

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24<sup>TH</sup> DAY OF NOVEMBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE V. SRISHANANDA

**CRIMINAL REVISION PETITION NO.368 OF 2012**

**BETWEEN:**

1. SRI.SATISH  
S/O CHOWDAIAH  
AGED ABOUT 30 YEARS
2. SRI.HOOVAIAH  
S/O VENKATAIAH  
AGED ABOUT 45 YEARS
3. SRI.K.P.POLOUS  
S/O POLOUS  
AGED ABOUT 68 YEARS
4. SRI.K.P.DENNY  
S/O K.P.POLOUS  
AGED ABOUT 34 YEARS

ALL ARE R/AT: KURUBAGODU  
VILLAGE, SANAGAMESHWARA PET POST  
CHIKAMAGALUR TALUK AND DISTRICT.  
... PETITIONERS

(BY SRI. H.V.KRISHNAMURTHY, ADVOCATE FOR  
SRI.H.P.LEELADHAR, ADVOCATE)

**AND:**

STATE OF KARNATAKA BY  
R.F.O.BALEHONNUR VILLAGE POLICE  
CHIKAMAGALUR DISTRICT.

...RESPONDENT

(BY SRI. V.S.VINAYAKA, HCGP)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W SECTION 401 CR.P.C PRAYING TO SET ASIDE THE CONVICTION AND SENTENCE DATED 28.04.2010 IN C.C.NO.297/04 PASSED BY THE PRL.CJ AND JMFC AT CHIKAMAGALUR AND THEREBY ORDER OF APPELLATE COURT DT:23.01.2012 IN CRL.A.NO.95/2010 PASSED BY THE PRL.SJ CHIKAMAGALUR AND ALLOW THE REVISION PETITION AND ACQUIT THE PETITIONERS.

THIS CRIMINAL REVISION PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

The accused is in revision. Accused persons who suffered an order of conviction in C.C.No.297/2004 passed by the Prl. Civil Judge & JMFC, Chikmagalur, for the offences punishable under Sections 24(e) and 104-A of the Karnataka Forest Act, 1963 and sentenced to pay fine of Rs.2,000/- each and rigorous imprisonment for three months and one year for the aforesaid offences with default sentence which was confirmed in Crl.A.No.95/2010

dated 23.01.2012 passed by the Principal District and Sessions Judge, Chikmagalur, are in revision petition.

2. Today a memo came to be filed by the learned Counsel for the revision petitioners that accused Nos.2 and 3 died on 16.05.2018 and 03.11.2015 respectively and death certificates are also filed.

3. Learned High Court Government Pleader submits that the death of accused Nos.2 and 3 who are petitioner Nos.2 and 3 may be recorded and proceedings against them be terminated, as they have paid the fine amount imposed by the Trial Magistrate following the dictum of the Hon'ble Apex Court in the case of ***Ramesan (Dead) Through Legal Representative Vs. State of Kerala*** reported in **(2020) 3 SCC 45**.

4. The brief facts of the case are as under:

On 27.03.2003 Laxmana Gowda, Forester along with forest guards Satish and Veerabadra Naik while on patrolling duty at Balehonnur Region, Basavanakote, Mannajangaliya area, had a credible information and heard that few persons were discussing something secretly.

They followed the said sound and noticed that four persons were trying to carry and transport the wooden billets. On seeing the forest officials, the accused persons tried to flee away from the spot but the forest officials were able to capture three of the accused persons and on enquiry they revealed their names.

