

CASE NO.:  
Appeal (crl.) 396 of 1995

PETITIONER:  
Tej Bahadur Dube (dead) by L.Rs.

RESPONDENT:  
Forest Range Officer F.S.(S.W.), Hyderabad

DATE OF JUDGMENT: 17/02/2003

BENCH:  
N.Santosh Hegde & B.P.Singh.

JUDGMENT:

J U D G M E N T

SANTOSH HEGDE, J.

The original appellant has since died and this appeal is now being pursued by his legal representatives.

The original appellant was charged for violation of Rules 3 to 7 of the A.P.Sandalwood and Red Sanders Wood Transit Rules, 1969 (the 'Rules') which is punishable under Section 29(4) (a) (i) of the A.P. Forest Act, 1967 (the 'Act'), before the II Metropolitan Magistrate, Hyderabad on the ground that he along with another person was transporting sandalwood pieces numbering 30,000 in a lorry on 7.8.1982 from Hyderabad to Bombay. The said transportation was alleged to be without permit and in contravention of the Act and the Rules, stated herein above.

The trial court after considering the evidence on record came to the conclusion that the appellant is a licensed dealer and stockist in sandalwood and the sandalwood pieces found during the transportation were not actually sandalwood as defined under Section 2(o) of the Act but were products obtained after conversion of the original sandalwood to certain shapes which are meant for the purpose of being used as handles in other finished sandalwood products and there being no requirement of law to obtain any permit for transportation of such finished sandalwood products, found the appellant not guilty of offences charged against him, hence, acquitted him with a direction that the material objects, namely, the sandalwood pieces seized should be returned to the appellant.

In appeal, the High Court took a contrary view of the matter and came to the conclusion that even if the goods seized were products made out of sandalwood, the same required transit permit, otherwise there is every likelihood of a person contravening the provisions of the Rules if such goods are transported without the knowledge of the authorities. On the said basis, it reversed the findings of the trial court and found the appellant guilty of having contravened Rule 3 of the Rules consequently held him liable for punishment under section 29(4)(a)(i) of the Act and imposed a sentence of three months simple imprisonment with a fine of Rs.2,000/-. The High Court also directed M.Os 1 to 125 to be confiscated to the Government. In this appeal, though the appellant had died and the punishment imposed on him had abated, the appeal is pursued by the legal representatives of the deceased appellant because of the order of confiscation made by the High Court.

Shri Kavin Gulati, learned counsel appearing for the appellant contended while the trial court was justified in coming to the conclusion that the finished sandalwood product did not require

transit permit, the High Court erred in proceeding on a presumption that such a permit is necessary even though the prosecution had failed to establish that in law such a permission was necessary. Learned counsel contended the finding of the High Court that a transit permit for transportation of finished sandalwood is necessary because, otherwise there would be every likelihood of circumventing the provisions of law is a ground which is not sustainable in law. In support of this contention, he relied on a judgment of this Court in Suresh Lohiya vs. State of Maharashtra & Anr. (1996 10 SCC 397) wherein this Court while considering a similar argument in regard to transportation of bamboo, had held that a conviction based on such presumption is unsustainable in law. Shri Prabhakar, learned counsel appearing for the respondent-State primarily contended that the material seized by the authorities were in fact sandalwood as defined under Section 2(o) of the Act and merely because some conversion is made on this sandalwood the same would not become finished goods and would still remain to be sandalwood as defined under the Act. Therefore, a transit permit is necessary for transportation of such sandalwood. He also contended that the High Court was justified in protecting the interest of the State by requiring a transit permit to be taken while transporting such sandalwood.

As noticed above, the original appellant was a holder of a licence to deal in and stock sandalwood. From the material on record, it is seen that the said appellant had obtained necessary permit from the competent authorities for converting the sandalwood purchased by him into various types of handles which is ultimately used in other sandalwood handicrafts which permission was valid upto 31st of December, 1982 period covering the period of seizure. The appellant had contended that it is pursuant to the said permission he had converted the sandalwood pellets into handles to be used in the other sandalwood artifacts and he had informed the concerned authorities about such conversion as per Ex.P-18 to P-27. It is also the case of the appellant that converted sandalwood artifacts or parts thereof do not require any transit permit and it is only sandalwood in its original form or chips and powder of sandalwood which requires a transit permit. The trial Court has agreed with this submission of the appellant. We also notice under the Rules and the Act what is prohibited is the transportation of sandalwood as defined in Section 2(o) of the Act and not sandalwood products which have been converted into such products after obtaining proper permission from the authorities. Such converted sandalwood product under the Rules do not require any transit permit. We say so because Rules referred to in these proceedings do not contemplate such transit permit and the respondents have not produced any other Rules to show such transit permit is required. On the contrary, the respondent argues that even converted sandalwood products require transit permit because they remained to be sandalwood as contemplated under Section 2(o) of the Act. In the absence of any specific Rules or provisions in the Act to this effect, we are unable to agree with this argument. We are of the opinion once sandalwood is subjected to certain process from which a sandalwood product is lawfully obtained, then such product ceases to be sandalwood as understood in Section 2(o) of the Act.

The High Court, however, proceeded on the basis that if such a restriction on transport of sandalwood product is not inferred then there is likelihood of evasion of the provisions of the Act, therefore, it proceeded on an inference that such transit permit is necessary in law. We are unable to accept this reasoning of the High Court which as rightly contended by the learned counsel for the appellant cannot be sustained. We are supported in this view of ours by the judgment of this Court in the case of Suresh Lohiya (supra)

For the reasons stated above, we are of the opinion that the respondents have failed to prove that the deceased appellant had committed any such offence as charged against him, therefore, this appeal must succeed.

For the reasons stated above, this appeal is allowed, the impugned judgment of the High Court is set aside as that of the trial court is restored. The respondent State shall return the material objects seized from the deceased appellant, the same shall be handed over to the legal representatives of the said deceased appellant within three months from today. The appeal is allowed.

JUDIS