

## State Of Karnataka vs K.A. Kunchindammed on 16 April, 2002

**Equivalent citations:** AIR 2002 SUPREME COURT 1875, 2002 AIR SCW 1865, 2002 AIR - KANT. H. C. R. 1231, 2002 (5) SRJ 500, 2002 (3) SLT 282, 2002 (2) UJ (SC) 855, 2002 (3) SCALE 706, 2002 (2) UC 164.2, 2002 (9) SCC 90, (2002) 4 JT 255 (SC), 2003 SCC(CRI) 1085, (2003) ILR (KANT) (1) 183, (2002) 2 CRIMES 228, (2002) SC CR R 836, (2002) 2 ALLCRILR 589, (2002) 2 CURCRIR 132, (2002) 3 SUPREME 361, (2002) 3 SCALE 706, (2002) 2 UC 164(2), (2002) 44 ALLCRIC 1153, (2002) 4 CAL HN 157, (2002) 2 CHANDCRIC 25

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**Bench:** D.P. Mohapatra, Shivaraj V. Patil

CASE NO.:

Appeal (crl.) 513 of 2002

PETITIONER:

STATE OF KARNATAKA

RESPONDENT:

K.A. KUNCHINDAMMED

DATE OF JUDGMENT: 16/04/2002

BENCH:

D.P. MOHAPATRA & SHIVARAJ V. PATIL

JUDGMENT:

JUDGMENT 2002 (3) SCR 162 The Judgment of the Court was delivered by D.P. MOHAPATRA, J. Leave granted.

The question that arises for determination in this appeal is-which authority has the power to pass order for interim release of the forest produce seized under the Karnataka Forest Act, 1963? (for short 'the Act'). Is it the Authorized Officer under the Act or the Magistrate under the Code of Criminal Procedure?

The facts of the case relevant for appreciating the question may be stated thus:

A lorry bearing registration No. KL-10-J-1728 carrying 5 barrels of sandalwood oil weighing 136.5 kgs. was seized by the officials of the Forest Mobile Squad, Udupi on 2nd of March 2000 on the allegation of illegal transportation of the forest produce. FIR No. 08437 OR No. 108/99-2000 was registered on the same day. On 3rd March,

2000 a report about the seizure was submitted to the Authorized Officer and Deputy Conservator of Forests, Kundapur, under section 71A of the Act. By order of the Authorised Officer dated 7th March, 2000 custody of the seized material and the vehicle was entrusted to the Range Forest Officer, Udupi as whereabouts of the driver of the vehicle and its owner were not known to the Authorised Officer. Attempts were made to get the particulars from office of the Regional Transport Authority (RTA) concerned in the State of Kerala. Having failed to get any response from the RTO the Authorised Officer got published a notice on 31st August, 2000 for information of all concerned particularly, the persons interested in the goods seized. The notice was published in the daily newspaper 'Udayavani' on 18.9.2000. Nobody came forward to claim either the seized sandalwood oil or the vehicle. Thereafter the authorized officer by order dated 31.10.2000 ordered confiscation of the seized vehicle and sandalwood oil. The said order was published in the official gazette on 9th November, 2000 and also published in the newspaper 'Udayavani' on 15.11.2000. The order was not challenged in appeal under section 71-D of the Act or in any other proceeding. The order of confiscation stood confirmed under Section 71-F of the Act. The order of confiscation as confirmed was then published in the official gazette on 4th January, 2001.

The owner of the vehicle, who is the respondent herein, filed an application before the Judicial Magistrate 1st class, Udupi for interim custody of the vehicle in question in Crime No. 108/99-2000. The learned Magistrate on 26.5.2000 dismissed the application holding that in the circumstances of the case the power to grant interim release custody of the vehicle is vested in the Authorised Officer. The said order was challenged by the respondent in Criminal Revision No. 234/2000 before the Sessions Judge, Dakshina Kannad, Mangalore. The learned Sessions Judge by order dated 12th September, 2000 upheld the order passed by the Magistrate and dismissed the revision petition. The respondent challenged the order of the Sessions Judge by filing a petition under section 482 of the Criminal Procedure Code (for short "Cr.P.C.") before the High Court of Karnataka, which is registered as Criminal petition No. 3670/2000. The High Court by order dated 7.12.2000 allowed the petition and issued a direction to the learned Magistrate to consider the request of the petitioner for interim custody of the vehicle on merits and further directed disposal of the matter within two weeks. The said order is under challenge in this appeal filed by the State of Karnataka represented by Range Forest Officer, Udupi Range.