The team also seized the wooden billets and on enquiry they came to know that the accused persons were not having any pass or licence to possess and transport the wooden billets and therefore the raid party treated the wooden billets as illegal billets and seized the same and drafted a mahazar. Thereafter the head of the raid party lodged a report along with the seized articles and captured persons to the official superiors and a case came to be registered against the accused persons who were captured at the spot and the person who fled away from the spot for the offences punishable under Sections 24(e), 50, 104-A read with Section 62 of the Karnataka Forest Act, 1963. After thorough investigation, a charge sheet came to be filed against the accused persons for the aforesaid

offences. Presence of the accused was secured and plea was recorded. Accused pleaded not guilty and trial was held against the accused. In order to prove the case of the prosecution, prosecution in all examined four witnesses as PWs.1 to 4 and they relied on five documents which are exhibited and marked as Exs.P1 to P5, seized wooden billets and one saw was marked as M.Os.1 to 4. There afterwards, accused statement was recorded as contemplated under Section 313 Cr.P.C. The accused persons denied all the incriminatory materials found against them. However, accused persons did not choose to place their version to the incident on record in writing as is contemplated under Section 313 (5) of the Cr.P.C. nor adduced any evidence.

Subsequent thereto, the learned Magistrate heard the parties in detail and passed an order of conviction of the four accused persons for the offences under Sections 24(e) and 104-A of the Karnataka Forest Act, 1963 and passed the sentence as referred to supra. Being aggrieved by the same, the accused persons filed an appeal before

the District and Sessions Judge, Chikkamagalur in Crl.A.No.95/2010.

Learned Prl. District and Sessions Judge secured the records from the learned Magistrate and after hearing the parties in detail and also by supplementing the additional reasons, dismissed the appeal filed by the accused persons and confirmed the order passed by the learned Magistrate. Being aggrieved by the same, accused persons are in revision.

5. Learned Counsel for the revision petitioners Sri H.V.Krishnamurthy on behalf of Sri H.P.Leeladhar, vehemently contended that both the Courts have wrongly convicted the accused and sentenced them, whereby there is miscarriage of justice in the case on hand. He further contended that there is no proper compliance of Sections 62(3) and Section 71-A of the Act, in the case on hand, and therefore, the entire trial stood vitiated and sought for allowing the revision petition. He also pointed out that there is no independent witnesses who had taken for conducting the mahazar nor any effort is made to secure

the presence of the independent witnesses as could be seen from the contents of the mahazar and the evidence of PWs.1 to 4 are self-serving testimony and therefore could not have been relied on by the trial Magistrate. Atleast the learned Judge in the First Appellate Court should have re-appreciated the said aspect of the matter and sought for allowing the revision petition. Alternatively, he contended that in the event of this Court maintaining the order of conviction, since the accused persons are first time offenders, probation may be granted to the accused persons.

6. Per contra, learned High Court Government Pleader while supporting the impugned judgments contended that in a matter of this nature, expecting the independent witnesses is highly impossible as the incident has taken place deep in the forest. He also pointed out that the contents of the mahazar clearly states that the forest officials could not have fetched the presence of the independent witnesses inasmuch as the incident has taken place deep in the forest and hardly any public movement

was there in the place of incident and therefore, Ex.P1 cannot be faulted based on not taking the independent witness for drawing up of the mahazar. He also pointed out that admittedly the seized wooden billets were carried by the accused persons without pass or permit and therefore, the forest officials treated them as illegal transport and seized the same and even before the Court, the accused persons could not offer any explanation as to the possession and transport of the wooden billets and therefore, sought for dismissal of the revision petition. He also pointed out that the non-compliance of the provisions as is contemplated under Sections 62(3) and 71-A of the Act, does not vitiate the trial in a matter of this nature and no case is made out by the revision petitioners that by non-compliance of the said provisions, serious prejudice has been caused to the accused persons and thus sought for dismissal of the revision petition.

7. Insofar as the alternate submission is concerned, the learned HCGP contended that if the accused persons-revision petitioners are dealt leniently, it would send a



wrong message to the general public at large and therefore, sought for dismissal of the revision petition in toto.

8. In view of the rival contentions, having regard to the scope of the revisional jurisdiction, the following points would arise for consideration:

i) Whether the finding recorded by the trial Magistrate that accused persons are guilty of the offences punishable under Sections 24(e) and 104-A of the Karnataka Forest Act, confirmed by the Prl. District Judge in CrI.A.No.95/2010 is suffering from legal infirmity, perversity and thus calls for interference?

ii) Whether the sentence is excessive?

