
(2013) 04 KL CK 0020

High Court Of Kerala

Case No: Criminal R.P. No. 292 of 2002

Sajeevu and Another

APPELLANT

Vs

Forest Range Officer

RESPONDENT

Date of Decision: April 1, 2013

Citation: (2013) 2 KHC 779

Hon'ble Judges: P.D. Rajan, J

Bench: Single Bench

Advocate: S.U. Nazar and P.M. Muhammed Rahaz, for the Appellant; M. Madhuben, Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.D. Rajan, J.

Revision petitioners were convicted by the Trial Court u/s 27(1)(e)(iii) and (iv) of the Kerala Forest Act and sentenced to undergo simple imprisonment for different periods and also directed to pay fine under the aforesaid sections. The substantive sentences were ordered to run concurrently. An appeal filed was partly allowed by the Sessions Court, Thodupuzha confirming the conviction passed u/s 27(1)(e)(iv) by the Trial Court and set aside the conviction u/s 27(1)(e)(iii) and modified the sentence. Challenging the said judgments this criminal revision petition has been preferred. The prosecution allegation is that on 22/11/1993 and within three days prior to that day, the accused trespassed into the reserve forest at Chandanakanam, Keeriplavu beat, Thodupuzha range and they cut and felled a dead Vellakil tree and attempted to remove the same in pieces, thereby causing a loss of Rs. 1,650/- to the Government. Thus, the accused committed the offences under Sections 27(1)(e)(iii) and (iv) of the Kerala Forest Act.

2. To prove the case, P.Ws. 1 to 3 were examined by the prosecution and Exts. P1 to P3 and MO 1 were admitted in evidence. The incriminating circumstances brought out in evidence were denied by them, when they were questioned u/s 313 CrPC. The Trial

Court convicted the accused and sentenced to undergo simple imprisonment for one year each and a fine of Rs. 1000/- each in default of which simple imprisonment for one month each u/s 27(1)(e)(iii) KF Act. and accused were further sentenced to undergo simple imprisonment for one year each and fine of Rs. 1000/- each in default of which simple imprisonment for one month each u/s 27(1)(e)(iv) KF Act. Sentence of imprisonment were directed to be run concurrently. Aggrieved by that, they preferred appeal No. 82/1999 before the Sessions Judge, where the conviction and sentence passed by the Trial Court u/s 27(1)(e)(iii) of the Kerala Forest Act was set aside and confirmed the conviction u/s 27(1)(e)(iv) of the Kerala Forest Act. Aggrieved by that order, they preferred this Criminal Revision Petition.

3. The learned counsel Sri. S.U. Nazar appearing for the revision petitioners contends that there is violation of Section 52 of the Kerala Forest Act. Moreover, the inordinate delay in sending the report to the Court was not considered by the Courts below. The revision petitioners were not arrested by the forest officials, when they were found inside the forest. The evidence of P.Ws. 1 and 2 are not admissible, since they are inconsistent each other and petitioners are entitled to get the benefit of doubt.

4. The learned Public Prosecutor Smt. Madhuben strongly opposed the argument and contended that non-arrest was only because they were familiar to the forest officials. The revision petitioners are residing near the forest boundary and no delay in sending the report to the Magistrate Court. P.Ws. 1 and 2 are official witnesses and there is no reason to discard their evidence. There is no reason to interfere in the finding recorded by the Trial Court.

5. In the light of the above argument, the only question that arises for consideration is whether there is any illegality or irregularity in convicting revision petitioners u/s 27(1)(e)(iv) of the Kerala Forest Act? Prosecution relied the evidence of P.W. 1 to prove the case. According to P.W. 1, while he was conducting beat duty on 22/11/1993 with P.W. 2, he heard a sound inside the forest, he approached that place and two persons were found sawing a tree. He obstructed them and identified their name and addresses, the bottom part of the tree was cut and removed with an axe. For this he prepared Ext. P1 mahazar in which he noted that the tree was cut three days before the incident. As per Ext. P2 notification issued by the Government of Kerala shows that the incident was occurred within the reserve forest. Ext. P3 is the Form No. 1 report. In cross-examination, P.W. 1 admitted that the place of occurrence was 10 kilometres away from the forest beat station. P.W. 1 categorically admitted that he did not arrest the accused. He again visited the place of occurrence on the next day, but he did not arrest them on the same day. P.W. 2, who is also the official witness deposed the same version of P.W. 1, in order to avoid repetition of the same version, I am not reiterating the oral testimony of P.W. 2. P.W. 2 admitted the signature in Ext. P3. The accused are very familiar to him. But, in cross-examination, he admitted that he did not know the boundaries of this Thodupuzha reserve. The distance between the place of occurrence and the forest beat is only 1 Km. This inconsistent version with regard to the place of occurrence create a doubt in the

prosecution case.