The High Court held that in the circumstances of the case it is the jurisdictional magistrate by virtue of the relevant provisions of Cr.P.C. read with clause (b) of sub-section 3 of section 62 of the Act who has the jurisdiction to consider the request for custody of the vehicle allegedly used in transportation of sandalwood oil, whether interim or otherwise. Therefore the learned Magistrate and learned Sessions Judge erred in holding to the contrary. The High Court was persuaded to take the view on the findings that sandalwood oil was not an item of forest produce in respect of which the Authorized Officer was competent to pass an order of confiscation. The Court

drew distinction between the expressions 'sandalwood' and 'sandalwood oil' and held that these are distinct items of forest produce and in the absence of any provision vesting the power of confiscation in the Authorized Officer in respect of sandalwood oil, such power could not be exercised by him.

We have heard Shri Harish N. Salve, learned Solicitor General who has appeared on behalf of the appellant. None has appeared for the respondent despite service of notice.

Before entering into the merits of the case, it will be convenient to note the relevant provisions of the Act material for the purpose of the case. The expression 'forest produce' is defined in section 2(7) as follows:

"(7) 'Forest Produce' includes-(a) the following whether found in or brought from a forest or not, that is to say-timber, charcoal, caoutchouc, catechu, (sandal wood) lootikai (Capparis Mooni), wood oil, sandal-wood oil, resin, (rubber latex) natural varnish, bark, lac, mahua or ippe (Bassia latifolia) flowers and seeds, seed of Prosopis juliflora, kuth, and tembumi or tupra (Diospyros Melanoxylon) leaves, rosha (Cymbopogon Martini) grass and oil and myrabolams (Terminalia Chebula, Terminalia Belerica and (Phyllanthus Emblica, Ramapatre and Shigakai) and (emphasis supplied) xxx xxx xxx The expression 'sandalwood' is defined in section 2(18) which provision was substituted by Act 1 of 1981 with effect from 3.2.1981. the provision reads as follows:

"Sandalwood" means any portion of a sandal (santalum album) tree and includes bark, leaves and roots thereof, whether containing heartwood or not and whether in the form of roots, billets, pieces (sawn or otherwise), chips (whether coloured or not and whether mixed with other ingredients or not), sawdust, spentwood, flakes or pulp) (and sandalwood oil) but does not include sandalwood manufactured in the form of sandalwood handicraft articles."

(emphasis supplied) In section 62 of the Act provision is made regarding seizure of property liable to confiscation. The section reads as follows:

"62. Seizure of property liable to confiscation-(1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, boats, vehicles or (cattle or any other property used) in committing any such offence, may be seized by any Forest Officer or Police Officer.

(2) Any Forest Officer or Police Officer may, if he has reason to believe that a vehicle has been or is being used for the transport of forest produce in respect of which there is reason to believe a forest offence has been or is being committed, require the driver or other person in charge of such vehicle to stop the vehicle and cause it to remain stationary as long as may reasonably be necessary to examine the contents in the

vehicle and inspect all records relating to the goods carried which are in the possession of such driver or other person in charge of the vehicle.

(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 authorized Officer under section 71-A; 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.

(emphasis supplied)"

Section 65 of the Act makes provision regarding forfeiture of various forest produce, tools etc. It states :

"65. Forest produce, tools, etc., when liable to forfeiture-(1) It is provided in the section that all timber or forest produce which is not the property of Government and in respect of which a forest offence has been committed and all tools, boats, vehicles and cattle used in committing any forest offence, shall, subject to Section 71-G, be liable by order of the convicting Court to forfeiture to the State Government.

(2) Such forfeiture may be in addition to any other punishment prescribed for such offence.

In Section 66 of the Act a provision is made regarding disposal, on conclusion of trial for forest offence, of produce in respect of which it was committed. Therein it is laid down that when the trial of any forest offence is concluded any forest produce in respect of which such offence has been committed shall, if it is the property of Government or has been forfeited, be taken charge of by a Forest Officer, and, in any other case, may, subject to Section 71-G, be disposed of in such manner as the Court may direct.

In Section 70 wherein provision regarding vesting of forfeited property in State Government is made, it is laid down therein that when an order for the forfeiture of any property has been passed under Section 65 or Section 67, as the case may be, and the period specified by Section 69 for an

appeal from such order has elapsed, and no such appeal has been preferred, or when on such an appeal being preferred, the Appellate Court confirmed such order in respect of the whole or a portion of such property, such property or such ' portion thereof, as the case may be, shall vest in the State Government free from all encumbrances.

