

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 8TH DAY OF NOVEMBER 2022 / 17TH KARTHIKA, 1944

CRL.MC NO. 8920 OF 2019

CC.NO.2198/2017 OF JUDICIAL MAGISTRATE OF FIRST CLASS, IRINJALAKUDA

PETITIONERS/ACCUSED:

- 1 JOSE
AGED 44 YEARS
S/O. KORUMPERI CHUMMAR, NANDIPULAM (P.O),
NANDIPULAM DESOM, NANDIPULAM VILLAGE, CHALAKUDY THALUK,
THRISSUR DISTRICT, PIN-680312.
- 2 NARAYANAN NAIR
AGED 69 YEARS
S/O. KALYANI KUTTIAMMA, ELAYIDATH HOUSE,
NANDIPULAM (P.O), NANDIPULAM DESOM, NANDIPULAM VILLAGE,
CHALAKUDY THALUK, THRISSUR DISTRICT, PIN-680312.
- 3 ARJUNAN
AGED 50 YEARS
S/O. KUNJITTI, VAYKKAPARAMPIL HOUSE, CHENGALLUR P.O,
CHENGALLUR DESOM, CHENGALLUR VILLAGE, CHALAKUDY TALUK,
THRISSUR DISTRICT, PIN-680312.
BY ADVS.
PRABHU K.N.
SHRI.MANUMON A.

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP.BY RANGE FOREST OFFICER, PALAPILLY FOREST RANGE,
CHALAKKUDY THALUK, THRISSUR DISTRICT,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.
BY SPL.GP (FOREST) - SRI.T.JAYAN

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
8.11.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

“CR”

ORDER

This is a petition, filed under Section 482 of the Code of Criminal Procedure, to quash Annexure A4 report, filed before the Judicial First Class Magistrate Court, Irinjalakkuda, which led to the registration of C.C.No.2198/2017, pending before that court.

2. Heard the learned counsel for the petitioners as well as the learned Special Government Pleader Sri.T.Jayan, appearing for the State of Kerala, representing Forest Department.

3. The legal question that has been posed in this matter is the competency of the Forest Range Officer to file a report, as mandated under Section 9(3) of the Kerala Promotion of Tree Growth in Non-Forest Areas Act, 2005 (for short ‘the Act, 2005’ hereinafter). It is argued by the learned counsel for the petitioners that, as per Section 9(1) the Act, 2005, an Officer not below the rank of a Forester, if he has reason to believe that any tree has been cut or any timber has been transported in contravention of Section 6, he may seize the timber together with all tools, ropes, chains and other articles used in the

commission of such offence and all vehicles, boats or animals used for carrying such timber. Section 9 provides that every Officer seizing any timber shall report the same to the Divisional Forest Officer and as per Section 9(3), the Divisional Forest Officer is the competent person to file a report after satisfying that the timber mentioned in such report is of any tree transported in contravention of Section 6, before the competent Judicial First Class Magistrate Court.

4. However, the learned Special Government Pleader argued that as per Section 12 the Act, 2005, no prosecution shall be instituted against any person without the sanction of the Divisional Forest Officer and present prosecution also was lodged with sanction of the Divisional Forest Officer. He also argued that if the Divisional Forest Officer alone is competent to file final report, the officer competent to file final report as well as to give prosecution sanction under Section 12 of the Act would become one and the same person. In the said circumstance, a final report filed by the Forest Range Officer along with the sanction given by the Divisional Forest Officer shall be considered as a proper report and the same shall not be a reason to treat the report as not authorised and consequently the cognizance taken by the Magistrate is perfectly legal.

5. Per contra, the learned counsel for the petitioners placed a decision of this Court reported in [2017 (5) KHC 866 : 2018(1) KLT 354 : 2018 (1) KLJ 228], ***Abitha Beebi & Ors. v. State of Kerala & anr.*** and in para.9 this Court held that *as per S.11 of the 2005 Act, upon a report under Clause (a) of sub-section (3) of S.9, the Magistrate can take cognizance of the offences. As per S.9(3)(a), the Divisional Forest Officer, to whom a report is made under sub-section (2) shall make a report before the Judicial First Class Magistrate's Court, concerned. Here, Annexure-5 report, as pointed out earlier, is filed by the Forest Range Officer, who is not competent to file such a report. Matters being so, the Court below ought not to have taken cognizance of the offences based on Annexure – 5.* Therefore, following the ratio of this decision also, the final report filed by the Forest Range Officer and cognizance taken by the Magistrate acting on the report are illegal and therefore, the same are liable to be quashed.

6. While addressing the rival arguments, it is necessary to refer Sections 9 to 12 of the Act, 2005. The same are extracted hereunder;

9. Power to seize timber and other articles involved in the commission of the offence.- (1) *Where any Officer of the Forest Department, not below the rank of a Forester, has reason to believe that any tree has been cut or any timber has been transported in contravention*

of Section 6, he may seize the timber together with all tools, ropes, chains and other articles used in the commission of such offence and all vehicles, boats or animals used for carrying such timber.

