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HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 45 of 2020

State Of Chhattisgarh Through the Police Station Kanker, District North Bastar
Kanker Chhattisgarh

... Appellant.

versus

Dilip Singh Thakur S/o Late Kushal Singh Aged About 58 Years R/o Village
Rajapara Kanker, Police Station Kanker, District North Bastar, Kanker
Chhattisgarh.

... Respondent.

For Appellant	:	Mr. Dilman Rati Minj, Govt. Advocate.
For Respondent	:	None.

SB : Hon'ble Shri Justice Deepak Kumar Tiwari

Judgment on Board

04.08.2025

1. The appellant/State has filed this acquittal appeal under Section 378 (1) of the Code of Criminal Procedure, 1973 (**CrPC**) against the judgment of acquittal dated 21.12.2018 passed by the Chief Judicial Magistrate, North Bastar Kanker in Criminal Case No.945/2014, whereby, the respondent/accused has been acquitted of the charge under Section 26 (1) (h) and 63 (c) of the Indian Forest Act, 1927 (for short the "**Act 1927**").
2. Prosecution case, in brief, is that on 25.06.2014 a Forester Jameel

Ahmad Baksh during inspection in the forest found that the respondent/accused has illegally cleared the land and built up a house in reserved forest land admeasuring area $5.50 \times 3 = 16.5$ square meter situated at Reserved Forest Area RF/69 Rajapara, District Kanker. Further, when he was asked to vacate the said land, the respondent denied for the same. Thereafter, Panchnama was prepared vide Ex.P-1. Spot Map was prepared vide Ex.P-2. POR has been prepared vide Ex.P-3. Statement of the witnesses were recorded vide Ex.P-11. After enquiry, a complaint was registered against the respondent/accused and after investigation charge-sheet was filed for the offences mentioned above.

3. The respondent/accused abjured his guilt and claimed for trial. During trial, the appellant/State examined as many as 8 witnesses and exhibited 11 documents to prove its case.
4. After evaluating the evidence on record, the trial Court has acquitted the respondent/accused of the charges levelled against him. Being aggrieved by the order of acquittal, this appeal has been preferred by the State.
5. Learned counsel for the appellant/State submits that the trial Court has not appreciated the evidence in proper perspective and prays to allow the appeal.
6. Heard learned counsel for the appellant and perused the record with utmost circumspection.
7. The main allegation against the respondent/accused was under Section 26 (1) (h) of the Act 1927 that he has cleared the land of reserved forest for construction of the house. Section 26 of the Act 1927

prescribes the acts which are prohibited in reserved forest. For ready reference the relevant part is reproduced hereunder:-

"26. Acts prohibited in such forests.(1) Any person who-

- (a) makes any fresh clearing prohibited by section 5; or
- (b)....
- (c)....
- (d)....
- (e)....
- (f)....
- (g)...
- (h) clears or breaks up any land for cultivation or any other purpose**
- (i)....
- (j)....

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid."

8. In order to frame the aforesaid charge, the subject land is required to be proved as reserved forest which can be only done after issuance of notification by the State Government in terms of Section 4 of the Act 1927. For the sake of brevity Section 4 of the Act 1927 is reproduced hereunder:-

"4. Notification by [State Government].—(1) Whenever it has been decided to constitute any land a reserved forest, the [State Government] shall issue a notification in the [Official Gazette]—

- (a) declaring that it has been decided to constitute such land a reserved forest;
- (b) specifying, as nearly as possible, the situation and limits of such land; and
- (c) appointing an officer (hereinafter called “the Forest Settlement-officer”) to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest-produce, and

to deal with the same as provided in this Chapter.

Explanation.—For the purpose of clause (b), it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries.

(2) The officer appointed under clause (c) of sub-section (1) shall ordinarily be a person not holding any forest-office except that of Forest Settlement-officer.

(3) Nothing in this section shall prevent the 1[State Government] from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest-office except as aforesaid, to perform the duties of a Forest Settlement-officer under this Act."

