

# IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE 22<sup>ND</sup> DAY OF AUGUST, 2025

### **BEFORE**

# THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE CRIMINAL REVISION PETITION NO. 1576 OF 2006 BETWEEN:

B RAJU, S/O DODDABELLEGOWDA, AGE MAJOR, R/AT HALEGANGUR VILLAGE POST,

LINGADHAHALLI HOBLI, TARIKERE TQ, CHICKAMAGALUR DISTRICT.

...PETITIONER

(BY SRI BUDRUNNISA, ADVOCATE)

#### **AND:**

THE STATE OF KARNATAKA REP. BY RANGE FOREST OFFICER, KOPPA REP. BY THE STATE PUBLIC PROSECUTOR HIGH COURT BUILDING, BANGALORE

...RESPONDENT

(BY SRI CHANNAPPA ERAPPA, HCGP)



THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE JUDGMENT PASSED IN C.C.NO.707/01 DT.31.7.02 ON THE FILE OF THE JMFC., KOPPA AND ALSO THE JUDGMENT PASSED IN CRL.A.NO.70/02 DT.30.6.06 ON THE FILE OF THE S.J., FTC-II, CHIKMAGALUR.

THIS PETITION, COMING ON FOR DICTATING JUDGMENT, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE



# **ORAL ORDER**

This petition is arising against the concurrent findings of conviction and sentence.

- 2. Petitioner is tried and convicted for an offence under Section 87 of The Karnataka Forest Act, 1963 (for short 'Act, 1963'). Petitioner is sentenced to simple imprisonment for 3 years and also directed to pay fine of Rs.5,000/-.
- 3. The appeal filed by the petitioner before the Sessions Court is also dismissed confirming the conviction and sentence. Hence, the present revision petition.
- 4. This petition was earlier dismissed by this Court and the petitioner filed Special Leave Petition before the Hon'ble Supreme Court. In terms of the order dated 28.03.2025, Special Leave Petition was allowed and the matter is remitted to this Court for fresh consideration and the Apex Court noticed that the petition was disposed of without hearing the counsel for the petitioner, who was not present when the case was listed for hearing.



- 5. Hence, the matter is placed before this Court for fresh consideration.
- 6. Prosecution alleged that on 23.08.2001, the Foresters of Basrikatte and Jayapura were on duty and when they were near Makkikoppa Bus Stand, they found two persons moving suspiciously and one among them was holding a plastic bag and the other was holding a gunny bag. The forest officials claim that when they made enquiry, both of them tried to run away. Prosecution claims that both persons were caught hold off by the forest officials and when the plastic bag was opened, they found Sandalwood billets. It is stated that the person who was holding plastic bag is accused No.1 and accused No.2 was holding gunny bag containing sandalwood pieces. officials after Forest investigation have filed the charge sheet.
- 7. Accused did not plead guilty and they were tried. Before the Trial Court, prosecution examined 6 witnesses and produced five documents marked as Exs.P.1 and 5. The material objects are produced as MOs.1 to 7.



- 8. After considering the evidence on record, the Trial Court found that both accused are guilty of offence under Section 87 of the Act, 1963 and imposed sentence of three years simple imprisonment and fine of Rs.5,000/- each. The Sessions Court has dismissed the appeal.
- 9. Learned counsel appearing for the petitioner would urge that Section 62-C of the Act, 1963 mandates that the person who is issuing the certificate under the Act, 1963, regarding the specified forest produce is required to be an Officer above the rank of the Range Forest Officer and also he is required to undergo training for the said purpose.
- 10. Learned Counsel for the accused contends that person who issued the certificate at Ex.P.5, and who has been examined, does not claim that he has undergone the training. Thus, it is contended that Ex.P.5 the alleged certificate issued under Section 62-C of the Act, 1963 is not proved and once it is not proved, the prosecution should fail and the petitioner ought to have been acquitted.



- 11. It is also urged that that contradictions in the evidence of the witnesses examined on behalf of the prosecution is not taken note of by the Trial Court and the Sessions Court and those contradictions would clearly demonstrate that the prosecution has not proved the case beyond reasonable doubt.
- 12. Learned counsel for the petitioner would urge that the mandatory requirement under Section 62(3) of Act, 1963 is not complied inasmuch as after the alleged seizure of sandal wood from the petitioner, the forest officials have not reported the matter to the authority under Section 71-A of the Act, 1963.
- 13. In addition, the learned counsel for the petitioner would also urge that the complaint is not filed and entire case is investigated and tried only on the basis of the mahazar and same is impermissible.
- 14. In support of the contention, learned counsel appearing for the petitioner would refer to the judgments of the Co-ordinate Bench of this Court in *Mr.Muzammil Pasha*



and others vs. State of Karnataka<sup>1</sup> and Ekbal and
Another vs. State of Karnataka<sup>2</sup>.

15. Learned High Court Government Pleader would submit that the offence alleged against the accused is duly established. Both the accused have been convicted and the appeal filed by accused No.1 is also dismissed and he has not filed any revision before this Court challenging the order of conviction confirmed by the Appellate Court. It is also his further submission that this Revision Petition was earlier dismissed after noticing records and the matter is now remanded by the Supreme Court on the technical ground that the counsel for the petitioner was not present when the matter was heard on the earlier occasion, as such, he would urge that the petition also warrants dismissal.

