

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 219 of 2009.

Reserved on: 18th March, 2019.

Date of Decision: 29th March, 2019..

State of H.P.

Versus

.....Appellant.

Hem Chand

....Respondent.

Coram

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting? Yes.

For the Appellant: Mr. Hemant Vaid, Additional A.G.
with Mr. Y.S. Thakur, Dy. Adv. Gen.
G. and Mr. Vikrant Chandel, Dy. A.G.

For the Respondent: Mr. G. R. Palsra, Advocate.

Sureshwar Thakur, Judge

The instant appeal, stands, directed by the State, against, the pronouncement made by the learned Addl. Chief Judicial Magistrate, Mandi, H.P., upon, Criminal Case No. 77-III/2006, whereunder, the accused/respondent herein stood acquitted.

2. The allegations of the prosecution against the accused are that during the intervening night of 28.10.20006 and 29.10.2006, at about 2.45 a.m., at place

Kamand, the accused was found transporting 34 Karians of Deodar Wood in Maruti Van bearing registration NO. HP-33-7168 without any licence and permit. The accused was apprehended by the police party while it had laid Naka on the spot. The Investigating Officer has taken into possession 34 Karians of Deodar Wood along with afore Maruti Van in presence of HC Rajiv Kumar and HC Tulsi Ram. The investigating Officer has sent Ruqua Ex.PW4/A to the police station concerned, on the basis of which FIR Ex.PW4/B was registered in police station Sadar Mandi. Thereafter, the investigating officer completed all the codal formalities.

3. On conclusion of the investigations, into the offences, allegedly committed by the accused, a report, under Section 173 of the Code of Criminal Procedure, was prepared, and, filed before the learned trial Court.

4. The accused/respondent herein stood charged, by the learned trial Court, for, his committing offences, punishable under Sections 41 and 42 of the Indian Forest Act. In proof of the prosecution case, the prosecution examined 8 witnesses. On conclusion of recording, of, the prosecution evidence, the statement of the accused, under, Section 313 of the Code of Criminal Procedure, was,

recorded by the learned trial Court, wherein, the accused claimed innocence, and, pleaded false implication in the case.

5. On an appraisal of the evidence on record, the learned trial Court, returned findings of acquittal in favour of the accused/ respondents herein.

6. The appellant herein/State, stands aggrieved, by the findings of acquittal, recorded, by the learned trial Court. The Additional Advocate General, has, concertedly and vigorously contended, qua the findings of acquittal, recorded by the learned trial Court, standing not, based on a proper appreciation of the evidence on record, rather, theirs standing sequelled by gross mis-appreciation, by it, of the material on record. Hence, he contends qua the findings of acquittal warranting reversal by this Court, in the exercise of its appellate jurisdiction, and, theirs being replaced by findings of conviction.

7. On the other hand, the learned counsel appearing for the respondents, has, with considerable force and vigour, contended qua the findings of acquittal, recorded, by the learned trial Court, rather standing based, on a mature and balanced appreciation, by it, of the

evidence on record, and, theirs not necessitating any interference, rather theirs meriting vindication.

8. This Court with the able assistance of the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.

9. The prosecution though, has, cogently proven the apt recovery memo, borne in Ex.PW2/A. However, merely, upon, proof being adduced qua efficacy, of, preparation, of the afore memo, wherethrough, the recovery of the timber, illicitly carried in a maruti van, by the accused, was made, at the site of occurrence, (a) would not, per se constrain this court to conclude, that, the verdict impugned, before this Court, is, stained with a gross impropriety. The afore exhibit is not enjoined to be read solitarily, rather is to be read along with other connected therewith evidence, as, adduced by the prosecution. Conspicuously, from the evidence adduced by the prosecution, rather apt emergencies were enjoined to occur, hence, dispelling, the accused's espousal, that, after, the, processing, of, the eight logs of deodar wood, in respect whereof, a valid T.D. permit was granted, his, transporting the afore logs. However. The owner of the saw mill concerned, whereat the processing of the eight logs of

Deodar, as, validly acquired by the accused, rather occurred, stepped into the witness box, not as a defence witness, rather as a prosecution witness. During the course of recording, of his deposition, he testified with candour and unequivocality, qua, the seized timber, being, the same in respect whereof, he made relevant processings at his saw mill, (b) and, that the specification(s), vis-a-vis, processed timber being endorsed, by him in Ex.DA, (c) exhibit whereof is the relevant T.D. permit granted, vis-a-vis, the accused. Furthermore, with his also testifying qua his making, the, apt entry in respect thereof, in his register Ex.PA, (d) and, whereas, thereupon, and, rather thereat, the, learned APP, with the permission of the Court, hence, was enjoined get him declared, as hostile, and, thereafter hold him, to, cross-examination, rather for belying the afore rendered deposition, (e) importantly appertaining to the specification(s) of the seized timber, not, tallying, with, the, compatible therewith endorsements made on Ex.DA, (f) and, also was enjoined to bring forthright evidence, hence, making clear displays, that, the specifications of the seized timber, not bearing, any compatibility, vis-a-vis, the specifications, in respect thereof, as, stood endorsed, on the reverse of Ex.DA. However, none of the afore relevant

concerts, were endeavoured, to be made by the prosecution. Consequently, even if, the accused, much earlier, to the seizure made at the site of occurrence, rather lifted the processed timber, from, the, saw mill of PW-1, (a) or in other words, even if, there occurs some hiatus inter se the accused receiving the processed timber, from, the saw mill, vis-a-vis, the effectuation, of, seizure, (b) yet the afore factum would not garner any inference, that, the afore rendered deposition of PW-1, rather losing its vigour and efficacy.

