

A

STATE OF M.P.

v.

S.P. SALES AGENCIES AND ORS.

MARCH 29, 2004

B

[Y.K. SABHARWAL AND B.N. AGRAWAL, JJ.]

Indian Forest Act, 1927: Ss. 2, 41, 42, 52 and 76/Madhya Pradesh Transit (Forest Produce) Rules, 1961; Section 3/Code of Criminal Procedure, 1973; Section 482:

C

Accused transporting 'kattha' and 'cutch' without transit pass—Seizure of—Authority ordering confiscation of the goods treating them as forest produce—Appellate Authority remanded the matter back—Authority again arrived at the same findings—Affirmed by Appellate Authority—Revision petitions admitted by Sessions Court—Petitions for quashing order of seizure of the goods and the confiscation proceeding—Allowed by High Court holding that the seized goods were not forest produce and since criminal prosecution was not launched pursuant to the seizure, confiscation proceeding could not have been initiated—On appeal, Held: Kattha and cutch being manufactured from log of wood of Khair tree/acacia tree, falls within the definition of catechu, a forest produce—Condition precedent for initiating confiscation proceeding is commission of forest offence and not launching of prosecution against accused—Since forest offence was committed, confiscation proceeding has rightly been initiated by the authority against the accused—Hence, High Court erred in reversing the order of the Authorities.

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The questions which arose for consideration in these appeals were as to whether 'Kattha' and 'cutch' are forest produce and as to whether confiscation proceeding could be initiated only after launching of criminal prosecution or it is open to the Forest Authorities upon seizure of forest produce to initiate both or either.

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It was contended by the appellant that Catechu is a forest produce and kattha and cutch both form part of it.

Dismissing the appeals, the Court

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HELD: 1.1. Catechu means any of the various dry, earthy or resinous astringent substances extracted from wood, leaves or fruits of various tropical Asiatic plants, viz. acacia and other trees and shrubs. Khair tree is one of the types of acacia tree and log of wood of the said tree is basic raw material for the manufacture of kattha and cutch. After employing series of activities to the log of khairwood, various substances, namely, cutch and kattha etc. are extracted. Hence, cutch and kattha come within the sweep of expression 'catechu' which has been enumerated in the definition of forest produce. Thus, kattha and cutch are forest produce within the meaning of Section 2(4) of the Act and the High Court was not justified in holding otherwise. [646-E-G]

Himachal Pradesh Marketing Board and Ors. v. Shankar Trading Co. Pvt. Ltd. and Ors., [1997] 2 SCC 496, referred to.

Shorter Oxford English Dictionary, p. 276 and *Webster's Third New International Dictionary*, Volume 1, p. 352; *Chamber's Twentieth Century Dictionary* compiled by Rev. Thomas Davidson and revised and expanded by J. Liddell Geddie, p.148; *New Encyclopaedia Britannica*, Volume 2, 15th Edition, p. 946; *Oxford Hindi-English Dictionary*, edited by R.S. McGregor, pp. 162 and 244 and *Comprehensive English-Hindi Dictionary of Governmental and Educational Words & Phrases*, 4th Edition, p.14, referred to.

1.2. The power of confiscation, exercisable under Section 52 of the Act, cannot be said to be in any manner dependant upon launching of criminal prosecution as it has nowhere been provided therein that the forest produce seized can be confiscated only after criminal prosecution is launched, but the condition precedent for initiating a confiscation proceeding is commission of forest offence, which, in the case on hand, is alleged to have been committed.

[647-E-F]

Divisional Forest Officer and Anr. v. G.V. Sudhakar Rao and Ors., [1985] 4 SCC 573 and *State of West Bengal v. Gopal Sarkar*, [2002] 1 SCC 495, referred to.

1.3. The stock of cutch was seized in the year 1991, but no confiscation proceeding has been initiated as yet. The revision application arising out of the confiscation proceeding relating to the kattha seized was withdrawn more than eight years ago, the same having become infructuous in view of the impugned judgment and criminal prosecution has not been launched so far pursuant to seizure of the stock of kattha and cutch. Hence, it is not appropriate to interfere with the impugned judgment. [648-F-G]

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 259-260 of 1997.

From the Judgment and Order dated 7.9.1995 of the Madhya Pradesh High Court in CrI. M.C. No. 2466 and 2475 of 1995.

B Ms. Vibha Datta Makhija for the Appellant.

Sushil K. Jain, Puneet Jain and Ms. Pratibha Jain for the Respondents.