Section 71 provides for saving of power to release property seized. The section reads as follows.

"71. Saving of power to release property seized-Nothing herein before contained shall be deemed to prevent any officer empowered in this behalf by the State of Government from directing at any time the immediate release of any property seized under Section 62, which is not the property of Government, and the withdrawal of any charge made in respect of such property."

Section 71-A which is important for the purpose of the case is quoted in extenso:

"71-A 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 Ailanthus malabaricum), 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 authorized 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 authorized officer).

(2) Where an authorized officer seizes under sub-section (1) of Section 62 any timber, ivory, firewood [Gulmavu (machilus marantha) bark, Dalchini bark, Halmaddi (exudation of Ailanthus Malabaricum), canes] bark, and charcoal which is the property of the State Government or any sandalwood or where any such property is produced before an authorized officer under sub-

section (1) and he is satisfied that a forest offence has been committed in respect of such property, such authorized 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 authorized officer, after passing an order of confiscation under sub-section (2), is of the opinion that it is expedient in the public interest so to do, he may, order the confiscated property or any part thereof to be sold by public auction.

(b) Where any confiscated property is sold, as aforesaid, the proceeds thereof, after deduction of the expenses of any such auction or other incidental expenses relating thereto, shall where the order of

confiscation made under Section 71-A is set aside or annulled by an order under Section 71-C or 71-D, be paid to the owner thereof or to the person from whom it was seized, as may be specified in such order.

(emphasis supplied)"

Against the confiscation order passed under Section 71-A provision for filing a revision before any Officer not below the rank of Conservator of Forests specially empowered by the State Government in that behalf by notification in the official Gazette has been made in Section 71-C of the Act.

In Section 71-D provision has been made for an appeal by any person aggrieved by an order passed under Section 71-A or 71-C of the Act, within thirty days from the date of communication to him of such order.

In Sub-section (2) of Section 71-D it is laid down that an order of the Sessions Judge under sub-section (1) shall be final and shall not be questioned in any Court of law. In Section 71-E it is laid down that the Award of Confiscation under Section 71-A or 71-C or 71-D shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act.

In Section 71-F it is provided that when an order for confiscation of any property has been passed under Section 71-A or Section 71-C or Section 71-D and such order has become final in respect of the whole or any portion of such property, such property or portion thereof, (or it has been sold under sub-section (3) of Section 71-A, the sale proceeds thereof) as the case may be, shall vest in the State Government free from all encumbrances.

Section 71-G in which provision is made regarding bar of jurisdiction in certain cases is quoted below:

"71-G. Bar of jurisdiction in certain cases-Whenever any timber, ivory, [Gulmavu (Machilus marantha) bark, Dalchini bark, Halmaddi (exudation of Ailanthus malabaricum), canes] firewood or charcoal belonging to the State Government or any sandalwood, together with any tool, rope, chain, boat, vehicle or cattle used in committing any offence is seized under sub-section (1) of Section 62, the authorized officer under Section 71-A or the officer specially empowered under Section 71-C or the Sessions Judge hearing an appeal under Section 71-D shall have and, notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) or in any other law for the time being in force, any other officer, Court, Tribunal or authority shall not have, jurisdiction to make orders with regard to the custody, possession, delivery, disposal or distribution of such property."

(emphasis supplied) From discussions in the order under challenge it appears that the High Court in para 4 of the judgment has taken note of the definition of 'forest produce' in section 2(7), in which the expressions 'sandalwood' and sandalwood oil are separately mentioned in the inclusive definition. Taking note of the provisions of section 62(3) clauses (a) and (b) the High Court observed that while clause (a) requires report to be made to the Authorised Officer under Section 71-A in respect of seizure of timber, ivory, firewood or charcoal which is the property of the State Government or in respect of sandal wood, in other cases, under clause (b), reporting is to be made to the jurisdictional Magistrate. The Court further observed that so far as confiscation proceeding is concerned, Section 71-A confines it to timber, ivory, firewood or charcoal which is the property of the State Government or in respect of sandal wood together with, inter alia, the vehicle in which the said property is being transported. Considering the provision in section 71-G the Court found that in the said provision also timber, ivory, firewood or charcoal belonging to the State Government or any sandal wood together with the vehicle being used for transportation, that the Jurisdiction is exclusively vested in the Authorised Officer, and jurisdiction of other fora is barred. From these provisions the Court held as follows:

