

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Criminal Revision No: 52/2000

Gandharab Singh and another Vs. State of J&K

Coram :

Hon' ble Mr. Justice Gh. Hasnain Massodi, Judge.

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| i) Whether to be reported in
Press/Journal/Media: | Yes/No |
| ii) Whether to be reported
in Digest/Journal: | Yes/No |

Appearing counsel:

For the petitioner(s) : Nemo

For the respondent(s) : Ms. Shaista Hakeem, Dy. A.G

Challenge is to the order of learned Sessions Judge Udhampur dated 7.7.2000 whereby an appeal preferred against judgment and sentence recorded by CJM Udhampur on 27.3.1995, has been dismissed.

The Criminal Revision was filed on 19th July 2000. The petitioners after persuading the Court to suspend sentence, stayed away from the proceedings and ignored to pursue the matter. The Revision Petition was dismissed in default of appearance of the petitioners on 26.08.2003. Thereafter, the petition was restored to its original number on 1.9.2003. The petitioners continued their game of hide and seek and avoided to assist the Court to take the matter to its logical end. On

15.07.2006 petitioner No.2 was reported to have passed away and his name was directed to be deleted vide order dated 27.09.2003 from the array of the petitioners. The petitioner No.1 was impressed upon time and again to contact his counsel and ensure that the arguments were addressed. The petitioner No.1 on 29.8.2006 was reminded that no further adjournments would be allowed, to argue the matter. The petitioner No.1 ignoring all directions, made in this behalf and also his duty to take steps for effective proceedings in the matter, has stayed away from the proceedings. It appears that the petitioner No.1 has developed vested interest in delaying the matter so that irrespective of the merits of the Revision petition, the petitioner No.1 is in a position to avoid the fall out of the judgment recording conviction against the petitioner No.1. The court is thus left with two options – (1) to adjourn the matter and thus help the petitioner No.1 to succeed in his tactics and (2) to deal with and dispose of the matter on its merits. The option of dismissing the revision petition in default though followed on 26.08.2003, is not permissible under law. In my opinion, the matter that is pending for last one decade should not be allowed to linger on endlessly and the court should not fall in the trap laid by the petitioner

and allow the petition that is waiting disposal for about a decade, to clog the system. So viewed, the matter needs to be dealt on its merits. But first a bit of the background.

The staff posted at Forest Check Post Domail Udhampur in the wee hours of 24.10.1989 intercepted truck No.803-JKQ carrying fruit boxes and on routine inspection of the truck, found it to carry 111 planks of devdar, concealed beneath the fruit boxes. The petitioner No.1 driver of the truck in question and petitioner No.2 his accomplice also traveling in the truck, could not account for and justify the possession of the timber or produce any documents authorizing transportation of the timber. The timber was suspected by the vigilant forest guards to be illicit forest produce and the seizure reported to SHO P/S Udhampur, where upon a case FIR No.370 of 1989 was registered. The investigation was entrusted to Shri Salman Siddiqui the then Sub Inspector P/S Udhampur. After usual investigation the charge sheet regarding offence punishable under section 379 read with 6/39 The J&K Forest Act, 1987 svt. (for short as Forest Act) was presented in the court of CJM Udhampur. The learned CJM on 4.12.1991 held, the charge sheet and the material submitted therewith to disclose

commission of offence punishable under section 15 and 16 Forest Act against the petitioners and accordingly charged the petitioner. The petitioner denied the charge. The prosecution examined the witnesses listed in the charge sheet. The incriminatory material appearing in the prosecution witness was put to the petitioners to enable them to explain such circumstances. The petitioner adduced evidence in their defense. Learned CJM after going through charge sheet and the evidence brought on the file, held the prosecution to have brought home guilt to the petitioners and accordingly convicted the petitioners of the offenses punishable under section 15/16 Forest Act and sentenced the petitioners to rigorous imprisonment for one year and a fine of Rs.1000/-. The petitioners in default of payment of fine, were directed to undergo simple imprisonment for one month each.

The petitioners aggrieved of the judgment and the sentence dated 27.3.1995 preferred an appeal in the court of Sessions Judge Udhampur. Learned Sessions Judge Udhampur on 7.7.2000 after going through the appeal as also the record of the trial court including the impugned judgment and after hearing the counsel for the petitioners and the respondent, dismissed the appeal and maintained conviction and

sentence recorded by CJM Udhampur on 27.3.1995.

