

SESSIONS DIVISION, KALPETTA
IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE-I, KALPETTA,
WAYANAD

Wednesday, this the 22nd day of April, 2026
02nd day of Vaisakha, 1948

Present: Smt. A.V.Mrudula, Additional Sessions Judge-I

CRIMINAL APPEAL No : 67/2023

- From what Court the Appeal is preferred : Judicial First Class Magistrate Court, Kalpetta.
- No. of the case in that Court : CC 248/2019
- Name and description of the appellant : Accused No.5:- Musthafa P., aged 51 years, S/o.Bapputty, Parakkoth House, Pozhuthana Post, Pozhuthana Village, Vythiry Thaluk, Wayanad District
- Name and description of the respondent : The State of Kerala, represented by the Forest Range Officer, Meppadi Range through the Special Public Prosecutor, Kalpetta.
- The sentence and the provision of law under which it was imposed in the lower court : **All the accused are sentenced to undergo simple imprisonment for one year each and to pay a fine of ₹3,000/- (Rupees Three thousand only) each; in default of payment of fine each of the accused shall undergo simple imprisonment for a further period of two (2) months each u/s.27(1)(e)(iv) of the Kerala Forest Act.**
- Whether confirmed, modified or reversed and if modified the modification. : **1. The appeal is dismissed.**
2. The conviction and sentence passed by the Judicial First Class Magistrate, Kalpetta in CC 248 of 2019 on 27.07.2023 is upheld.

Date of or on which							
Presentation	Filing	Issuance of notice to the respondent	Appearance of respondent	Appellant ordered to appear	Release on execution of bail bond	Final Hearing	Judgment
1	2	3	4	5	6	7	8
25.08.2023	25.08.23	25.08.23	25.03.24	25.03.24	-	-	22.04.26

This Criminal Appeal coming on this day for hearing before me, upon perusing the appeal and the record of the evidence and proceedings and upon duly considering the same after hearing Sri.A.J.Antony, Advocate for appellant/Accused No.5 and Sri.Abhilash Joseph, Additional Public Prosecutor for Respondent/State, I do adjudge and pass the following:

J U D G M E N T

This is an appeal filed under Section 374(3) CrPC challenging the conviction and sentence passed by the Judicial First Class Magistrate, Kalpetta in CC 248 of 2019 on 27.07.2023.

2. The prosecution case is that Accused Nos.1 to 5 had trespassed into the Arunagiri Forest region on 19.12.2015 at about 02.00 a.m. in a vehicle with guns, two torches, three plastic sacks, one knife, one axe, one flex sheet, and a rasp for the purpose of hunting wild animals.

3. On the basis of the charge sheet filed by the Forest Range Officer, Meppadi Range in OR 20/2015, before the Chief Judicial

Magistrate Court, Kalpetta the case was taken on file as CC 330/16 u/ss. 2(16), (33), (35), 9, 39(d), 51(1), 52 of the Wildlife (Protection) Act and Section 27(1)(e)(iv) of the Kerala Forest Act, 1961. The case was then transferred to the Judicial First Class Magistrate Court, Kalpetta, for the purpose of trial and disposal.

4. On appearance of the accused before that Court, they were served with copies of the relevant prosecution records and were released on bail. In support of the prosecution case, PWs 1 to 3 were examined, and Exhibits P1 to P11 and MO1 to MO9 were marked prior to the framing of charge. Thereafter, both sides, were heard and a charge was framed by the learned Magistrate against the accused under Section 2(16), (33), (35), 9, 39(d), 51, 52 of the Wildlife (Protection) Act and Section 27(1)(e)(iv) of the Kerala Forest Act, 1961 and read over and explained to them in Malayalam, to which they pleaded not guilty.

5. After the framing of charge, PW1 to PW3 were recalled and cross examined by the learned defense Counsel. On closure of the prosecution evidence, the accused were examined under Section 313(1) (b) CrPC. They denied all the incriminating circumstances which were brought out in evidence. Thereafter they were called upon to enter on their defence. No defence evidence was adduced.