The Judgment of the Court was delivered by

C **B.N. AGRAWAL, J.** These appeals by special leave have been filed against judgment rendered by Gwalior Bench of Madhya Pradesh High Court whereby two petitions filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') by Respondent Nos. 1 and 3 have been allowed and seizure of stock of *kattha* and *cutch* under the provisions of Section 52 of the Indian Forest Act, 1927 ('Act' for short) for violation of provisions of rule 3 of Madhya Pradesh Transit (Forest Produce) Rules, 1961 (hereinafter referred to as 'the Transit Rules') and the consequent proceedings have been quashed.

E The short facts are that on 2.5.1988 a truck bearing No. USR-1147 was intercepted by the police near Shinde Police Outpost under Indra Ganj Police Station in the District of Gwalior within the State of Madhya Pradesh and it transpired that 281 cases of *kattha* manufactured by M/s. Harsh Wood Products (Respondent No. 2) were loaded therein at their factory premises, the same having been purchased by M/s. K.S. Finance Corporation (Respondent No. 3) without obtaining transit pass as required under rule 3 of the Transit Rules.

F Thereafter, the matter was reported to the Sub-Divisional Forest Officer, Gwalior, who initiated a confiscation proceeding under Section 52 of the Act and on 23.5.1988 an order of confiscation was passed whereafter an appeal was taken to the Conservator of Forest under Section 52A of the Act, who remitted the matter to the original authority. On remand, the original authority again passed order of confiscation of *kattha* seized which was confirmed in appeal whereafter a revision bearing No. 1147/88 was preferred under Section 52B of the Act before the Sessions Judge, Gwalior, challenging order passed in appeal and the same was admitted. During the pendency of the revision application, the seized stock of *kattha* was released by way of interim measure.

H On 15.8.1991 another truck bearing No. MP-07-A-8740 was found

loaded with 160 bags of cutch which were purchased by M/s. S.P. Sales Agencies (Respondent No. 1) from its manufacturer M/s. Harsh Wood Products (Respondent No. 2) and as no transit pass, as required under the Rules, was obtained for its movement, it was seized and made over to the Sub-Divisional Forest Officer, Gwalior. Respondent No. 1 thereafter filed an application before the Chief Judicial Magistrate, Gwalior, for release of the seized articles, but the prayer was refused and the same was upheld by the Sessions Court whereafter Respondent No. 1 preferred an application before the High Court of Madhya Pradesh under Section 482 of the Code which was allowed on 17.12.1991 and the seized cutch was ordered to be released by way of interim measure. Respondent Nos. 1 and 3 thereupon filed two separate applications under Section 482 of the Code before the High Court which were registered as Misc. Criminal Case No. 2475 of 1995 and 2466 of 1995 respectively for quashing the seizure of aforesaid stock of kattha and cutch and consequent proceedings. The High Court by its order dated 7.9.1995 allowed both the applications and quashed the seizure and consequent proceedings on grounds, *inter alia*, that kattha and cutch were not forest produce within the meaning of Section 2(4) of the Act and confiscation proceeding could not have been initiated as no criminal prosecution was launched pursuant to the seizure. In view of the aforesaid order, Criminal Revision No. 1147/88 which was filed before the Sessions Court against the appellate order in relation to seized stock of kattha became infructuous and accordingly the same was withdrawn on 1.11.1995. Challenging the aforesaid order dated 7.9.1995 passed by the High Court, two petitions were filed before this Court for grant of special leave in which leave to appeal having been granted, the present appeals are before us.

The main question that falls for our consideration is as to whether 'kattha' and 'cutch' are forest produce within the meaning of Section 2(4) of the Act. For deciding this question, it would be necessary to refer to Section 2(4) of the Act which reads thus:-

"S.2.- Interpretation Clause.- In this Act, unless there is anything repugnant in the subject or context, -

(4) "forest-produce" includes

(a) the following whether found in, or brought from, a forest or not, that is to say:-

timber, charcoal, caoutchouc, catechu, woodoil, resin, natural

- A varnish, bark, lac, shellac gum, mahua flowers, mahua seeds tendu leaves, kuth and myrobalans, and
- (b) the following when found in, or brought from a forest, that is to say:-
- B (i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,
- (ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,
- C (iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey, and wax, and all other parts of produce of animals, and
- (iv) peat, surface soil, rock, and minerals (including limestone, laterite, mineral oils, and all products of mines or quarries);
- D (v) standing agricultural crops.”

