

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 31ST DAY OF AUGUST 2020

BEFORE

THE HON'BLE MRS.JUSTICE M.G.UMA

CRL.APPEAL NO.100356/2017

BETWEEN:

SHRI.RASALLA BADULAL BADRI
AGE: 52 YEARS, R/O: BARRI,
TAL: SEHOR, DIST: KATHANI,
STATE: MADHYA PRADESH.

... APPELLANT

(BY SRI SRINAND A PACHHAPURE, ADVOCATE)

AND

THE STATE OF KARNATAKA
THROUGH DHUNDASI RANGE FOREST OFFICE,
TQ: SHIGGAON, DIST: HAVERI,
NOW REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA DHARWAD
BENCH AT DHARWAD.

... RESPONDENT

(BY SRI VINAYAK KULKARNI, AGA)

THIS CRIMINAL APPEAL IS FILED UNDER
SECTION 374 OF CR.P.C., SEEKING TO SET ASIDE
THE JUDGMENT OF CONVICTION DATED 17.10.2017
PASSED BY THE PRL. DISITRICT AND SESSIONS

JUDGE, HAVERI IN S.C.NO. 21 OF 2015 AND ACQUIT THE ACCUSED/ APPELLANT FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 24(C)(ii)(e), 24(j), 86, 87 OF KARNATAKA FOREST ACT 1963 AND 144 READ WITH RULE 165 OF KARNATAKA FOREST RULES 1969 AND TO ALLOW THE APPEAL ACCORDINGLY.

THIS APPEAL COMING ON FOR FINAL HEARING THIS DAY, THE COURT PASSED THE FOLLOWING:

JUDGMENT

The appellant-accused No.1 has preferred this appeal aggrieved by the impugned judgment of conviction and order of sentence dated 9.10.2017 passed in S.C.No.21/2015 on the file of the learned Principal District & Sessions Judge, Haveri, (for short referred to as 'the trial Court') convicting accused for the offences punishable under Sections 24(c)(ii), 24(j), 86 and 87 of the Karnataka Forest Act 1963 (for short referred to as 'the Act') and violation of Rule 144 r/w 165 of Karnataka Forest Rules 1969 (for short referred to as 'the Rule') and sentencing him to undergo imprisonment with fine and with default sentence.

2. Heard the learned counsel Sri. Srinand A.Pachchapure for the appellant and the learned AGA-Sri.Vinayak Kulkarni for respondent-State.

3. Brief facts of the case as made out by the prosecution is that accused No.1 is the native of Madhya Pradesh. On 6/12/2014, illegally trespassed into the reserved forest in Survey Nos.29 and 30 of Kalkatti village, cut and removed the sandalwood trees, formed it into billets without any permit or licence and was transporting the same for the purpose of selling. Thereby he has committed offences punishable under Sections 24(c)(ii), 24(j), 86 and, 87 of the Karnataka Forest Act 1963 the Act and violation of Rule 144 r/w 165 of the Rule.

4. On the basis of the report submitted by the forest official examined as PW1, investigation was conducted and charge sheet was filed against all the four accused. Accused No.2 was the juvenile, tried

before the Juvenile Justice Board. Accused Nos.2 and 3 were absconding and hence, spilt up charge sheet was came to be filed. The present appellant being accused No.1 was in judicial custody and after taking cognizance of the offence, the charges for the above said offence was framed. Accused has pleaded not guilty and claimed to be tried.