6. After hearing both sides and evaluating the evidence on record, the learned Magistrate found the accused guilty of the offence

punishable under Section 27(1)(e)(iv) of the Kerala Forest Act and convicted and sentenced them to undergo simple imprisonment for a period of 1 year each and to pay a fine of ₹ 3,000/- (Rupees three thousand only) each and in default of payment of fine, to undergo simple imprisonment for a further period of 2 months each.

7. Aggrieved by the conviction and sentence passed by the trial Court, accused No.5 has come up in appeal.

8. The appeal was originally filed before the Principal Sessions Court, Kalpetta and taken on file as Criminal Appeal No.67 of 2023. Thereafter, it was made over to this Court for the purpose of hearing and disposal in accordance with law.

9. Heard both sides and perused the records.

10. The points that arise for consideration are as follows:

1. Whether the appellant has committed an offence punishable under Section 27(1)(e)(iv) of the Kerala Forest Act, 1961?
2. Whether the impugned judgment calls for any interference?
3. Order to be passed?

11. **Point numbers 1 & 2 :-** PW1 is the Beat Forest Officer. PW2 is the Forest Range Officer and PW3 is the Forest Range Officer

Meppadi. Exhibit P1 is the mahazar, Exhibit P1(a) is the mahazar verification, Exhibit P2 is the mahazar, Exhibit P3 is the Form-I report, Exhibits P4 to P8 are the confession statements of A1 to A5, respectively, Exhibit P9 is the property list, Exhibit P10 is the Form C and Exhibit P11 is the copy of the Gazette notification. MO1 is the gun, MO2 is the bullet, MO3 is the rasp, MO4 is the axe, MO5 is the knife, MO6 is the big torch, MO7 is the small torch, MO8 series are the plastic sacks and MO9 is the flex.

12. PW1 says that while he was on night patrol duty on 19.12.2015 along with CW2 and some other forest officials they had spotted a vehicle 20 metres south of a jungle path leading to Vythiri resort with accused Nos. 1 to 5 seated inside. According to PW1, the first accused was holding a gun. A knife, axe, rasp, three plastic sacks and a flex sheet were found on inspecting the vehicle. It is also stated that A3 and A5 were holding torches and that accused No. 4 was seated in the front seat of the vehicle. Exhibit P1 mahazar was prepared by PW1 from the spot and the accused and articles were produced before the Range Officer. Exhibit P2 is the mahazar prepared by the Range Officer, wherein PW1 has subscribed his signature. MOs 1 to 9 are also identified by PW1.

13. PW2 has corroborated the evidence of PW1 stating that the accused were taken into custody from the Arunagiri Vested Forest

along with a vehicle, country gun, rasp, torches, knife, sacks had produced before him. It was he who had inspected the spot and registered a case against the accused. Ext.P3 Form I is marked through him. He had also verified Exhibit P1 mahazar and recorded the statements of all the accused. According to PW2, the gun belonged to accused No. 1 who was earlier involved in a similar offence. Exhibits P4 to P8 statements are identified and marked through him.

14. PW3 had obtained Exhibit P10 prosecution sanction from the DFO South Wayanad and produced the same as well as Exhibit P11 notification copy before the Court.

15. **Advocate A.J. Antony**, the learned counsel appearing for the appellant, has at the very outset argued that the entire investigation was conducted by officers who are not authorized under the Kerala Forest Act or the Wildlife Protection Act and that the trial Court accepting this contention has acquitted the appellant and the other accused of the offences charged under the Wildlife Protection Act. It is further argued that the trial Court had erroneously rejected an identical contention raised by the appellant before the trial Court with respect to the Kerala Forest Act without assigning any reason in the judgment. In this regard, he relies upon the decision of our Hon'ble High Court in **Luca Beltrami v. State of Kerala 2020 (4) KHC 603**. It is further argued that the prosecution has miserably failed to establish that

