Suresh Lohiya

Vs

State of Maharashtra and Another

Criminal Appeal No. 430 of 1993

(G. N. Ray, B. L. Hansaria JJ)

23.08.1996

JUDGMENT

HANSARIA, J.

1. Whether bamboo mat is a forest-produce as is this expression known to the Indian Forest Act, 1927 requires our determination in this appeal. This question would decide whether the order of confiscation of bamboo mat belonging to the appellant was in accordance with law. The Bombay High Court, having been approached in revision by the State against the order of the Additional Sessions Judge directing release of the bamboo mat, has reversed the order being of the view that the product confiscated was "forest-produce". The owner of the bamboo mat has approached this Court by filing this appeal.

2. "Forest-produce" has been defined in the Indian Forest Act, 1927 (hereinafter referred to as "the Act") as below :

> "2. (4) 'forest-produce' includes -
>
> (a) the following whether found in, or brought from, a forest or not, that is to say -
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> timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds, kuth and myrabolams, and
>
> (b) the following when found in, or brought from, a forest, that is to say -
>
> (i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,
>
> (ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,
>
> (iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and
>
> (iv) peat, surface soil, rock and minerals (including limestone, laterite, mineral oils and all products of mines or quarries)."

We must also note the definition of 'timber' as given in sub-clause (6) and of 'tree' in sub-clause (7) - the same being as below :

"2. (6) 'timber' includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not; and

(7) 'tree' includes palms, bamboos, stumps, brushwood and canes."

3. The High Court's decision is principally based on a conjoint reading of definition of 'timber' and 'tree'. It has stated that as definition of 'tree' includes bamboo, and as definition of 'timber' includes tree, even a fashioned bamboo would be a tree. It was then stated that "forest-produce" having been defined as any produce of tree in sub-clause (i) of clause (b) of sub-section (4), bamboo mat is forest-produce. In taking this view the High Court differed from what had been held by the Gujarat High Court in Fatesang Gimba Vasava v. State of Gujarat [AIR 1987 Guj 9 : (1987) 1 Guj LR 219].

4. Shri Bhatia, appearing for the appellant, who was duly assisted by Ms Verma, submitted that the High Court erred in holding that a product like bamboo mat would be forest-produce by relying on the definition of 'timber' because that definition is in two parts and the second part which speaks of "all wood... fashioned... or not" has no application so far trees are concerned, which have been dealt in the first part of the definition. It has also been urged that bamboo mat being a separate commercial product what was stated by the Gujarat High Court in Fatesang case [AIR 1987 Guj 9 : (1987) 1 Guj LR 219] merits our acceptance.

5. Shri Dholakia, who was duly assisted by Shri Jadhav, however, contends that if bamboo mat is held to be not a forest-produce, the object of the Act would be frustrated inasmuch as it would debar the forest authorities to enquire about the removal of such goods from the forests, which would be used as a handle by unscrupulous dealers to denude the country of its forest wealth. To buttress his submission, reference has been made to the definition of 'produce' in Stroud's Judicial Dictionary which reads : "The expression 'produce of mines or minerals' does not necessarily mean produce in its native state; coke may be such produce, although by combustion its chemical nature is changed."

6. We have given our considered thought to the rival contentions. It appears to us that the High Court erred in taking the abovesaid view by referring to the definition of 'timber' inasmuch as we agree with Shri Bhatia that the second part of the definition does not take within its fold fashioned bamboo as that part is relatable to wood, and not tree. We have said so because the definition of tree includes even canes, and a cane cannot be taken as a wood, even if a tree could be. But then, the High Court has also referred to sub-clause (i) (supra) which speaks of produce of tree as well. As to this, submission of the appellant's counsel has been that when sub-clause (i) is read as a whole the same would clearly indicate that such produce of tree alone is contemplated which is a natural growth or product like flowers and fruits. This submission has force when the definition of forest-produce is read in its entirety which would show that the definition either includes nature's gifts like charcoal, mahua flowers or minerals. Wild animals of which sub-clause (iii) speaks of is also a God's gift and not man-made. Wherever the legislature wanted to include article produced with the aid of human labour, it has said so specifically as would appear from sub-clause (iv), as it speaks, apart from minerals etc. of "all products of mines or quarries".

7. The legislature having defined "forest-produce", it is not permissible to us to read in the definition something which is not there. We are conscious of the fact that forest wealth is required to be preserved; but, it is not open to us to legislate, as what a court can do in a matter like at hand is to iron out creases; it cannot weave a new texture. If there be any lacuna in the definition it is really for the legislature to take care of the same.

8. We may also state that according to us the view taken by the Gujarat High Court in Fatesang case [AIR 1987 Guj 9 : (1987) 1 Guj LR 219] is correct, because though bamboo as a whole is forest-produce, if a product, commercially new and distinct, known to the business community as totally different is brought into existence by human labour, such an article and product would cease to be a forest-produce. The definition of this expression leaves nothing to doubt that it would not take within its fold an article or thing which is totally different from forest-produce having a distinct character. May it be stated that where a word or an expression is defined by the legislature, courts have to look to that definition; the general understanding of it cannot be determinative. So, what has been stated in Stroud's Judicial Dictionary regarding a 'produce' cannot be decisive. Therefore, where a product from bamboo is commercially different from it and in common parlance taken as a distinct product, the same would not be encompassed within the expression "forest-produce" as defined in Section 2(4) of the Act, despite it being inclusive in nature. That bamboo mat is taken as a product distinct from bamboo in the commercial world, has not been disputed before us, and rightly.

9. In view of all the above, we hold that bamboo mat is not a forest-produce in the eye of the Act, and so, allow the appeal, set aside the impugned judgment of the High Court and state that the order of confiscation passed by the Conservator of Forest was not in accordance with law.