5. The prosecution in order to prove its contention, got examined PWs.1 to 5, got marked Exs.P1 to P9 and identified 20 materials objects, i.e sandalwood billets and saw pieces. The accused has denied all the incriminating materials available on record in the statement under Section 313 of Cr.P.C., but has not chosen to lead any evidence in support of his defence. The trial Court after taking into consideration all the materials on record, came to the conclusion that the prosecution is successful in proving the guilt of the accused for the offence punishable

under Sections 24(c)(ii), 24(j), 86 and, 87 of the Karnataka Forest Act 1963 the Act and violation of Rule 144 r/w 165 of the Rule and passed the impugned judgment of conviction and order of sentence, sentencing him to undergo rigorous imprisonment for one year and to pay fine of Rs.2,000/- and in default to pay fine, to undergo simple imprisonment for four months for the offence punishable under Section 24(c)(ii) of the Act. He was sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.2,000/- and in default to pay fine, to undergo simple imprisonment for four months, for the offence punishable under Section 24(j) of the Act. The accused was sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs.75,000/- and in default to pay fine, to undergo rigorous imprisonment for 20 months for the offence punishable under Section 86 of the Act. The accused was sentenced to undergo rigorous imprisonment for seven years and to pay fine of

Rs.75,000/- and in default to pay fine, to undergo rigorous imprisonment for twenty months for the offence punishable under Section 87 of the Act. He is also sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.1,000/- and in default to pay fine, to undergo rigorous imprisonment for three months for violation of Rule 144 r/w 165 of the Rules. All the substantive sentences were ordered to run concurrently. Aggrieved by the said judgment of conviction and order of sentence passed by the trial Court, accused No.1 has preferred this appeal on various grounds.

6. The learned counsel for the appellant has not addressed his arguments on merits of the case and he restricted his submissions only regarding the quantum of sentence imposed by the trial Court for the offences punishable under Sections 86 and 87 of the Act.

7. Learned counsel the appellant submitted that accused No.1 is in judicial custody, since more than five years and 9 months. The trial Court proceeded to sentence the accused to undergo rigorous imprisonment for 7 years each for the offences punishable under Sections 86 and 87 of the Act, obviously acting under proviso (ii) of these Sections. He has drawn my attention to the order of sentence passed by the trial Court, wherein there is reference to the conviction of the accused for the offence under Wild Life Protection Act, one in the State of Maharashtra, and the other in the state of Madhaya Pradesh. Therefore, invoking proviso (ii) to Sections 86 and 87, the trial Court proceeded to sentence the accused to undergo rigorous imprisonment for 7 years each for these offences. The learned counsel submitted that bare reading of Sections 86 and 87 of the Act, makes it clear that proviso appended to both these Sections apply only when the second or subsequent offence was committed

under the Act and not for any other offences. He submitted that since the accused is in judicial custody, since more than 5 years 9 months, the sentence imposed by the trial Court with rigorous imprisonment for 7 years may be reduced to the period which he had already undergone, by showing leniency towards the appellant-accused No.1.

8. On the contrary, Sri.Vinayak Kulkarni, the learned AGA opposing the submission made by the learned counsel for the appellant contended that under proviso (i) and (ii) of Sections 86 and 87 of the Act, it is only minimum sentence which is prescribed, but as the Sections read, the accused is liable to be convicted with imprisonment which may extend to 10 years and therefore, accused No.1 is not entitled for any leniency. He submitted that the trial Court considered the conduct of accused No.1 that he is already convicted for violation of the provisions of the Wild Life Protection Act

and convicted in two cases i.e. one in the State of Maharashtra and one in the State of Madhya Pradesh. Therefore, the appellant is not entitled for any leniency and prays for dismissal of the appeal as devoid of merits.

9. I have perused the materials including the trial Court records.

10. The trial Court while passing the order of sentence relied on the order sheets showing that accused No.1 involved in two other cases for violation of the provisions of the Wild Life Protection Act and formed an opinion that the accused had involved in similar case of violation of the provisions of the Wild Life Act and also the Forest Act.

11. The report of the Jailer, District Prison, Dharwad was considered by the trial court to find that in Crime No.50/2015 before the JMFC, Pauni,

Maharashtra state and in Crime No.51/2015 of Tumsar, Madhya Pradesh, appellant-accused No.1 was convicted for the offence punishable under the provisions of the Wild Life Protection Act and IPC. Therefore, the learned counsel submitted that the accused is not convicted for commission of the forest offence as referred to in Sections 86 and 87 of the Act.

