

(1995) 10 KL CK 0036

High Court Of Kerala

Case No: W.A. No. 1159 of 1994

State of Kerala

APPELLANT

Vs

P.P. Mathew and Another

RESPONDENT

Date of Decision: Oct. 25, 1995

Acts Referred:

- Kerala Forest Act, 1961 - Section 61A, 61B, 61B(2), 61D
- Kerala High Court Act, 1958 - Section 5

Hon'ble Judges: K.T. Thomas, Acting C.J.; P. Shanmugam, J

Bench: Division Bench

Advocate: T.V. George, Government Pleader, for the Appellant; M. Ramesh Chander, for Respondent 1, for the Respondent

Final Decision: Allowed

Judgement

K.T. Thomas, Actg. C.J.

1. During the early hours of 14th February 1990 a pick-up van was intercepted by a police patrol party as the van transporting sawn timber pieces. As the police were satisfied that the vehicle was being used for illicit transportation of forest produce, they seized the vehicle as well as the contraband timber and handed them over to the Divisional Forest Officer ("D.F.O." for short).

Driver of the van and two other passengers therein were arrested. The D.F.O. initiated proceedings for confiscation of the vehicle as it was used for committing a forest offence. After hearing the owner of the vehicle the D.F.O. ordered confiscation of both (timber pieces and the van) as per Section 61-A of the Kerala Forest Act (for "the Act"). The order of confiscation (Ext. P-1) was challenged by the vehicle owner in appeal filed u/s 61-D of the Act Learned District Judge, who heard the appeal, allowed it and annulled the order of confiscation of the vehicle (Ext. P-2 judgment). State of Kerala filed the present Original Petition in challenge of Ext. P-2. As it was dismissed by the learned Single Judge, this appeal has been filed before

the Division Bench u/s 5 of the Kerala High Court Act.

2. Though the District Judge found that the vehicle was used for committing a forest offence, he took the view that owner of the vehicle (first Respondent) has satisfied the conditions in Section 61-B of the Act and on that premise annulled the confiscation order. Learned District Judge has mentioned in Ext. P-2 judgment that first Respondent had no knowledge that contraband timber was loaded in the van and that he had given instructions to the driver that timber unsupported by pass should not be carried in the vehicle.

3. Learned Government Pleader contended that findings of the District Judge, even if sustained, are insufficient to annul the confiscation order inasmuch as there is no finding that driver of the vehicle was also unaware of the illicit transportation of forest produce.

4. Section 61-B contains two Sub-sections. The first Sub-section says that no order of confiscation shall be made without giving notice to the person from whom it was seized informing him of the grounds for confiscation and affording him an opportunity of making representation. Sub-section (2) contains a further restriction against confiscation. It says that no order of confiscation shall be made if the owner of the vehicle proves that it was used in carrying the timber "without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the vehicle and that each of them had taken all reasonable and necessary precautions against such use".

5. The restriction against confiscation contained in Sub-section (2) can operate only on the combination of three postulates. First is that the owner or his agent was totally unaware of the illicit use. Second is that he had taken all reasonable and necessary precautions against such use. Third is, the person in charge of the vehicle had also taken reasonable and necessary precaution against such use. If the owner succeeds in satisfying only the first two postulates, he would not get the benefit of the restriction against confiscation. The third condition is as important as the other two and unless that also is established no advantage would practically enure to the owner of the vehicle. Sub-section (2) would remain at bay if the third condition remains unsatisfied.

6. The contention that such a strict view would adversely affect an innocent vehicle owner cannot be countenanced since any narrow or liberal interpretation of confiscatory provisions in the Act can eventually lead to disastrous consequences for forest wealth which is a very endangered bounty of nature. The idea behind extension of confiscatory provisions to vehicles, etc., is to convey a peremptory and explicit message to the vehicle owners not to allow their vehicles to be used for depletion of forest wealth. If any vehicle is caught in the nefarious act of carrying illicit forest produce, it is not enough that the owner establishes his innocence alone. If he wants to retrieve his vehicle he must show further that the person who

was in charge of the vehicle has taken reasonable and necessary precautionary measures against such user of the vehicle. The owner cannot rest with establishing his innocence in the matter. It may be that having succeeded in showing his innocence his failure to establish the next limb might lead to hard consequences to him. Legislature intended, by providing such stringent conditions, to prevent harder consequences for the society and for the posterity.

7. In this context we think it worthwhile to quote the words of Sukumaran, J. in *Baby v. The Forest Range Officer* ILR 1986 Ker 57. "The background in which legislation regarding forest had been made, and had been improved from time to time, both by the parliament and by the State Legislatures, has to be viewed in the larger background. When the legislature has taken note of the colossal depredation of the forest wealth, and when it is scientifically established that such wanton waste of forest-cover would take the country perilously near desertification and a total disturbance of the ecology and environment, the Court should be slow to give a narrow interpretation to such well-meant statutory provisions." In *State v. Pushpan* 1984 K.L.I. 257 Bhaskaran Nambiar, J. has also observed in the same tone though in different words like this: "The onus is on the owner to prove that the vehicle was used for transporting illicit timber without his knowledge and without his connivance and that he had taken all precautions against such use. The owner did not discharge this burden. Forest cannot be denuded and forest wealth cannot be dissipated. Pretended ignorance cannot cover resourceful attempts and protect sharp practices. Lenient view in such case is bound to effect public interest and will indirectly set this as an accepted pattern for illicit transport of forest produce," Constitutional validity of confiscatory provisions in the Andhra Pradesh Forest Act was upheld by the Supreme Court in [Divisional Forest Officer and Another Vs. G.V. Sudhakar Rao and Others](#), and in the decision their Lordships justified the change in legislative approach as a necessity "to prevent the growing menace of ruthless exploitation of Government forests".

8. We cannot, therefore, allow the vehicle to be released to the owner until establishment of all the conditions in Sub-section (2) of Section 61-B of the Act.

9. Attention of the learned Single Judge was not brought to the above aspects and therefore, this has not been adverted to by the learned Single Judge. In the result, we allow this appeal and quash Ext. P-2 judgment. We direct the District Judge to dispose of the appeal afresh in the light of the observations made above.

Appeal is disposed of in the above terms.