Explanation.- *The term “vehicle” and “boat” in this section, Sections 10 and 11 shall include all the articles and machinery kept in the vehicle or boat, as the case may be, whether fixed to the same or not.*

(2) *Every Officer seizing any timber under sub-section (1) shall, place on such timber a mark indicating that the same has been so seized and shall, as soon as may be, make a report of such seizure to the Divisional Forest Officer having jurisdiction over the area.*

(3) *The Divisional Forest Officer to whom a report is made under sub-section (2) shall,-*

(a) *if he is satisfied that the timber mentioned in such report is of any tree transported in contravention of Section 6, make a report of the seizure of such timber to the Judicial Magistrate of the First Class, having jurisdiction over the area in which such seizure has been made;*

(b) *if he is not so satisfied, order that such timber and any tool, rope, chain or other article; or any boat, vehicle or animal, seized along with it, shall be returned to the person from whom they were seized.*

10. Power to release property seized under Section 9.- *The Divisional Forest Officer, may release any tool, rope, chain or other article or any boat, vehicle or animal seized under Section 9 and in respect of which a report has been made to the Judicial Magistrate of the First Class under sub-section(3) of that section, on the execution by the owner thereof of a bond for the production of the property so released, if and when so*

required, before such Magistrate.

11. Procedure by Magistrate.- *Upon the receipt of report under clause (a) of sub-section (3) of Section 9, the Magistrate shall take such measures as may be necessary, for the trial of the accused and the disposal of the timber, and tool, rope, chain or other article or any boat; vehicle or animal seized along with it, according to law.*

12. Institution of prosecution.- *No prosecution shall be instituted against any person without the sanction of the Divisional Forest Officer.*

7. On reading Section 9(1), it has been provided that a person, who is not below the rank of a Forester, can seize the trees together with the tools, if the same is found to be in contravention of Section 6 of the Act, 2005. However, Section 9(2) provides the procedure when such an officer seizes the contraband. Sub Section 2 provides that the Officer, who has seized the contraband, shall, as soon as may be, make a report of such seizure to the Divisional Forest Officer having jurisdiction over the area. Section 9(3) provides that the Divisional Forest Officer, to whom a report is made under Section 2, shall file a report before the competent Magistrate Court, if he finds that the seized articles would constitute violation of Section 6. It is true that in order to institute a prosecution, the Divisional Forest Officer also shall grant sanction as provided under Section 12 of the Act.

8. Reading Sections 9 and 12 of the Act, there is lack of clarity and inconsistency. That is to say, as per Section 9(3) of the Act, the report (final report) shall be filed by the Divisional Forest Officer. At the same time, the prosecution sanctioning authority also is the Divisional Forest Officer. So, the legislature must apply its wisdom either to designate an officer below the rank of the Divisional Forest Officer to file report as provided under Section 9(3) or the sanctioning authority shall be a person holding the post superior to the post of the Divisional Forest Officer. Such an amendment is inevitable to clear the inconsistency.

9. Going by the ratio in *Abitha Beebi & Ors. v. State of Kerala & anr.*'s case (*supra*), on no stretch of imagination it has to be held that a person below the rank of a Forest Officer is competent to file final report as provided under Section 9(3) of the Act. Till the legislature on its wisdom amends statutory provision as pointed out above, it is better to hold that the final report can be filed by the Divisional Forest Officer after granting sanction to do the same, so as to effectuate the intention of the legislature. Therefore, hereinafter, when final report will be filed under this Act, the said procedure may be followed.

10. The foregoing discussion would lead to the conclusion that the

Divisional Forest Officer alone is competent to file report under Section 9(3) of the Act and the same presupposes the fact that Forest Range Officer is not a competent officer under Section 9(3) to file final report. Therefore, the final report in this case shall not sustain in the eye of law and therefore the Divisional Forest Officer is directed to get back the report and file the same afresh, as herein above observed. Accordingly, C.C.No.2198/2017 pending before the Judicial First Class Magistrate Court, Irinjalakuda shall stand quashed.

11. It is made clear that if the Divisional Forest Officer on getting back the report, if re-files the same, the Magistrate is bound to take cognizance in this matter, in accordance with law.

This Crl.M.C shall stand disposed of as above.

Forward copies of this order to the Chief Secretary, Law Secretary and the Secretary in charge of Forest Department, for information.

Sd/-
A. BADHARUDEEN
JUDGE

Bb

APPENDIX OF CRL.MC 8920/2019

PETITIONERS' ANNEXURES

ANNEXURE A1	CERTIFIED COPY OF THE SCENE MAHAZAR DATED 11.03.2016 IN OFFENCE NO.OR-4/2016 OF PALAPILLY FOREST RANGE.
ANNEXURE A2	CERTIFIED COPY OF THE SEIZURE MAHAZAR DATED 13.03.2016 AND SEIZURE REPORT DATED 14.03.2016(FORM I) IN OFFENCE NO.OR-4/2016 OF PALAPILLY FOREST RANGE.
ANNEXURE A3	CERTIFIED COPY OF THE STATEMENTS MADE BY THE PETITIONERS/ACCUSED IN OFFENCE NO.OR-4/2016 OF PALAPILLY FOREST RANGE.
ANNEXURE A4	CERTIFIED COPY OF THE PRELIMINARY REPORT(FORM II) IN OFFENCE NO.OR-4/2016 OF PALAPILLY FOREST RANGE.
RESPONDENT'S ANNEXURES	NIL

//True copy//

//PA To Judge//