12. On going through these judgments which are available in the file, it is clear that the present accused was convicted in two other cases under the provisions of the Wild Life Protection Act 1972 and under the provision of IPC and not for committing any forest offences.

13. Under Sections 86 and 87 of the Karnataka Forest Act, offender on conviction is punishable with imprisonment for a term which may extend to 10 years or with fine which may extend to Rs.1,00,000/-. The

provisos appended to Section 86 and 87 read as follows:-

86. Penalty for offence in regard to sandalwood- In any case of a forest offence having reference to the cutting, uprooting, or removal or damage to, a sandal tree or any part of a sandal tree belonging to Government, [or to an occupant or holder of land or other person referred to in section 83], the offender shall, on conviction, be punishable with imprisonment for a term which may extend to [ten years] [and with fine] which may extend to [one lakh rupees.]

Provided that,-

(i) in the case of first offence the term of imprisonment shall not be less than [five years] and the amount of fine shall not be less than [fifty thousand rupees] and

(ii) in the case of a second or subsequent offence the term of imprisonment shall not be less than [seven years] and the amount of fine shall not be less than [seventy five thousand rupees].

87. Regulation of sale and manufacture of sandalwood and sandalwood oil.—

(1) xxx

(2) Whoever contravenes the provisions of sub-section (1) shall, on conviction, be punishable with imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees:

Provided that,—

(i) in the case of first offence, the term of imprisonment shall not be less than five years and the amount of fine shall not be less than fifty thousand rupees;

(ii) in the case of a second or subsequent offence, the term of imprisonment shall not be less than seven years and the amount of fine shall not be less than seventy five thousand rupees.”

14. Even though the sentence suggested under the proviso referred to above is only minimum sentence that may be imposed, the learned counsel for the appellant submits that accused No.1 is in judicial custody for more than five years nine months and he is the native of Madhya Pradesh and considering his plight, leniency may be shown to reduce the period of imprisonment for the period he has already undergone.

15. Considering the submissions made by the learned counsel for the appellant –accused No.1 and also in view of the wordings in Sections 86 and 87 and also provisos appended to it, I am of the opinion that if accused is to be considered as second offender being tried for subsequent offence, the first offence must be the forest offence and not under any other Act. Therefore, considering the submission made by the learned counsel for the appellant, period of sentence undergone by appellant-accused No.1 can be treated as sentence for the offences punishable under Sections 86 and 87 of the Act. However, the accused may be ordered to pay the maximum fine of Rs.1,00,000/- each for these offences. In the result, the appeal is to be allowed in part, modifying the order of sentence passed by the trial Court. Hence, I proceed to pass the following:

ORDER

Appeal is allowed in part.

The impugned judgment of conviction and order of sentence dated 9/10/2017 passed by the trial Court in SC No.21/2015 on the file of the learned Principal District and Sessions Judge, Haveri, convicting the accused for the offences punishable under Sections 24(c)(ii), 24(j) of the Karnataka Forest Act 1963 the Act and violation of Rule 144 r/w 165 of the Rule is confirmed.

The impugned judgment of conviction referred to above passed against the accused for the offences punishable under Sections 86 and 87 of the Karnataka Forests Act is confirmed.

The sentence passed by the trial Court is modified as under:-

Accused is ordered to under go imprisonment for the period he has already undergone and to pay fine of Rs.1,00,000/- and in default to pay fine, to undergo

rigorous imprisonment for a period of 18 months for the offence punishable under Section 86 of the Act.

Accused is ordered to under go imprisonment for the period he has already undergone and to pay fine of Rs.1,00,000/- and in default to pay fine, to undergo rigorous imprisonment for a period of 18 months for the offence punishable under Section 87 of the Act.

The accused is ordered to be released on payment of the entire fine amount ordered by the trial Court as well as by this Court, if he is not required in any other case.

Send back the trial Court records along with the copy of the judgment.

Sd/-
JUDGE

Vmb