6. According to Section 52 of the Kerala Forest Act, when there is reason to believe that a forest offence has been committed in respect of any timber or other forest produce, the Forest Officer may seize all such articles, vehicle, products, timber at the place of occurrence itself. Every officer seizing any property u/s 52(1) shall put a mark indicating the same has been seized and shall as soon as make a report of such seizure to the Magistrate having jurisdiction to try the offence. A close reading of Section 52 of the Act shows that the Forest Officer or a Police Officer has every right to seize any timber or various forest produce, such as timber or produce, together with all tools, ropes, chains, boats, vehicles, when such offence has been committed in respect of any forest produce. P.Ws. 1 and 2 in their evidence deposed that the accused were not arrested. Moreover, the place of occurrence, according to P.W. 1, is 10 kilometres away and according to P.W. 2, 1 kilometre away. This inconsistent version with regard to the place of occurrence coupled with non-compliance of Section 52 of the Act, create a doubt in the credibility of prosecution case.

7. The next contention put forwarded by the revision petitioners was that there was inordinate delay in forwarding the report before the Court. According to P.Ws. 1 and 2 the offence was detected on 22/11/1993. The endorsement in Ext. P1 shows that the report was received in the Magistrate's Court only on 10/12/1993. There is delay of more than 18 days in forwarding the report. Therefore, non-compliance of Section 52(2) of the Act not reporting seizure to the Magistrate having jurisdiction to try the offence is a violation of Section 52(2) of the Forest Act. P.W. 2 is the Forest Guard gave evidence, but his evidence is not satisfactory for conviction. According to P.W. 3, he arrived at the place of occurrence and prepared Ext. P1(a). There is no dispute with regard to the signature, but, non-compliance of the statutory provision affect the prosecution case. In this context, I may refer the Division Bench decision of the Madhya Pradesh High Court in [Kailash Chand and Another Vs. State of Madhya Pradesh and Others](#),

11. The scheme of the central Act is to ensure that an offender is prosecuted before the Magistrate concerned and on his conviction, the forest produce or other properties seized become liable for confiscation. On receipt of the report u/s 52(2), it is the duty of the Magistrate to take measures for arrest and trial of the offender and disposal of the property. Power has been conferred on Forest Officer or Police Officer to arrest without warrant. Thus, the offences under the Act are cognizable offences as defined in Section 2(c) of the Cr.P. Code (for short, the Code). Sub-section (2) of Section 4 of the Code states that offences under laws other than Indian Penal Code shall be investigated, enquired into, tried and otherwise dealt with according to the provisions of the Code, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Since the offences under the Forest Law are cognizable, provisions of Chapter XII of the Code are also attracted in relation to officers-in-charge of Police Stations. By virtue of Section 154, such a Police Officer, on receiving information relating to commission of a cognizable

offence, is bound to reduce it in writing, enter the substance thereof in the prescribed book and by virtue of Section 157 of the Code, bound to prepare first information report and proceed to investigate the fact on sending the FIR to the Magistrate. A Forest Officer who detects a forest offence, has also the power and responsibility of invoking jurisdiction of Criminal Court. Section 52(2) of the Amended Act requires the seizing officer to make a report of seizure to the Magistrate "where it is intended to launch criminal proceedings against the offender immediately" If one seizure of property u/s 52(1) of the Act, the Forest Officer has all the necessary facts and materials to warrant immediate launching of criminal proceedings, he is bound to report the seizure to the Magistrate. Where the facts and evidence available with him are not adequate to launch criminal proceedings immediately, he is not required to report seizure to the Magistrate. In such circumstances, he has to fall back upon Section 190 of the Code and due course, lodge a complaint before a Magistrate. Where the report is received u/s 52(2), the Magistrate has to proceed u/s 54. Where a complaint is received u/s 190 of the Code, he has to proceed in the manner contemplated by the Code. Learned counsel for the petitioners contends that Section 52(2) refers to "where it is intended to launch criminal proceedings against the offender immediately" and this is entirely a matter in the discretion of the seizing officer, leading to arbitrary exercise of power. We are unable to agree with this interpretation of the provision in Section 52(2). The expression "intended" cannot be read as indicative of mere discretion of the officer concerned. The intention to launch criminal proceedings immediately is not dependent on the whims and fancies of the officer concerned; it is dependent on the objective factors present by way of facts, evidence and information available in each case. Whether criminal proceedings can be launched immediately or not is of course a matter for decision of the officer concerned, but the decision rests entirely on the evidence before the Officer. This is more or less on par formation of opinion on the part of a Police Officer u/s 170(3). The emphasis in the provision is on the immediacy of launch of prosecution. We are, therefore, unable to agree that the seizing officer has been given unguided discretion to launch prosecution or otherwise or launch prosecution immediately or otherwise.

In view of the above legal principle, the primary responsibility of the detecting officer is to report the matter before the Magistrate concerned at the earliest. When there is a delay from the side of the detecting officer and failure to comply with statutory provisions, which will create a doubt in the credibility of the prosecution case. The Trial Court and Appellate Court failed to appreciate that legal position in the correct perspective. Therefore, the conviction and sentence u/s 27(1)(e)(iii) and (iv) of the Kerala Forest Act is to be set aside.

In the result, conviction and sentence u/s 27(1)(e)(iii) and (iv) of the Kerala Forest Act is set aside and petitioners are set at liberty.

The criminal revision petition is allowed as above.