

# SUPREME COURT OF INDIA

S.P., Forest Cell, Adyar

Vs.

Kannans Co.

(A.P.Mishra and N. S. Hegde JJ.)

11.08.2000

## ORDER

1. Leave granted.

2. Heard learned Counsel for the parties.

3. The present appeal is directed against the order dated 2nd September, 1992 of the Single Judge in Writ Petition No. 12601 of 1992 filed by the respondent before the High Court of Judicature at Madras. The writ petition was allowed with the direction to the appellant to return the sandalwood seized on 30th August, 1992 from the godown of the respondent company at Alamathi village Thiruvallur Road, Red Hills, Madras-52. The respondent alleged in the writ petition that 8.508 tons sandalwood is seized by the present appellant illegally without ascertaining true facts as the sandalwood was validly with the respondent in terms of the licence and in accordance with law. The respondent referred to the two criminal cases, i.e., Criminal Case Nos. 9 and 10 of 1992, one relating to the seizure of the lorry and the other to the seizure of the sandalwood. It seems the High Court went too far in writ jurisdiction to draw its inference on a subject matter of criminal cases in which the seized sandalwood is the subject matter of issue. The High Court records the following findings:

It is true that two criminal cases in Crime Nos. 9 and 10 of 1992 are pending against the petitioner company. But that does not mean that the sandalwood products seized in this case to the extent of 8.508 tons is part and parcel of the materials of that criminal cases. Simply because there is no official seal/manner mark of any mark on the sandalwood products seized from the petitioner's godown, it cannot be said that the sandalwood products seized is illicitly purchased or smuggled.

4. High Court committed error in adjudicating the question, whether the sandalwood was legally or illegally seized or was or was not in wrongful possession or whether the seized sandalwood is or is not subject matter of criminal cases. There did not exist any evidence on record to decide or conclude any such above findings. Aggrieved by this judgment of learned Single Judge, a writ appeal was preferred by the appellant which was also dismissed. Aggrieved by this present appeal is filed. As we have observed, the High Court committed error in going into the questions and recording findings which it should not have done in exercise of its power under Article 226 of the Constitution of India. Not only High Court has decided disputed questions of fact but through its order has taken the property outside the reach of the Criminal Court. Accordingly, the said impugned orders are unsustainable in law. In fact the proper course open to the respondent was to

move the criminal court under Section 451 of Criminal Procedure Code in respect of the custody of the seized sandalwood. Admitted position is, the seized goods has been produced before the concerned criminal court, then for the custody of the same Section 451 of the Criminal Procedure Code is the proper course. This Section empowers the criminal court to order for custody and disposal of property pending trial. Even if there be a dispute as in the present case whether the seized good is the property in the pending criminal case it is that criminal court alone would be competent to adjudicate and decide the issue but not the High Court under its writ jurisdiction. In view of this, we find the High Court has committed error in issuing the writ and granting the said relief to the respondent. Accordingly, the order of the learned Single Judge and the impugned judgment in writ appeal are hereby quashed. As the seized good is with respondent No. 1 he will produce the same before the Judicial Magistrate, Thiruvottiyur Chennai within three weeks from today.

5. With the aforesaid observations, the present appeal is allowed. Costs on the parties.