16. It is also urged that materials seized are admitted to be Sandalwood, as such, even if there is no certificate under Section 62-C of the Act, 1963, the accused have to be convicted as the offence is established as seizure is

<sup>&</sup>lt;sup>1</sup> Crl.A.No.807/2012

<sup>&</sup>lt;sup>2</sup> Crl.A.873/2013



established as the petitioner/accused himself has admitted that what is seized is Sandalwood.

- 17. Learned High Court Government Pleader would submit that it was reported to the concerned officer under Section 62 of the Act, 1963.
- 18. This Court has taken into consideration all the contentions raised at the bar and perused the records.
- 19. Though, the learned counsel for the petitioner would urge that the requirement of Section 62-C of the Act, 1963 is not complied with inasmuch, no records are produced to hold that the person who has issued the certificate under Section 62-C has the requisite training as contemplated under Section 62-C, this Court is of the view that the said certificate is not of much consequence in the present case as the petitioner/accused has not disputed the fact that the materials seized and placed before the Court are pieces of Sandalwood.
- 20. Section 62(3) of The Karnataka Forest Act, 1963 reads as under:



- 62. Seizure of property liable to confiscation.—
  - (1) XXX
  - (2) XXX
- (3) Every officer seizing any property under this Section shall, as soon as may be, [make a report of such seizure,—
- (a) where the offence on account of which the seizure has been made is in respect of timber, ivory, [Gulmavu (machilus macrantha) bark, Dalchini bark, Halmaddi (exudation of Ailanthus malabaricum), canes], firewood or charcoal which is the property of the State Government or in respect of sandalwood, to the concerned authorised Officer under section 71A; and
- (b) in other cases, to the magistrate having jurisdiction to try the offence on account of which the seizure has been made; ]

Provided that when the forest produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.



21. Section 71-A of The Karnataka Forest Act, 1963 reads as under:

71A. Confiscation by Forest Officers in certain **cases.**—(1) Notwithstanding anything contained in the foregoing provisions of this Chapter [or in any other law], where a forest offence is believed to have been committed in respect of timber, [ivory, [Gulmavu (Machilus marantha) bark, Dalchini bark, Halmaddi (exudation of Ailantus malabricum), canes], firewood and charcoal which is the property of the State Government or in respect of sandalwood], the officer seizing the property under sub-section (1) of Section 62 shall, without any unreasonable delay produce it, together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence, before an officer authorised by the State Government in this behalf by Notification in the Official Gazette, not being below the rank of an Assistant Conservator of Forests (hereinafter referred to as the authorised officer):

(2) Where an authorised officer seizes under subsection (1) of Section 62 any timber, [ivory, firewood [Gulmavu (machilus marantha) bark, Dalchini bark, Halmaddi (exudation of Ailantus



Malabricum), canes] and charcoal which is the property of the State Government or any sandalwood], or where any such property is produced before an authorised officer under sub-Section (1) and he is satisfied that a forest offence has been committed in respect of such property, such authorised officer may, whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of the property so seized together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence.

- (3) (a) Where the authorised officer, after passing an order of confiscation under sub-section (2), is of the opinion that it is expedient in the Forest public interest so to do, he may, order the confiscated property or any part thereof to be sold by public auction.
- 22. On perusal of the aforementioned provisions, it is evident that once the items/forest produce mentioned in Sections 62 and 71-A of Act, 1963 are seized, the concerned officer shall without any unreasonable delay produce the same before the officer notified in the Official Gazette not



being below the rank of an Assistant Conservator of Forest.

The said provisions deal with the procedure for seizure and confiscation respectively.

- 23. On going through the evidence placed on record, it is noticed that the prosecution has not made any statement that it has complied with the requirement of Sections 62 read with 71-A of the Act, 1963 relating to seizure being reported under Section 71-A. No document is produced to hold that Section 71-A of the Act of 1963 is complied. This Court in this case is not recording a finding as to whether non-compliance of provisions of Sections 62 and 71-A of the Act, 1963 vitiates entire proceeding.
- 24. However, the judgment of co-ordinate bench of this Court in *Ekbal* supra applies to the facts of the present case. In the case of *Ekbal* supra it is held that the proceeding cannot be initiated based on spot mahazar. In the instant case the proceeding is initiated based on spot mahazar and not on the basis of any complaint.



- 25. It is also relevant to notice that in the cross examination the alleged witness to the spot mahazar has stated that he is not in a position to state as to which of the accused was holding the bags alleged to have been seized by the Forest officials. The said witness has also stated he does not know when the numbers on the sandalwood billets have been written.
- 26. It is well settled principle of law that prosecution has to prove the case beyond reasonable doubt and has failed to do so. Under these circumstances the benefit of doubt is to be given to the petitioner/accused. Both Courts have not noticed the fact that the proceeding is initiated only based on spot mahazar.

# 27. Hence, the following:

# **ORDER**

- (i) The Criminal Revision Petition is **allowed**.
- (ii) The impugned judgment dated 30.06.2006 in Crl.A.No.70/2002 on the file of II Additional Sessions Judge, Chikkamagalur and the



judgment dated 31.07.2002 in CC.No.707/2001 on the file of JMFC, Koppa are set-aside.

- (iii) The petitioner is acquitted of the charge under Section 87 of the Karnataka Forest Act, 1963.
- (iv) Bail bond if any, stands cancelled.
- (v) The petitioner shall be released forthwith.

Sd/-(ANANT RAMANATH HEGDE) JUDGE

brn/GVP

List No.: 2 SI No.: 33