52 & 61(a) of the Forest Act, is devoid of merit.

4. Thereafter, the Assistant Wildlife Warden, Peechi-Vazhani Wildlife Sanctuary, filed Forest Offence charge sheet in Form No.II against the

petitioners before the Judicial First Class Magistrate Court-III, Thrissur. It is the above charge sheet which is sought to be quashed in this proceedings

initiated under Section 482 Cr.P.C.

5. Heard the learned counsel for the petitioners and the learned Special Public Prosecutor representing the Forest Department.

6. The verdict rendered by this Court on 04.06.2008 in CrI.M.C.No.1151/2008 contained clear indication that the Forest Department is having the right

and authority to proceed against the petitioners for the offence committed under the relevant provisions of the Kerala Forest Act in connection with

the cutting and removal of two teakwood trees which were said to have existed in the land over which the petitioners's predecessor had obtained

patta. The above right reserved by this Court in the judgment dated 04.06.2008 is quoted in the order dated 06.12.2012 of this Court in

Crl.M.C.No.4684/2008 which was instituted by the petitioners for quashing the proceedings initiated against them pursuant to the report dated

24.09.2008 incorporating Forest Offences under Sections 2(e)(k), 27(1)(e)(iii)(iv), 52 & 61(a) of the Forest Act, which eventually resulted in the filing

of Annexure-VI charge sheet which is sought to be quashed in this case. It could be seen from the aforesaid order (Annexure-V) dated 06.12.2012 in

Crl.M.C.No.4684/2008 of this Court that there is clear finding that, banking upon the documents already produced and considered by this Court in the

previous proceedings initiated by the petitioners vide Crl.M.C.No.1151/2008, the petitioners cannot seek the exercise of inherent powers of this Court

for quashing the report dated 24.09.2008 initiating proceedings against the petitioners for the commission of offence under the relevant provisions of

the Forest Act. It is further observed in the aforesaid order that the disputed question being whether the two teak trees have been cut from an

assigned land or land falling within Reserved Forests, the Competent Authority to determine is the Tribunal constituted under Section 6 of the Forest

Act. In the light of the above finding of this Court in Annexure-V order, the petitioners have no manner of right to challenge Annexure-VI charge

sheet which has been laid by the Investigating Officer on the basis of the original report dated 24.09.2008 initiating proceedings against the petitioners

under the relevant provisions of the Kerala Forest Act. It is to be noted that the petitioners have stated in paragraph No.6 of the statement of facts

forming part of the Memorandum of Appeal that the finding of this Court in Annexure-V order that the Tribunal constituted under Section 6 of the

Forest Act is the Competent Authority to decide the question whether the two teakwood trees were cut and removed from land coming under

Reserved Forest, is not correct since Section 6 of the Forest Act has no application in the nature of the facts and issues involved in this case. Thus, it

appears that the petitioners, by filing the present petition, have ventured to indirectly challenge the Annexure-V order of this Court by instituting the

present petition under Section 482 Cr.P.C. The above course adopted by the petitioners is totally alien to the established principles and procedures of

law. If the petitioners were actually aggrieved by the findings in Annexure-V order, they could have taken recourse to appropriate proceedings before

the Appellate Forum, instead of filing another petition under Section 482 Cr.P.C. At any rate, the present petition filed by the petitioners to quash

Annexure-VI charge sheet cannot be entertained in the light of the clear findings in Annexure-V order that it is for the Tribunal constituted under

Section 6 of the Forest Act to decide whether the teakwood trees cut and removed by the petitioners were existing in the land falling under Reserved

Forest. As a conclusion to the above discussion, I find the present petition filed by the petitioners, totally unsustainable.

In the result, the petition is hereby dismissed.