9. In the case on hand, Ex.P1 is the mahazar based on which the entire criminal prosecution has been launched against the revision petitioners. Under Ex.P1, M.Os.1 to 4 have been seized by the raid party. Admittedly, raid party members did not possess any serious enmity or animosity against the accused persons.

The place of incident, as could be gathered from the contents of mahazar, is deep inside the forest. The raid party while on the patrolling duty overheard the conversation amongst the accused persons and raided them. At the place of incident itself, the raid party was able to capture three of the accused persons and one person fled away from the place of incident is also subsequently made to stand for the trial and the wooden billets marked as M.Os.1 to 3 and the saw that was used for cutting a tree has been seized by the raid party which was also marked before the learned Magistrate as M.O.4. The oral testimony of PWs.1 to 4 is tested in the witness box by cross-examining them. However, in such cross-examination, the defence is unable to elicit any materials so as to consider the oral testimony of the prosecution witnesses are suffering from contradictions or the credibility of the oral testimony was sought to be impeached.

10. Under such circumstances, the trial Magistrate placing reliance on the oral testimony of PWs.1 to 4

coupled with the seizure of M.Os.1 to 4 clearly establishes that the accused persons are guilty of the offences punishable under Section 24(e) and 104-A of the Karnataka Forest Act.

11. The learned Judge in the first Appellate Court not only re-appreciated the entire materials on record but also supplemented the reasons and quelled all grounds urged in the appeal by relying on the settled principles of law and confirmed the findings recorded by the trial Magistrate.

12. On re-examination of the impugned judgments in the light of the grounds urged by the revision petitioners, this Court is of the considered opinion that there is no legal infirmity or perversity in reaching out such findings by both the Courts and accordingly point No.1 is answered in the negative.

**Re. Point No.2:**

13. Admittedly, accused persons are first time offenders and there is no criminal antecedents. In a matter of this nature especially having regard to the punishment prescribed in the statute for the offences under Sections

24(e) and 104-A of the Karnataka Forest Act, the trial Magistrate ought to have considered the grant of probation. Atleast in the first appellate Court the learned Judge should have bestowed his attention on to the said aspect of the matter. Admittedly, three months imprisonment and one year imprisonment is granted by the trial Magistrate for the offences punishable under Sections 24(e) and 104-A of the Karnataka Forest Act. Since the accused persons are first time offenders and having regard to the fact that the incident has occurred in 2003 and there is no complaint against the accused persons in all these years, this Court is of the considered opinion that the accused persons-revision petitioners have made out a case for grant of probation. The view of this Court in arriving at such a conclusion is supported by the judgment of the Hon'ble Apex Court in the cases of **Chandreshwar Sharma Vs. State of Bihar** reported in **(2000) 9 SCC 245** and **Gulzar Vs. State of Madhya Pradesh** reported in **(2007) 1 SCC 619**.

14. Accordingly, instead of sentencing the accused persons for imprisonment at once, if they are directed to execute a bond in a sum of Rs.50,000/- with one surety for the likesum for a period of two years for their good behaviour and ordered to pay a fine of Rs.20,000/- each, the ends of justice would be met. Accordingly point No.2 is answered and following order is passed:

**ORDER**

Revision petition is ***partly allowed***. While maintaining the conviction of the accused persons for the offences punishable under Sections 24(e) and 104-A of the Karnataka Forest Act, accused Nos.1 to 4 are directed to execute a bond for a sum of Rs.50,000/- each with one surety for the likesum to the satisfaction of the trial Magistrate and also directed to pay fine of Rs.20,000/- (Rupees Twenty thousand only) each inclusive of the fine already imposed and paid by the accused Nos.1 to 4 before trial Magistrate on or before **31.12.2021**. It is made clear that any violation of the bond condition or non-payment of

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fine imposed as ordered by this Court, the order passed by the trial Magistrate shall automatically stand restored.

Office is directed to return the Trial Court records along with a copy of this order, forthwith.

**Sd/-  
JUDGE**

JT/-