the place of occurrence is a Reserved forest. According to him, Exhibit P11 notification relied upon by the prosecution to prove this aspect is not a notification contemplated under Section 19 of the Kerala Forest Act, but a document certified by the Conservator of Forests and custodian of vested forests, Eastern Circle, Palakkad. He has pointed out that a notification issued by the Government or a certified copy thereof can be proved only by producing a copy duly certified by the Head of the department, in this case the Chief Conservator of Forests in order to make it admissible under Section 78 of the Indian Evidence Act. The learned counsel would further submit that PW3, through whom Exhibit P11 notification was marked, has not adduced any evidence whatsoever regarding the publication of any notification declaring the area in question as a Reserved forest. In this regard, he relies upon the decision in **Chacko Pyli and others v. State of Kerala, 1966 KLT 102**, **Jose Uthuppan and another v. Forest Range Officer, Pathanamthitta and another, 2015 4 KHC 761** and **Vinod and another v. State of Kerala (Crl.Rev.Petn. No 896 of 2006)**. On the above grounds, he prays that the appeal may be allowed and the appellant acquitted.

16. **Advocate Abilash Joseph**, the learned Additional Public Prosecutor, has countered the arguments of the learned counsel appearing for the appellant stating that Section 72 of the Kerala Forest Act empowers Forest Officers to hold enquiries in relation to forest offences and that the said provision does not entirely exclude the power

of the Forest Range Officers to detect offences, prepare mahazars or produce the accused persons. It is pointed out that PW2 and PW3 are Forest Range Officers fully empowered to conduct an investigation and file a charge sheet. According to him, the decision in **Luca Beltrami's** case pertains to recording of confessions and conducting formal enquiries under the Kerala Forest Act and does not declare that the investigation or detection by a Forest Range Officer renders the entire prosecution a nullity. It is further submitted that it is well settled that an irregularity in the investigation does not per se vitiate a conviction until it is shown that the irregularity has caused a failure of justice or has caused prejudice to the accused. Regarding Exhibit P11 notification, it is argued that Arunagiri Forest Range is a well-known and long-standing vested forest area in Wayanad recognized as such for decades and that the accused persons were apprehended inside the forest at 02.00 a.m. with weapons, cutting implements, and sacks. He strongly relies upon PW1's evidence that the accused were found in Item No. 93 vested forest in Vythiri Section known as the Arunagiri Forest and the evidence of PW2 which corroborates the evidence of PW1. According to him, the decisions relied upon by the learned counsel appearing for the appellant deal with situations where there was a complete absence of any notification or gazette publication and therefore are not applicable to this case. It is further argued that the testimony of a Forest Officer, who is personally familiar with the boundary and extent of a notified

forest area, can constitute sufficient proof of forest status, particularly when supported by documentary evidence. According to him, the evidence of PW1 to PW3 are consistent and credible and rightly relied upon by the trial court to find the appellant guilty and therefore the appeal is only to be dismissed.

17. Section 27 of the Kerala Forest Act deals with Penalties for trespass or damage in Reserved forests and acts prohibited in such forests. The section reads as follows :

(1) "Any person who-

(a) does any act prohibited by section 7 ; or

(b) sets fire to a Reserved Forest or kindles leaves burning any fire in such manner as to endanger the same ; or

(c) sets fire to jungles, or forests, other than Reserved Forests and a land proposed to be constituted a Reserved Forest, without taking precautionary measures to prevent the spread of fire into Reserved Forests and land proposed to be constituted a Reserved Forest; or

(d) knowingly receives or has in possession of any forest produce illicitly removed from a Reserved Forest or a land proposed to be constituted a Reserved Forest;

(e) in a Reserved Forest or in a land proposed to be constituted a Reserve Forest --

(i) cultivates or clears or breaks up any land for cultivation or for any other purpose or puts up any shed or other structures or plants trees ;

(ii) damages, alters or removes any wall, ditch, embankment fence, hedge, or railing ; or

