

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4333 OF 2008

(@ SPECIAL LEAVE PETITION (C) NO. 10382 OF 2007)

State of Kerala & Ors.

.... Appellant (s)

Versus

Ancy Phillip & Anr.

.... Respondent(s)

ORDER

- 1) Leave granted.
- 2) The respondents were prosecuted under the provisions of the Kerala Forest Act, 1961 (hereinafter referred to as 'the Act') alleging that they had cut and removed certain trees from the forest. The respondents/accused denied the prosecution case and, during the course of the trial, they insisted that the timber, which was seized by the forest officials during the course of investigation, is to be produced in the Court. They approached the High Court by filing O.P. No. 25171 of 1999 praying to issue a writ of mandamus directing respondent Nos. 2 and 3 therein to issue pass and permit enabling the

first petitioner therein to transport rosewood timbers and rosewood billets as per Exts. P2 and P2 (a) from Vayaloor Pettickal in Palakkad District to Ernakulam. In the same petition, they also prayed for a direction to the Divisional Forest Officer, Agali for disposal of their representation Ext. P6 expeditiously. By order dated 02.06.2000, the learned Single Judge directed the officer, who registered the case, for production of timber in question before the appropriate Court within one month from the date of receipt of copy of the order. With the said direction, the learned Judge disposed of the writ petition.

3) Aggrieved by the said direction, the State of Kerala and two officers of the Forest Department filed Writ Appeal No. 2246 of 2000 before the Division Bench. The Division Bench, by impugned order dated 31.01.2006, placing reliance on Section 54 of the Act and finding no infirmity in the direction issued by the learned Single Judge for production of the timber before the appropriate Court dismissed the writ appeal. The said order is under challenge before this Court in this appeal.

4) Heard both sides.

5) In the instant case, the forest officials had allegedly seized 41 rosewood timber and 54 rosewood billets. The High Court has relied on Section 54 of the Act which refers “disposal of the property according to law”, would necessarily mean that the disposal of the property confiscated under the provisions of Section 61A has to be under the orders of Magistrate. It is true that in addition to the criminal prosecution, the appellants are entitled to proceed against timber under Section 61A of the Act, but timber can also be disposed of after obtaining necessary orders from the Magistrate concerned under Section 54 of the Act. However, the Single Judge and the Division Bench had mis-interpreted the above provision, namely, Section 54 and held that disposal can only be done after physical production of timber before the Magistrate and after obtaining necessary orders. This is a perverse finding. The same was not warranted by the provisions of law, as the prosecution has to produce the relevant records showing such seizure and the officer, who has seized those articles, has to satisfy that an offence has

been committed by the accused. As rightly pointed out, the High Court did not consider the effect of the non-obstante clause in Section 61A as well as the legal presumption available under Section 69 of the Act. Likewise, the interpretation to Section 54 is not acceptable. We accept the stand taken by the State and set aside the order of the High Court and the Special Magistrate is permitted to proceed with the trial of the accused in accordance with law.

6) The appeal is allowed accordingly. No costs.

.....CJI.
(K.G. BALAKRISHNAN)

.....J.
(P. SATHASIVAM)

.....J.
(J.M. PANCHAL)

NEW DELHI;
11TH JULY, 2008.