

# SUPREME COURT OF INDIA

Pawan Kumar

Vs.

State of Himachal Pradesh

Crl.A.No.442 of 2019

(Navin Sinha and M.R.Shah,JJ.,)

06.03.2019

## JUDGMENT

SLP(Crl.)No.7713/2017

1. None appears for the appellants. We have gone through the records with the assistance of the learned counsel for the respondent.

2. Leave granted.

3. The appellants were apprehended with a vehicle carrying 22 logs of Khair wood. They did not produce any authorization or permit with regard to the same. Their To secution under Section 379, IPC read with Sections 41 and 42 of the Indian Forest Act culminated in acquittal under Section 379, IPC by the Magistrate. The conviction under the Forest Act was for six months.

4. The conviction under the Forest Act was assailed before the Sessions Judge in appeal. The appellants were acquitted as neither the Khair wood logs nor the lorry in which it was being transported were produced as exhibits. The independent witness of seizure also did not support.

5. In the appeal against acquittal by the State, the High Court held that the independent witness did not deny his signatures on the seizure memo. In view of a sample of the log having been produced, non-production of the vehicle was not relevant, reversing the acquittal and sentencing the appellants under Sections 41 and 42 of the Forest Act for three months with fine of Rs.500/- with a default stipulation of one month.

6. We have heard the learned counsel for the respondent in opposition to the appeal and considered the nature of evidence available. Non-production of the seized wood and the vehicle, the primary evidence of the offence, renders the prosecution case fragile and unsustainable. Mere production of the seizure memo does not tantamount to the production of the seized woods and the lorry. Unless the seized wood was produced, mere production of a sample, and there is no material in support that the sample was out of the same 22

logs, we are unable to sustain the conviction of the appellants.

7. Since we do not have the benefit of the presence of the appellants, the status of the sentence is not known. Even while we acquit the appellants, if they have undergone the sentence, they shall stand acquitted of the charge.

8. The appeal stands disposed of accordingly.