Learned counsel on behalf of the appellant submitted that according to the definition of ‘forest produce’ referred to above, catechu is a forest produce and kattha and cutch both form part of catechu. In support of this, reference was made to *Webster’s Third New International Dictionary, Volume 1, page 352*, wherein ‘catechu’ has been defined to mean “1. any of various dry, earthy, or resinous astringent substances obtained by extraction and evaporation from the wood, leaves, or fruits of various tropical Asiatic plants: as a : an extract of the heartwood of an East Indian acacia that is used for dyeing, tanning, preserving fish nets and sails, and formerly in medicine - called also black catechu b: GAMBIER.....2: an East Indian spiny tree (*Acacia catechu*) that has twice-pinnate leaves, yellow flowers, and flat pods and is the source of catechu”. Similarly, in the *Shorter Oxford English Dictionary, at page 276* ‘catechu’ has been defined to mean “a name given to several astringent substances, containing from 40 to 55 per cent of tannin, which are obtained from *Acacia* .. and other Eastern trees and shrubs.” In *Chamber’s Twentieth Century Dictionary compiled by Rev. Thomas Davidson and revised and expanded by J. Liddell Geddie, at page 148* ‘catechu’ has been defined to mean “a substance used in tanning and dyeing, and medicinally as an astringent, obtained from the heart-wood of several East Indian trees, as the betel-nut.” In *New Encyclopaedia Britannica, Volume 2, 15th Edition, at page 949*, ‘catechu’ has been defined to mean “extract used in dyeing and tanning

H obtained from several plants, its chief sources are the wood of two species

of Acacia.”

‘*Kattha*’ has been defined in *Oxford Hindi-English Dictionary*, edited by R.S. McGREGOR, at page 162 to mean “an astringent and narcotic vegetable extract from the plant or tree *Acacia* .. (eaten in betel leaf with lime, which it turns red).” ‘*Acacia*’ has been botanically defined in *Comprehensive English-Hindi Dictionary of Governmental and Educational Words & Phrases*, 4th Edition, at page 14, to mean, *inter alia*, *khair*. ‘*Khair*’ has been defined in *Oxford Hindi-English Dictionary* edited by R.S. McGREGOR at page 244, to mean “the plant or tree of acacia which is a source of gum, timber and the astringent extract used with *pan* leaves.”

At this juncture, it may be useful to refer to the decision of this Court in the case of *Himachal Pradesh Marketing Board and Ors. v. Shankar Trading Co. Pvt. Ltd. and Ors.*, [1997] 2 SCC 496, wherein question had arisen as to whether *kattha* is a forest produce within the meaning of Himachal Pradesh Agricultural Produce Markets Act, 1969 wherein agricultural produce is defined under Section 2(a) to mean all produce as specified in the Schedule of the Act and as *kattha* is specifically enumerated in the Schedule of the said Act, this Court came to the conclusion that *kattha* is an agricultural produce within the meaning of Section 2(a) of the said Act. In that case, stand was taken before this Court on behalf of the parties that *kattha* is extracted from wood of tree known as *khair* and *khair* wood becomes the essential and basic raw material for the manufacture of *kattha* inasmuch as the said wood is not used in manufacturing of *kattha* alone but is also used and utilized for the manufacturing of forest medicines etc. and in order to obtain *kattha*, *khairwood* is processed through various physical and chemical processes to obtain its end product. Further, in that case, method for the manufacture of *kattha* and *cutch* was placed before this Court to show that *kattha* and *cutch* both are end products of *khair* wood, which method has not been denied by the parties in the present case, and the same runs thus :

- “(a) Long logs of *khairwood* are converted into small logs in sawmills.
- (b) In order to remove the bark and sapwood either manual process is adopted or *khair* logs are peeled through peeling machine.
- (c) The *khairwood* so peeled/debarked is known as heartwood.
- (d) Heartwood is again converted in small pieces in sawmill.
- (e) Small pieces of wood are converted into small chips in chipping machine.

- A (f) Standard size chips are removed/separated from odd size chips.
(g) Odd size chips are converted into standard chips in disintegrator machine.
(h) Standard size chips are boiled in closed vats.
- B (i) Mother liquor so obtained is concentrated in pan with steam.
(j) Thick liquor obtained is allowed for fermentation with treatment with chemicals.
(k) The fermented material is allowed to cool in cold storage. Cold storage is operated with the help of compressor and other allied machinery. This process is known as crystallization.
- C (l) The crystallized material is allowed to filter through hydraulic press and/or vacuum filter press to obtain paste and also remove the cutch (Tannin).
(m) Filtered product is converted into small blocks with the help of machine or manually.
- D (n) Small blocks are converted into tablets of different sizes. These tablets so obtained are allowed to dry in drying chamber. Drying chamber is operated with humidifier and other machinery.
(o) Dry product is known as *kattha*."

- E In view of the foregoing discussion and definitions extracted above from various dictionaries, *catechu* means any of the various dry, earthy, or resinous astringent substances extracted from wood, leaves or fruits of various tropical Asiatic plants, viz., acacia and other trees and shrubs. *Khair* tree is one of the types of acacia tree and log of wood of the said tree is basic raw material for the manufacture of *kattha* and *cutch*. After employing series of activities to the log of *khair*wood, various substances, namely, cutch and *kattha* etc., are extracted which are known as one of the types of *catechu*. This being the position, we hold that *cutch* and *kattha* come within the sweep of expression '*catechu*' which has been enumerated in the definition of forest produce, as such *kattha* and *cutch* are forest produce within the meaning of
- G Section 2(4) of the Act and the High Court was not justified in holding otherwise.