The order of Sessions Judge Udhampur dated 7.7.2000 is impugned herein on the following grounds:-

- a) that judgment rendered by the trial court is based on no or total insufficient evidence. The petitioners have been convicted on mere conjectures and surmises.
- b) that the trial court and the appellate court have not made proper appreciation of the plea of petitioners and the incriminatory circumstances have not been put to the petitioners.
- c) that the judgment of the trial court is not based on independent evidence and learned trial Magistrate has relied upon the testimony of interested witnesses.
- d) that the benefit of provisions of "*offenders Act*" has been denied to the petitioners.

I have gone through the Revision petition as also the record received from the trial court and Appellate Court. I have heard learned Dy. Advocate General. Perusal of the record reveals that prosecution witness Charan Dass, Bishan Dass, Vinod Kumar and Madan Lal all employees of the

Forest Department stepped in the witness box and gave vivid details of the occurrence and the recovery of illicit timber from the possession of the petitioners. All the four witnesses who were present at the scene of occurrence were subjected to thorough and searching cross examination by counsel for the petitioners. The prosecution witness stuck to their stand and claimed to have recovered illicit timber from the possession of the petitioners being unauthorizedly carried by the petitioners in truck No.803-JKQ from Srinagar towards Jammu. The testimony of the petitioners was corroborated by documentary evidence EXPW-A, EXPW-A-1, EXP-y, EXP-y/I, EXP-S, EXP-S/I, EXP-Y/2 and EXP-R/1. The evidence rendered by three important prosecution witnesses was also supported by other Forest officials to whom the seizure of illicit timber was immediately reported and were prompted to swing into action. The Investigating Officer to whom investigation was entrusted, immediately after the occurrence, has also extended support to the testimony of the P/W Charan Dass, Bishan Dass, Vinod Kumar and Madan Lal. Learned trial Magistrate after the prosecution evidence were concluded, took steps to acquaint the petitioners

with the incriminatory material appearing in the prosecution evidence so that the petitioners were in a position to offer their explanation, if any, and give their version of the events that took place in the early hours of 24.10.1989. The petitioners after they responded to the prosecution evidence, in their statements under section 342 Cr. Procedure Code were given an opportunity to adduce evidence in their defense. The petitioners examined Shri Bodh Raj and Shri Madan Lal in their defense. The stand taken by the petitioners and the defense witnesses was that the petitioners were agriculturists by profession and did not leave their native place. In other words the effort of the petitioners before the trial court was to prove that the petitioners were not present at the scene of occurrence and no recovery of illicit timber was effected, from the petitioners. Learned Trial Magistrate after making a thorough and detailed discussion of the evidence, brought on the file by the prosecution, stand of the petitioners and the defense evidence reached at the conclusion that the prosecution had successfully discharged its burden and proved its case against the petitioners.

The grounds urged in the revision petition to assail the order of learned Sessions Judge Udhampur

dated 07.07.2000 dismissing the petitioner's appeal, are reiterated in the Revision Petition. Learned Sessions Judge obviously was not impressed by the case set up by the petitioners before the Appellate Court.

The ground taken up in the Revision Petition, to question the judgment of trial court and Appellate Court, that the judgment recording conviction was based on no evidence, is bereft of any force. The prosecution did not only ensure that the three witnesses who were present at the spot and instrumental in recovering illicit timber from the petitioners stood in the witness box, but examined the other witnesses and proved the documents attributed to the witnesses to substantiate its case. The testimony of the witnesses to the occurrence, as pointed out by the learned trial Magistrate and learned Sessions Judge, was sufficiently corroborated and supported by other evidence on the file. It was pointed out by the courts below that the petitioner No.1 was proved to have deposited/paid the toll fee at Toll Post on the National Highway while plying truck No. No.803-JKQ from Srinagar towards Jammu. The story set up by the petitioners, left trial courts as also Appellate

court unimpressed in as much as petitioners were arrested on the spot presented before the Magistrate within 24 hours of the arrest as mandated by section 167 Cr. P.C and later enlarged on bail.

The plea that the impugned judgment was based on no evidence, is thus specious and untenable. Learned trial Judge has made proper appreciation of evidence and only thereafter arrived at just and proper conclusion.

The ground that the incriminatory material appearing in the prosecution was not put to the petitioners, is equally devoid of any substance. From perusal of file it transpires that the petitioners were made fully aware of the incriminatory material appearing against them and given an adequate opportunity to explain their stand. It is only after the petitioners understood and were well acquainted with prosecution evidence that the petitioners decided to adduce evidence in their defense.

