



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.4367 OF 2012**

ASSISTANT WILD LIFE WARDEN & ANR. ... Appellant(s)

VERSUS

K. K. MOIDEEN & ANR. ... Respondent(s)

J U D G M E N T

Rajesh Bindal, J.

1. In the present appeal, order dated 02.09.2010, passed by the High Court of Kerala in CRP No. 285 of 2008 has been challenged. By the aforesaid order, the High Court had allowed the revision petition filed by the respondent and directed to release rosewood logs and the lorry to the respondents, leaving it open to the appellants to take any other appropriate action in respect of the property seized, as permissible in law.

2. The case has a chequered history. Briefly the facts available on record are, that the officers of the forest department stopped a lorry bearing registration no. KL 11 E 4995 on 08.08.2004. During inspection, it was found to be carrying illicit rosewood logs. 37 such logs were found beneath 92 bunches of bananas and 26 bags of rice husk. Seized material was produced by the Assistant Wildlife Warden, Tholpuitti before the Wildlife Warden who asked him to conduct the enquiry.

3. Detailed Mahazar¹ was prepared on 10.08.2004. It was found during enquiry that the rosewood logs were cut from the forest of Shrimangala, Ponnampet area in Karnataka and lorry was coming from Kutta (Karnataka) side. While crossing the check post on Kutta side on 08.08.2004, the material loaded shown was bunches of bananas and bags of rice husk. Even the driver who was driving the vehicle at the time of detention by the officer was found to be different than the

¹ The *Mahazar*, in law, is an attested document by several persons professing to be aware of the circumstances of the case and submitted with their signatures. The *Mahazar* as defined in the Wilson's Glossary, would be a document attested by several persons professing to be cognizant of the circumstances of the case and submitted with their signatures to the Court. It could also be a written collective attestation by several persons jointly and the list or roll of persons present. See, *Bengaluru Development Authority v. State of Karnataka*, W.A. No. 1013 of 2016 decided on 04.02.2020, High Court of Karnataka and *Sri K.N Anandarama Reddy v. State of Karnataka*, W.P. No. 52989 of 2023 decided on 29.01.2014, High Court of Karnataka.

one who was driving the vehicle when it crossed the check-post on Kutta side.

4. In the order dated 27.06.2005 passed by the Wildlife Warden, it was recorded that the rosewood logs were government property and the vehicle was being used in commission of offence of illicit transport of forest produce. Both were seized to be confiscated. An appeal was filed before the District Judge against the aforesaid order by the respondent herein under section 61 D of the Act². The same was dismissed vide order dated 02.06.2007. The aforesaid order was challenged before the High Court. Vide impugned order, the revision petition was accepted by the High Court and the rosewood logs and lorry were directed to be returned to the petitioners therein.

5. Learned Counsel for the State submitted that it is the case established on merits before the authorities concerned that the rosewood logs being transported by the respondents were the state property. These logs were sought to be smuggled from Karnataka to the State of Kerala without proper documents. The lorry in which the logs were being transported was also loaded with bananas and rice husk bags. At the time of crossing inter-state border in Karnataka, the

² The Kerala Forest Act, 1961 (hereinafter 'the Act')

lorry was shown to be loaded with bananas and rice husk bags. Under these circumstances, the order passed by the High Court directing release of logs and the lorry deserves to be set aside. However, he submitted at this stage that the release may not be possible for the reason that the rosewood logs being perishable were sold on 17.04.2008, after the order passed by the Wildlife Warden Officer and the same was confirmed by the District Judge vide his order dated 02.06.2007. The lorry was sold thereafter on 10.06.2009, in view of the instruction issued vide Government Order dated 05.01.2009 for selling of confiscated vehicles which were lying parked in the Police Stations. In view of the aforesaid developments which have taken place after the order was passed by the District Judge, neither the lorry nor the goods can be released at this stage.

6. On the other hand, learned counsel for the respondents submitted that it is a case where the appellants have not been able to establish that the rosewood logs belonged to the 'state'. In the case in hand, the word 'state' as used in the Act, means the 'State of Kerala', and not any other State in general terms, which would include all the states in the country. Even during enquiry, it was found that the rosewood logs were being transported from Karnataka to Kerala as the lorry had crossed Kutta (Karnataka) border. Under these

circumstances, neither the goods nor the lorry could be seized or confiscated. Hence, the action of the appellants was totally illegal. The conduct of the appellants also needs to be deprecated as during the pendency of the matter before the High Court, the rosewood logs as well as the lorry were sold. Before the sale of either the rosewood logs or the lorry, no notice was issued to the owners thereof.

7. Heard Learned counsel for the parties and perused the relevant referred record. From the facts as have been noticed in brief above, the matter does not require examination in detail by this Court at this stage, for the reason that, neither the lorry nor the rosewood logs are available as both have been sold by the state and the amount is lying with the exchequer, hence cannot be returned back, if order passed by the High Court is upheld.

8. Considering the aforesaid development which had taken place during the pendency of the matter before the High Court and was not brought to the notice of the High Court at that stage in terms of which the relief as was granted by the High Court could not possibly be granted. None of the two things namely, either the rosewood logs or the lorry was existing, as these had already been disposed off, before the order was passed by the High Court. It is a lapse on the part

of the state to apprise the High Court of the true and up-to-date facts at the time of final hearing of the matter.

9. Considering the aforesaid changed situation which has been placed before this Court during the course of arguments, the matter needs to be remitted back to the High Court for examination afresh. Ordered accordingly. In case the arguments raised by the respondents are accepted, they will be entitled to receive the amount collected by the state on the sale of rosewood logs and the lorry.

10. The High Court would also examine the desirability of awarding interest thereon from the date the amount, on account of sale of lorry and rosewood logs, was credited in the state exchequer. The matter being quite old, we request the High Court to take up the matter expeditiously.

11. The appeal is disposed off accordingly. There shall be no order as to costs.

.....J
(ABHAY S. OKA)

.....J
(RAJESH BINDAL)

New Delhi
August 09, 2023.