- H The next question that arises in the present case is as to whether confiscation proceeding can be initiated under Section 52 of the Act only after launching of criminal prosecution or it is open to the Forest Authorities upon seizure of forest produce to initiate both or either. Under Section 52

of the Act when a forest officer or a police officer has reasons to believe that a forest offence has been committed in respect of any forest produce, he may seize the same whereupon confiscation proceeding can be initiated. 'Forest offence' has been defined under Section 2(3) of the Act to mean an offence punishable under this Act or any rule framed thereunder. Section 41 empowers State Government to frame rules for regulating transit of forest produce. Section 42 further empowers the State Government to frame rules prescribing thereunder penalties for breach of the rules framed under Section 41 of the Act. Section 76 confers additional powers upon the State Government to make rules for, *inter alia*, carrying out provisions of the Act. Purporting to act under Sections 41, 42 and 76 of the Act, the Government of Madhya Pradesh framed Transit Rules referred to above, rule 3 whereof lays down that no forest produce shall be moved either within the State of Madhya Pradesh or beyond its territory without obtaining a transit pass. Sub-rule (1) of rule 29 lays down that whosoever contravenes any of the provisions of these Rules shall be liable to be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

In the present case, the allegations are that by committing breach of rule 3 a forest offence within the meaning of Section 2(3) of the Act has been committed for which a criminal prosecution under rule 29 of the Transit Rules as well as a confiscation proceeding under Section 52 of the Act could be initiated. From the scheme of the Act, it would appear that for contravention of rule 3, two independent actions are postulated - one criminal prosecution and the other confiscation proceeding. The power of confiscation, exercisable under Section 52 of the Act, cannot be said to be in any manner dependant upon launching of criminal prosecution as it has nowhere been provided therein that the forest produce seized can be confiscated only after criminal prosecution is launched, but the condition precedent for initiating a confiscation proceeding is commission of forest offence, which, in the case on hand, is alleged to have been committed. Reference in this connection may be made to a decision of this Court in the case of *Divisional Forest Officer and Anr. v. G.V. Sudhakar Rao and Ors*, [1985] 4 SCC 573, wherein it has been clearly laid down that the two proceedings are quite separate and distinct and initiation of confiscation proceeding is not dependant upon launching of criminal prosecution. In the said case, the Court observed thus:

"The conferral of power of confiscation of seized timber or forest produce and the implements etc. on the Authorized Officer under

- A sub-section (2-A) of Section 44 of the Act on his being satisfied that a forest offence had been committed in respect thereof, is not dependent upon whether a criminal prosecution for commission of a forest offence has been launched against the offender or not. It is a separate and distinct proceeding from that of a trial before the court for commission of an offence. Under sub-section (2-A) of Section 44 of the Act, where a Forest Officer makes a report of seizure of any timber or forest produce and produces the seized timber before the authorized officer along with a report under Section 44(2), the authorized officer can direct confiscation to Government of such timber or forest produce and the implements etc. if he is satisfied that a forest offence has been committed, irrespective of the fact whether the accused is facing a trial before a Magistrate for the commission of a forest offence under Section 20 or 29 of the Act."
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- In the case of *State of W.B. v. Gopal Sarkar*, [2002] 1 SCC 495, while noticing the view taken in the case of *G. V. Sudhakar Rao* (supra), this Court has reiterated that the power of confiscation is independent of any criminal prosecution for the forest offence committed. This being the position, in our view, the High Court has committed an error in holding that initiation of confiscation proceeding relating to *kattha* was unwarranted as no criminal prosecution was launched.
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- E Ordinarily, we would have set aside the impugned judgment rendered by the High Court, directed the revision arising out of confiscation proceeding relating to *kattha* to be restored and disposed of on merit and granted liberty to the Forest Authorities to consider desirability of launching prosecution against Respondent Nos. 1, 2 and 3 and initiating confiscation proceeding in relation to the stock of 'cutch' seized in the year 1991. But, in the present case, we do not propose to adopt that procedure in view of the fact that the stock of *cutch* was seized in the year 1991, but no confiscation proceeding has been initiated as yet, the revision application arising out of the confiscation proceeding relating to the *kattha* seized was withdrawn more than eight years ago on 1.11.1995, the same having become infructuous in view of the impugned judgment and criminal prosecution has not been launched so far pursuant to seizure of the stock of *kattha* and *cutch*. Accordingly, we are not inclined to interfere with the impugned judgment.
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In the result, the appeals fail and the same are dismissed.