(2012) INDSC 0161

SUPREME COURT OF INDIA

State of Kerala

Vs.

P.V. Mathew (Dead) by

C.A.No.3337 of 2012

(P. Sathasivam and J. Chelameswar JJ.)

02.04.2012

JUDGMENT

P.SATHASIVAM, J.

1. Leave granted.

2. This appeal is directed against the final judgment and order dated 02.12.2005 passed by the High Court of Kerala at Ernakulam in C.R.P. No. 1587 of 1999 whereby the High Court while affirming the order dated 04.12.1998 of the District Judge, Thrissur in C.M.A. No. 16 of 1997 dismissed the revision petition filed by the State of Kerala, the appellant herein.

3. Brief facts:

(a) According to the prosecution, a case was registered as C.R. No. 5 of 1990 in Vazhachal Range in Vazhachal Forest Division of Kerala on the allegation of illicit killing of a wild elephant. During the course of investigation, three persons, viz., Nelladan George, Madhura Johny and Chirayath Jose were taken into custody and questioned. On 01.04.1991, Nelladan George and Madhura Johny gave statements before the Divisional Forest Officer, Chalakudy and Chirayath Jose had given statement before the Range Officer, Flying Squad, Thrissur. While questioning, they admitted having gone to Vazhikadavu and shot dead wild tuskers about six months back. In the statement given by Madhura Johny, he admitted that about seven months back he along with four others, namely, Nelladan George, Parambal Chandran, Kaitharam Paulachan, Kottatti Jose had gone to

Vazhikadavu area in a car bearing Registration No. KL 8 6755 for shooting elephants with two unlicensed guns. After reaching there, they sent back the car and went to the forest. After two or three days, Madhura Johny shot dead two tuskers, one big elephant and another small one. They collected the tusks and kept it in a cave and returned to Thrissur by bus. Again they went to Vazhikadavu in the same car and collected the tusks hided in the cave. They brought the tusks to Thrissur and sold it to Chirayath Jose for Rs.72,000/-. They paid Rs.3,500/- to the driver of the car for two trips and the balance amount they divided among them.

(b) After recording the statement, on 09.04.1991, Range Officer, Thrissur Flying Squad and his party seized the car. On the same day, the car was produced before the Divisional Forest Officer, Chalakudy and thereafter he entrusted the car to the Range Officer, Pariyaram for safe custody and asked him to conduct a detailed enquiry.

(c) The owner of the vehicle b the respondent herein b filed O.P. No. 4554 of 1991 before the High Court praying for release of the vehicle. The High Court, by order dated 30.04.1991, directed to release the vehicle for interim custody to the respondent herein on furnishing security of immovable property to the extent of Rs.50,000/-. Accordingly, the car was released to the respondent herein on his furnishing the security. (d) After investigation, the Forest Range Officer, Pariyaram submitted a report on 02.10.1996. On 30.10.1996, the Investigating Officer issued a show cause notice to the original respondent i.e. P.V. Mathew as to why the car should not be confiscated to Government under Section 61A of Kerala Forest Act, 1961 (hereinafter referred to as b the Act) and called upon him to appear in person on 26.11.1996. After hearing him and after perusing the final report of the Investigating Officer, the Divisional Forest Officer, Chalakudy passed an order dated 20.12.1996 for confiscation of the car.

(e) Aggrieved by the said order of confiscation, the original respondent preferred an appeal being C.M.A. No. 16 of 1997 before the District Judge, Thrissur. By order dated 04.12.1998, the District Judge allowed the appeal.

(f) Against the order passed by the District Judge, the State preferred a revision petition being C.R.P. No. 1587 of 1999 before the High Court. The High Court, by the impugned judgment dated 02.12.2005, dismissed the revision filed by the State.

(g) Aggrieved by the said judgment, the State has preferred this appeal by way of special leave before this Court. During the pendency of the appeal, sole respondent died and his LRs were brought on record as R(i) to (viii).

4. Heard Ms. Bina Madhavan, learned counsel for the appellant-State and Mr. S. Gopakumaran Nair, learned senior counsel for the respondent.

5. By the impugned judgment, the High Court found that the vehicle of the respondents which was used for illegally transporting ivory collected from the forest cannot be confiscated invoking power under Section 61A of the Act because ivory is not a forest produce coming under Section 2(b) of the Act and no forest offence can be said to have been committed in respect of ivory. Ms. Bina Madhavan, learned counsel appearing for the appellant-State, after taking us through the relevant provisions from the Act including Section 61A, submitted that the Divisional Forest Officer was fully justified in confiscating the vehicle which transported ivory and the District Court as well as the High Court committed an error in setting aside the same. On the other hand, Mr. Gopakumaran Nair, learned senior counsel for the respondents submitted that after the amendment in respect of the definition forest produce in Section 2(f) of the Act, the forest authorities are not empowered to confiscate unless it is established that forest offence has been committed in terms of the Act. He also submitted that the District Court and the High Court were fully justified in setting aside the order of the Divisional Forest Officer based on the amended provisions.

6. Among the various provisions of the Act, we are concerned about the following provisions:

2 (e) forest offence means an offence punishable under this Act or any rule made thereunder.

2 (f) forest produce includes-

(i) the following whether found in or brought from, a forest or not, that is to say-timber, charcoal, wood oil, gum, resin, natural varnish, bark lac, fibres and roots of sandalwood and rosewood; and (ii) the following when found in, or brought from, a forest, that is to say,-

(a) trees and leaves, flowers and fruits, and all other parts or produce not herein before mentioned, of trees;

(b) plants not being trees (including grass, creepers, reeds and moss) and all parts or produce of such plants; and

(c) silk cocoons, honey and wax;

(d) peat, surface oil, rock and minerals (including limestone, laterite), mineral oils and all products of mines or quarries;

52. Seizure of property liable to confiscation.- (1) When there is reason to believe that a forest offence has been committed in respect of any timber or other forest produce, such timber, or produce, together with all tools, ropers, chain, boats, vehicles and cattle used in committing any such offence may be seized by any Forest Officer or Police Officer.