10. At this stage, the learned counsel appearing, for the respondent, has also argued, that, since the notice of accusation, omits, to make any allusion, to, Rule 20 of the H.P. Produce Transit (Land Routes) Rules, 1978, (i) and, hence the notice of accusation, was defective, (ii) thereupon, also the order of acquittal is validly recorded, (iii) and, also submits, that, the offences borne under Section 41 & 42 of the Indian Forest Act are non cognizable offences, and, thereupon, the Investigating Officer, was enjoined to register the FIR, only after the magistrate concerned, making a direction, vis-a-vis, its registration, (iv) and, with the afore direction, being not meted, by the Magistrate concerned, thereupon, also the order of acquittal

is well merited. However, the afore reasons are legally frail, and, outrightly rejected, (v) as the principal substantive provisions, borne in Sections 41 and 42 of the Indian Forest Act, are, recited in the notice of accusation, and, when the apposite rules, are, supplemental thereto, or are subsidiary to the principal substantive statutory provisions, (vi) thereupon, any non mentioning, of, the subsidiary, and, supplemental rules, vis-a-vis, the apt statutory provisions, in, the notice of accusation, (vii) does not, render the notice of accusation, to be vitiated or defective, (viii) conspicuously, when no demonstrable prejudice, has been shown, to be encumbered, upon, the accused, rather when the accused faced trial, and, was given an adequate opportunity, to bely, the efficacy of the seizure made, at, the site of occurrence. In addition, even though, the offences borne under, the, provisions of Sections 41 and 42 of the Indian Forest Act, are non cognizable, and, required prior, to the registration of the FIR, or investigations being conducted, a direction being made by the Magistrate concerned. However, the afore ground is extremely nebulous, (ix) given, hereat, rather the Investigating Officer concerned, investigating into the offences, borne, under Sections 41 and 42 of the Indian Forest, and, also his

making the seizure(s), without any prior information, and, conspicuously, at the site of occurrence, (x) and, when the seizure, at the site of occurrence, of the afore purported illegally transported timber or processed forest produce, rather being imperative, and, the afore imperative dire statutory necessity, arising from, obviating the fleeing of the accused, from, the site of occurrence, (xi) eventuality whereof, may occur, upon, the investigating officer concerned, delaying the making of the relevant seizure, upto the stage, of his receiving an affirmative order, from, a Magistrate concerned. Furthermore, also when the rukka, is, sent, from, the site of occurrence, by the Investigating Officer, to the police station concerned, for, the registration of the FIR, (xii) AND, when thereafter, the, FIR also is with utmost promptitude, rather sent to the illaqua magistrate concerned, thereupon, the Investigating Officer is presumed, to obtain the permission, of, the Magistrate concerned, (xiii) and, when the Magistrate concerned, also proceeds to put thereafter, hence, notice of accusation, vis-a-vis, the accused, qua offences constituted under Sections 41 and 42 of the Indian Forest Act, (xiv) thereupon, a construction, is rearable qua hence rather retrospective validation being meted, vis-a-vis, the investigations, as

earlier carried out, (xv) and, also hence meteing, of, the afore retrospective validation, obviously, does tacitly and impliedly, takes, within its domain, the relevant seizure, made at the site of occurrence, (xvi) thereupon, hence, the Investigating Officer, is deemed, to be impliedly hence permitted, to, carry, the investigation, under, the directions of the magistrate concerned. In case a view contrary to the afore is taken, especially, vis-a-vis, Sections 41 and 42, of, the Indian Forest Act, and, emphatically in the afore prevailing scenario, (xvii) thereupon, the entire process, of, collection or of seizure, of, the relevant incriminatory material, being untenably delayed, and, the accused, when faced with a notice of accusation, for, his committing offences, borne under Sections 41 and 42 of the Indian Forest Act, rather impermissibly at an advanced, and, at a progressed stage, of, trial of the afore constituted offences, hence taking a plea, that the entire proceedings, being vitiated, (xviii) merely for want of requisite permission, being granted by the learned magistrate concerned, (xix) even when the illaqua magistrate after the relevant seizure being made, is, immediately transmitted rather a copy of the FIR, and, hence, thereafter, also puts notice of accusation, whereupon, he mete validation(s), to, the

investigations, as, carried at the relevant site of occurrence by the Investigating Officer concerned. The afore inferences, are, sparked, for, obviating the Magistrate concerned, being, signatory, to, the relevant proceedings, and, to avoid his being cited as a prosecution witness, whereupon, he may be barred, to assume jurisdiction.

11. For the reasons which have been recorded hereinabove, this Court holds that the learned trial Court, has appraised the entire evidence on record in a wholesome and harmonious manner, apart therefrom, the analysis of the material, on record, by the learned trial court, hence, not suffering from any gross perversity or absurdity of misappreciation, and, non appreciation of germane evidence on record.

12. Consequently, there is no merit in the instant appeal, and, it is dismissed accordingly. In sequel, the impugned judgment is affirmed and maintained. All pending applications also stand disposed of. Records be sent back forthwith.

29th March, 2019.
(jai)

(Sureshwar Thakur)
Judge.