The case set up by the petitioners that the trial court before placing reliance on testimony of the prosecution witnesses ought to have realized that all the prosecution witnesses were from the Forest Department and thus partisan witnesses and

not credit worthy, does not merit any acceptance. The mere fact that the prosecution witnesses belong to a Government Department saddled with responsibility to control deforestation and check/prevent illegal felling of trees and transportation of illicit timber and other forest produce, does not lead to the inference that the prosecution witnesses are partisan or keen to see that the petitioners were convicted. The testimony rendered by prosecution witnesses cannot be held to be tainted with bias or partisan and discarded merely because prosecution witnesses are from a Government Department responsible to identify, apprehend and prosecute the offenders.

The plea that the court below has failed to give benefit of provisions of "offenders Act" and that the judgment of trial court and the Appellate Court must be over set on this ground alone, again does not sound convincing.

The error in date of occurrence in the charge sheet framed against the petitioners on 4.12.1991 is merely a clerical error crept inadvertently and is not fatal to the prosecution case. The petitioners have been well aware to the charge against them, have subjected the

prosecution witnesses to detailed cross examination, offered explanation to the incriminatory material and thereafter adduced evidence in their defense. The error as regards date of occurrence in the charge thus has not in any manner prejudiced the petitioners.

Section 16 of the Forest Act laying down penalty for breach of Rules made under section 15, does not prescribe rigorous imprisonment as punishment for infringement of aforesaid Rules. It may be recalled that section 15 empowers the Government to make rules to regulate transit of forest produce and Government in exercise of the powers and prescribed rules prohibiting transportation of Forest produce except in accordance with permit/pass issued by the competent authority. In the case in hand the petitioners were alleged to have found transporting timber without permit and thus committed infringement of section 15 of the Forest Act. Learned Trial Magistrate holding the petitioners guilty of commission of offence punishable under section 15 proceeded to award punishment as prescribed under section 16 of the Forest Act. The punishment awarded is one year rigorous imprisonment and a

fine of Rs.1000/-. Section 16 of the Forest Act does not prescribe rigorous imprisonment as punishment for infringement of section 15 of the Act. Wherever a penal provision does not qualify the imprisonment, the imprisonment prescribed is to be taken as simple imprisonment. So viewed the judgment and sentence recorded by Learned Chief Judicial Magistrate Udhampur, is required to be modified to the said extent.

For the reasons discussed above, the Revision Petition is meritless and judgment and sentence passed by the trial Court and the order impugned in the Revision of the Appellate Court are in strict conformity with law except to the extent of sentence as pointed out above, and do not suffer from any illegality or impropriety as must persuade the court to interfere with and set aside the impugned judgment and order.

So viewed the Revision Petition is dismissed. Resultantly the petitioner No.1 Shri Gandharab Singh shall surrender before the trial court within one week from the date of the order and serve rest of the sentence awarded by Chief Judicial Magistrate Udhampur. In the event the petitioner does not so surrender, Learned Chief

Judicial Magistrate shall issue a non bailable warrant against the petitioner No.1, securing his presence and remand the petitioner through appropriate warrant to District Jail Udampur to serve the sentence of simple imprisonment for one year less by the period already undergone and required to be let off under rules.

Before parting with this order it needs to be pointed out that learned Trial Magistrate has erroneously committed to frame charge punishable under section 379 RPC read with section 6 Forest Act against the petitioners and instead framed charge under section 15/16 of the Forest Act. It may be recalled that the Investigating Officer on the strength of material collected during investigation, had found the petitioners to have committed offenses punishable under section 379 RPC read with section 6 Forest Act. There was no scope for any disagreement that the Investigating Officer in as much as the petitioners had not been able to justify and account for the timber found in their possession. The recovered timber thus in terms of section 39 of the Forest Act, was to be presumed to have been stolen from the forest and thus illicit. The petitioners were to be formerly charged of the

offence punishable under section 379 RPC read with section 6 Forest Act. The petitioners were to be charged of the offence punishable under section 16 only if the petitioners were to account for the recovered timber but were found carrying the timber without permit as required under section 15 of the Forest Act and Rules framed thereunder. However, it is too late in the day to reopen the matter and ask the Trial Court to frame charge against petitioners for offence punishable under section 379 RPC read with section 6 Forest Act, with regard to the punishment prescribed are mere grave and serious as compared to section 16 of the Forest Act.

The record be sent down forthwith. The file shall go to records after due completion.

(Gh. Hasnain Massodi)

Judge

Jammu
10.02.2010
G. Nabi