(iii) cuts or fells any trees or girdles, marks, lops, tops, uproots, burns, saws, converts or removes any tree including fallen or felled, or strips off the bark or leaves from or otherwise damages the same;

(iv) trespasses or pastures cattle or permits or causes cattle to trespass; or

(v) quarries stones, burns lime or charcoal or collects or subjects to any manufacturing process or removes any forest produce; or

(vi) causes any damage by negligence in felling any tree, reed or cutting or dragging any timber,

shall be punished with imprisonment for a term which shall not be less than one year but may extend to five years and with fine which shall not be less than one thousand rupees but may extend to five thousand rupees, in addition to such compensation for damage done to the forest as the convicting court may direct to be paid."

Since the prosecution has a case that the offence took place inside a Reserve forest, the first and foremost aspect that it is bound to prove is that the place of occurrence is a Reserved forest.

18. Section 19 of the Kerala Forest Act, 1961, which enables the Government to issue a notification declaring forest reserved lays down as follows:

"When the proceedings prescribed in the preceding sections have been taken, the Government may publish a notification in the Gazette specifying the limits of the forests which it is intended to reserve and

declaring the same to be reserved from a date to be fixed by such notification.

Copies of the notification shall also be published at the headquarters of each Taluk in which any portion of the land included in such notification is situate and in every town, village and headquarters of Panchayats in the neighborhood of such land.

From the date so fixed, the forest shall be deemed to be a "Reserved Forest".”

Thus, it is implicit from the provisions of Section 19 of the Act that the Government has to not only issue a notification, but also has to publish the same in the Official gazette. As such, it is the duty of the prosecution to not only establish that the notification was issued, but also that the said notification was published in the Gazette. In **Chacko Pyli and Others v. State of Kerala 1966 KLT 102**, our Hon'ble High Court held thus : *"In view of these provisions of the Evidence Act, it was the duty of the prosecution to have established one of the ingredients of the offence viz., that the act complained of was done in a Forest constituted as a Reserved Forest by the issue of a notification u/s. 19 of the Act and by the publication of the same in the Gazette, either by the production of the Gazette or by a certified copy of the notification and adduce evidence of the publication of the same in the Gazette. No other evidence is admissible in the case"*. This view has been reiterated by our Hon'ble High Court in **Jose Uthuppan and Another v. Forest Range Officer, Pathanamthitta and Another 2015(4) KHC 761**.

19. Section 78 of the Indian Evidence Act reads as follows:

The following public documents may be proved as follows :-

“Acts, orders or notifications of the Central Government in any of its departments, or of the Crown Representative or of any State Government or any department of any State Government by the records of the departments, certified by the head of those departments respectively, or by any document purporting to be printed by order of any such Government or as the case may be, of the Crown Representative”. Notifications are laws within the meaning of Section 57 of the Evidence Act and the Court is bound to take judicial notice of these notifications. In **Chacko Pyli v. State of Kerala 1966 KLT 102**, the question was whether a notification issued under Section 19 of the Kerala Forest Act, 1961, could be taken judicial notice of under Section 57 of the Evidence Act and a Division Bench of our Hon'ble High Court held that the Court cannot take judicial notice of the notification issued under Section 19 of the Forest Act by virtue of the proviso contained in Section 57 of the Evidence Act, but such a notification is a public document within the meaning of Section 78 of the Evidence Act and has to be proved as provided in the said section. In **Wilson and Another v. Kerala Forest Department and Another 2018 (1) KHC 9**, it was held by our Hon'ble High Court as follows : "*Chacko Pyli v. State of Kerala (supra)* was decided at a time when there was private forests in Kerala. The scenario changed by the enactment of the Vesting of Private Forest Act, 1971. After the said enactment, there is no private forests in Kerala. All private forests vested in the Government. Further, by virtue of

Section 4 of the said Act, all such vested forests are deemed reserved forest. Thus, when there is evidence that the offence committed in a forest area, the burden will be on the defence to show that it is not a forest. When there is evidence that place of incident is inside a forest, by virtue of the provision in the Vesting of Private Forest Act, it will be a vested forest where by virtue of Section 4 of the said Act, it will be a deemed reserved forest. That is, if there is evidence to show that felling took place inside a forest, proof by production and marking of a notification as required under Section 19 of the Kerala Forest Act is not necessary, but it will be a matter of appreciation of evidence".