Explanation:- The terms b boatsb and b vehiclesb in this section, 9section 53, section 55, section 61A and section 61B) shall include all the articles and machinery kept in it whether fixed to the same or not.

(2) Every officer seizing any property under sub-section (1) shall place on such property or the receptacle, if any, in which, it is contained 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 Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that, when the timber or forest produce with respect to which such offence is believed to have been committed is the property of the Government and the offender is unknown, it shall be sufficient if the Forest Officer makes, as soon as may be, a report of the circumstances to his official superior.

61A. Confiscation by Forest Officers in certain cases.- (1) Notwithstanding anything contained in the foregoing provisions of this chapter, where a forest offence is believed to have been committed in respect of timber, charcoal, firewood or ivory which is the property of the Government, the officer seizing the property under sub-section (1) of Section 52 shall, without any unreasonable delay, produce it, together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence, before an officer authorized by the Government in this behalf by notification in the Gazette, not being below the rank of an Assistant Conservator of Forests (hereinafter referred to as authorized officer).

(2) Where an authorized officer seizes under sub-section (1) of section 52 any timber, charcoal, firewood or ivory which is the property of the Government, or where any such property is produced before an authorized officer under sub-section (1) of this section and he is satisfied that a forest offence has been committed in respect of such property, such authorized officer may, whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of the property so seized together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence.

It is clear that definition 2(f) was amended and the present provision was substituted by Act 23 of 1974. A perusal of the amended provision clearly shows exclusion of ivory within the ambit of forest produce. Further, after the amendment of the expression forest produce under Section 2(f) of the Act consequent to the enactment of the Wild Life (Protection) Act, 1972 it could not be said that ivory is a forest produce or that possession and transportation of ivory without valid authority is an offence punishable under the Act or any rule made thereunder. Inasmuch as ivory being not a forest produce as defined in Section 2(f) after the Amendment Act 23 of 1974, no forest offence as defined in Section 2(e) of the Act can be said to have been done in respect of the b ivory as alleged in the instant case and, therefore, the action taken under Section 61A of the Act cannot be supported.

7. As rightly pointed out by learned senior counsel for the respondents that after the Wild Life (Protection) Act, 1972, Section 2(f) of the Act came to be amended. The unamended Section 2(f) of the Act reads as under:

2 (f) forest produce includes 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 of trees, and charcoal,

(ii) plants not being trees (including grass, creepers, reeds and moss) and all other 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,

(iv) peat, surface oil, rock and minerals (including limestone and laterite), mineral oils and all produce of mines and minerals;

Clause (iii) of the unamended Section 2(f) has been deleted by Act 23 of 1974 and the present definition of forest produce does not include ivory. We have already extracted Section 52 of the Act which deals with seizure of property liable to confiscation. The said Section clearly contemplates that the power of confiscation is confined to only those vehicles used in committing any forest offence in respect of any timber or other forest produce. Though a reading of Section 61A of the Act as inserted by Amendment Act, 28 of 1975 shows that ivory is also included in respect of any forest offence under the Act and under sub-section (2) thereof, the vehicle used for committing such offence is also liable to confiscation by the Authorised Officer. However, consequent to the amendment of expression forest produce in Section 2(f) of the Act, the claim of the State that even in the absence of ivory in the definition forest produce, in view of Section 61A of the Act, the authorities are entitled to confiscate the vehicle cannot be sustained. For the sake of repetition, we reiterate that the definition of b forest produce in Section 2(f) does not include any part of living or dead wild animals which is being taken care of by the Wild Life (Protection) Act, 1972. In view of the same, the interpretation and the argument of the learned counsel for the State cannot be accepted.

8. Further, since seizure of ivory is not justified even under Section 52 of the Act, the power of confiscation under Section 61A commences only when a valid seizure of the property is effected under the Act and the report is made to the Authorised Officer. Therefore, we are of the view that the District Court has rightly held that b the fact that offences punishable under other analogous statutes have been committed in respect of ivory which is the property of the Government cannot expose the appellantb s vehicle to the consequence of confiscation under Section 61A of the Act.

We have already quoted the entire Section 61A. In the instant case, neither any property was seized from the car nor had any seizure taken effect as provided under sub-section (1) of Section 52. Inasmuch as seizure under Section 52 of the Act has not taken place and no forest offence in respect of a forest produce is shown to have been committed or established in the case, there is absolutely no justification for the seizure and the order of confiscation of the aforesaid car is beyond the jurisdiction of the authorized

officer. These aspects have been rightly considered by the District Court as well as the High Court and we are in entire agreement with the same. Inasmuch as the provisions of the Wild Life (Protection) Act, 1972 take care of wild animals skins, tusks, horns, bones, honey, wax and other parts or produce of animals, in the absence of specific charge under the said Act, the Authorized Officer was not justified in ordering confiscation of the vehicle. 9) The definition of forest produce in the Act under Section 2(f) doesn't take ivory in its purview. The presumption under Sec.69 of the Act applies only to the Forest Produce so even if Sec.61A of the Act takes in its fold b ivoryb as one of the items liable to be confiscated the presumption under Section 69 of the Act will not be available to the Government as it is not a forest produce.

10. In the light of the above discussion, we are unable to agree with the stand of the State. Consequently, the appeal fails and the same is dismissed. No order as to costs.