"This being the position, it could be seen that, sandal wood oil as such does not come either under the category of 'timber, ivory, firewood or charcoal, which is the property of the State Government, or even under the category of 'sandalwood', for the reason that, as already founding in Section 2(7) of the Act, in the inclusive definition of 'Forest Produce', sandal wood and sandalwood oil are separately mentioned. Sandalwood oil, therefore, is not one of the items referred to under Clause (a) of Section 62(3) of the Act, the reporting of which is required to be made to the Authorised Officer, nor is the said property, together with the vehicle concerned, liable for confiscation under Section 71-A, nor the jurisdiction to deal with the return of the same, otherwise vested in the jurisdictional Magistrate under provisions of the Criminal Procedure Code, barred by Section 71-G of the Act. In the circumstances, it is the jurisdictional Magistrate, by virtue of the relevant provisions of the Criminal Procedure Code read with clause, (b) of sub-section (3) of Section 62 of the Act, that has jurisdiction to consider the request for custody of the vehicle allegedly used in transportation of sandal wood oil seized, whether interim or otherwise. The learned Magistrate and the learned Sessions Judge erred in holding to the contrary."

From the order it is manifest that the High Court was persuaded to take the view that the power to order for interim custody of a vehicle seized which was found illegally transporting sandalwood, oil, is not vested in the Authorised Officer but in the Magistrate exercising jurisdiction in the area for the reason that while the expression sandalwood is included in the provisions vested in the exclusive jurisdiction of the Authorised Officer 'sandalwood oil' is not mentioned therein. Since the two terms have been separately mentioned in the inclusive definition of the term 'forest product' the Court drew the inference that the power for interim custody of the vehicle is to be exercised only by the Jurisdictional Magistrate and not the Authorised Officer. The High Court failed to take note of the definition of the expression 'sandalwood' in section 2(18) of the Act in which 'sandalwood oil' has been included within the term 'sandalwood'. It follows that wherever the term 'sandalwood' is used under the Act it has to be understood in terms of the definition in section 2(18). If the provisions

relating to power of confiscation in Sections 71-A, 71-C, 71-D and bar of jurisdiction in Section 71-G are so read it is clear that 'sandalwood oil' is also included within the purview of the said sections and the distinction between the two terms and their specific inclusion or exclusion in the statutory provision does not exist. Perhaps the attention of the High Court was not drawn to the amended provisions of the Act.

The Karnataka Forest Act is a special statute enacted for the purpose of preserving the forests and the forest produce in the State. The Scheme of the Act, as expressed in the sections, is to vest power in the Authorised Officers of the Forest Department for proper implementation/enforcement of the statutory provisions and for enabling them to take effective steps for preserving the forest and forest produce. For this purpose certain powers including the power of seizure, confiscation and forfeiture of the forest produce illegally removed from the forests have been vested exclusively in them. The position is made clear by the non-obstante clause in the relevant provisions giving overriding effect to the provisions in the Act over other statutes and laws. The necessary corollary of such provisions is that in a case where the Authorised Officer is empowered to confiscate the seized forest produce on being satisfied that an offence under the Act has been committed thereof the general power vested in the Magistrate for dealing with interim custody/ release of the seized materials under the Cr.P.C. has to give way. The Magistrate while dealing with a case of any seizure of forest produce under the Act should examine whether the power to confiscate the seized forest produce is vested in the Authorised Officer under the Act and if he finds that such power is vested in the Authorised Officer then he has no power to pass an order dealing with interim custody/release of the seized material. This, in our view, will help in proper implementation of provisions of the special Act and will help in advancing the purpose and object of the statute. If in such cases power to grant interim custody/release of the seized forest produce is vested in the Magistrate then it will be defeating the very scheme of the Act. Such a consequence is to be avoided.

From the statutory provisions and the analysis made in the foregoing paragraphs the position that emerges is that the learned Magistrate and the learned Sessions Judge were right in holding that on facts and in the circumstances of the case it is the Authorised Officer who is vested with the power to pass order of interim custody of the vehicle and not the Magistrate. The High Court was in error in taking a view to the contrary and in setting aside the orders passed by the Magistrate and the Sessions Judge on that basis.

Viewed from another angle also the order passed by the High Court is unsustainable. As stated earlier, the final order confiscating the seized sandalwood oil together with the vehicle used for transporting it had been passed on 31.10.2000 and the same was published in the official Gazette on 9.11.2000. The order being not challenged in any appeal or any other proceeding it attained finality. In such circumstances the question of the Magistrate exercising power of interim custody of the vehicle did not arise. The order passed by the High Court is unsustainable on this count as well.

Accordingly, the appeal is allowed. The order passed by the High Court on 7.12.2000 in Criminal petition No. 3670 of 2000 is set aside.