20. In **Sivaraman and Others Vs. State of Kerala 2012(2) KHC 416**, our Hon'ble High Court has held that attested copy of the notification by the Chief Conservator of Forest is sufficient to prove that the area notified is a forest.

21. The case of PW1 that the accused Nos.1 to 5 were found in a vehicle on 19.12.2015 at 02.00 a.m. parked in the Arunagiri forest area is corroborated by Exhibit P1 mahazar. Exhibits P1 to P3 and Exhibit P9 are seen produced before the Court on 19.12.2015 itself. Exhibit P11 notification bearing number D5272/77 dated 08.07.1977 is seen certified by the Conservator and Custodian of Vested Forests, Eastern Circle, Olavakkode, Palakkad-2. It clearly shows that Arunagiri is a vested forest. In addition to this we have the evidence of PW1 and PW2 who are persons familiar with the boundary and extent of the

notified forest area. There is absolutely nothing on record to disbelieve the evidence of PW1 and PW2. Moreover, Ext.P11 notification has not been challenged in cross examination. Thus the evidence on record clearly establish the fact that the appellant herein along with the other accused had trespassed into a Vested forest.

22. Section 72 of the Kerala Forest Act deals with the powers of the Forest Officers. As per Sec. 2(c) "*Forest Officer means any person appointed by name or as holding an office by or under the orders of the Government to be a Chief Conservator, a Conservator, Deputy Conservator, Assistant Conservator, Divisional Forest Officer, Ranger, Deputy Ranger, Forester, a Timber Depot Officer, Forest Guard, Forest Plantation Mastery, Watcher, Game Warden, Assistant Game Warden, Game Ranger, Game Forester, Game Guard, or to discharge any function of a Forest Officer under this Act or any rule made thereunder*". Sec. 72 stipulates as follows : "*The Government may invest any Forest Officer not below the rank of an Assistant Conservator of Forests with all or any of the following powers, and may withdraw the same : (a) power to enter upon any land and to survey, demarcate and make a map of the same; (b) Powers of a Forest Settlement Officer; (c) powers of a Civil Court to compel the attendance of witnesses and the production of documents; (d) power to hold enquiries into forest offences and in the course of such enquiries, to receive and record evidence and to issue search warrants which may be executed in the manner provided by the Code of Criminal Procedure, 1898; (e) Power to accept compensation for forest offences under Section 68 of this Act.*"

23. Section 72 of the Kerala Forest Act is about powers of Inquiry and not about Investigation.

Criminal Procedure Code, 1973 defines “inquiry” as per Section 2(g) and “investigation” as per Section 2(h).

Sec. 2(g) : “inquiry” means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

Section 2(h) : “investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.

In **Kunhali and Others Vs. The Forest Range Officer and another, 2012**

(2) KLJ 124, it was held as follows : *“The word ‘evidence’ occurring in Section 72(d) has reference to the statements of the witnesses and not to the statement of the person alleged to have committed an offence. As such the confession statements given by the accused persons to the Forest Range Officer are admissible in evidence”.*

24. In **Luca Beltrami Vs. State of Kerala 2020(4) KHC 603** our Hon'ble High Court has held as follows : *“Offence not attracted as they are not empowered Officers u/s.72. Assistant Conservator of Forests, Deputy Conservator of Forests and Conservator of Forests within their respective jurisdiction and the Chief Conservator of Forests for the whole State are empowered to hold enquiries into forest offences and in the course of such enquiries, to receive and record evidence and to issue search warrants.”*

25. Section 66 of the Kerala Forest Act 1961 stipulates that

every Forest Officer and Police Officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest offence and shall have power to evict all encroachers and squatters from Reserved Forests or other lands under the control of the Forest Department and to confiscate or demolish any sheds or other structures put up in such lands and that Forest Officers shall have the powers of the Police Officers for the purposes of investigation or prevention of forest offences and the collection of evidence. In para 4 of the judgment in **H.N. Rishbud Vs. State of Delhi AIR 1955 SC 196**, the various stages of investigation are enumerated as follows :

“(1) Proceeding to the spot,

(2) Ascertainment of the facts and circumstances of the case,

(3) Discovery and arrest of the suspected offender.

(4) Collection of evidence relating to the commission of offence by examination of various persons, search of place, seizure of things.

(5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so, taking the necessary steps for the same, by the filing of a charge sheet/complaint.”

Thus the decision in **Luca Beltrami’s** case is not applicable to this case. As such the Range Forest Officer who is a Forest Officer as per Sec. 2(c) of the Kerala Forest Act, 1961 has the power to investigate into the offence under this Act.

26. As per Section 27(1)(e)(iv) of the Kerala Forest Act, mere trespass is also an offence. In **Mundamdra Kareem and Another Vs. Deputy Ranger, Forest Station, Pothukal and Another, 2014 (4) KHC 529**, our Hon'ble High Court while dealing with Sec. 27(1)(e)(iii) and (iv) of the Kerala Forest Act has held as follows : *“The term trespass used in sub clause (iv) of the section can only be for any other act or offence than those mentioned in sub clause (iii) of the section. Established rules of interpretation of Statutes like purposive and harmonious interpretations will take us to an irresistible conclusion that the term 'trespass' used in sub clause (iv) of the Section may be for any purpose other than those mentioned in sub clause (iii) above. It may even take a person's entry into a reserve forest without any intention to commit any offence. As the offence under sub clause (iii) of the section include an implied trespass, in the facts and circumstances of this case, the petitioners cannot be charged both under sub clause (iii) and sub clause (iv) of the Section. Reckoning the wording employed in the two limbs of the Section, I find no legal logic in implicating the petitioners under sub clauses (iii) and (iv) of the Section separately in the facts of this case. Evidence in this case show that the conviction of the petitioners under Section 27(1)(e)(iv) of the Act is not legally sustainable”*. Thus it is clear that a person's entry into a reserve forest without any intention to commit an offence will also constitute an offence u/s. 27(1)(e)(iv) of the Kerala Forest Act, 1961. Hence I find no impropriety or illegality in the finding of the trial Court that the accused has committed an offence punishable under Section 27(1)(e)(iv)

of the Kerala Forest Act. The trial Court has convicted and sentenced the appellant/accused to undergo simple imprisonment for a period of 1 year and to pay a fine of ₹ 3,000/- (Rupees three thousand only) and in default of payment of fine, to undergo simple imprisonment for a further period of 2 months , which is also not illegal or improper. Hence there is no scope for interfering with the impugned judgment. Points No.1 and 2 are answered accordingly.

27. **Point No.3** :- In the light of my findings on point Nos.1 and 2, the appeal is only to be dismissed.

In the result,

1. The appeal is dismissed.

2. The conviction and sentence passed by the Judicial First Class Magistrate, Kalpetta in CC 248 of 2019 on 27.07.2023 is upheld.

Return the case records forthwith.

(Dictated in Adalat AI, corrected and pronounced by me in open Court, on this, the 22nd day of April, 2026)

ADDITIONAL SESSIONS JUDGE-I

Appendix: Nil

ADDITIONAL SESSIONS JUDGE-I

SESSIONS DIVISION, KALPETTA,
WAYANAD

IN THE COURT OF THE SESSIONS
JUDGE, KALPETTA

FAIR JUDGMENT IN

CRIMINAL APPEAL No. 67/2023

(DATED :22.04.2026)

To

The Registrar (District Judiciary)
Honourable High Court of Kerala,
Ernakulam, Kochi – 682 031.

Copy to:

1. The Judicial First Class Magistrate,
Kalpetta
- 2 The Appellant.