9. Further, Section 5 of the Act 1927 speaks about bar of accrual of forest rights. It says that after the issuance of notification under Section 4, no rights shall be acquired in or over the land comprised in such notification except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such rights was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the State Government in this behalf.
10. Even inspite of notification under Section 4 having been issued, the Forest Settlement Officer is required to publish in the local vernacular in every town and village in the neighbourhood of the land comprised therein a proclamation specifying the situation and limits of the proposed forest, explaining the consequences which would ensue on the reservation of such forest and fixing a period of not less than three months from the date of such proclamation, and requiring every person

claiming any right mentioned in Sections 4 or 5 within such period either to present to the Forest Settlement Officer a written notice specifying or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof (Section 6). If no such claim is put forward within the time specified and of the existence of which no knowledge has been acquired by inquiry under Section 7 of the Act, all the rights shall be extinguished, subject to a certain conditions, up to the date of the notification published under Section 20. Under Section 20, the State Government issues a notification declaring the land to be a reserved forest.

11. Further, Section 9 of the Act 1927 prescribes extinction of rights. It says that rights in respect of which no claim has been preferred under Section 6, and of the existence of which no knowledge has been acquired by inquiry under Section 7, shall be extinguished, unless before the notification under Section 20 is published, the person claiming them satisfies the Forest Settlement Officer that he had sufficient cause for not preferring such claim within the period fixed under Section 6. For the sake of brevity Sections 6 to 9 are reproduced hereunder:-

"6. Proclamation by Forest Settlement-officer.-When a notification has been issued under section 4, the Forest Settlement-officer shall publish in the local vernacular in every town and village in the neighbourhood of the land comprised therein, a proclamation—

- (a) specifying, as nearly as possible, the situation and limits of the proposed forest;
- (b) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest;

and

(c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in section 4 or section 5 within such period either to present to the Forest Settlement-officer a written notice specifying or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.

7. Inquiry by Forest Settlement-officer. - The Forest Settlement-officer shall take down in writing all statements made under section 6, and shall at some convenient place inquire into all claims duly preferred under that section, and the existence of any rights mentioned in section 4 or section 5 and not claimed under section 6 so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

8. Powers of Forest Settlement-officer.—For the purpose of such inquiry, the Forest Settlement-officer may exercise the following powers, that is to say:—

(a) power to enter, by himself or any officer authorised by him for the purpose, upon any land, and to survey, demarcate and make a map of the same; and

(b) the powers of a Civil Court in the trial of suits.

9. Extinction of rights.—Rights in respect of which no claim has been preferred under section 6 and of the existence of which no knowledge has been acquired by inquiry under section 7, shall be extinguished, unless, before the notification under section 20 is published, the person claiming them satisfies the Forest Settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section 6."

12. The aforesaid legal provisions which are prescribed under Chapter II of the Act of 1927 including 24 Sections i.e. Sections 3 to 27 provides the power to reserve forests, procedure for issuance of notification by the State Government and other rights related to reserved forests. From perusal of said provisions, it is also explicit that only after issuance of

notification by the State Government prescribed under the Act, the offence under Section 26 i.e. acts prohibited in such forests, will come into force. In the present case, no such notification has been filed or proved by the complainant/prosecution or the competent Authority of the Reserved Forest.

13. Further, the prosecution has examined 8 witnesses to prove their case who are the Forest Rangers and Forest Guard of the Forest Department, out of which, the main witnesses i.e. Heerasingh Thakur (PW-1), Jameel Ahmad Bakhsha (PW-3), Kishor Kange (PW-4), Sawantram Nareti (PW-5), Nemchand Kange (PW-6), Sudheer Yadav (PW-7), Toran Kumar Kunjam (PW-8) have only deposed to the extent that when they reached for spot inspection, they found that the respondent/accused had already built up a house admeasuring $5.50 \times 3 = 16.5$ square meter (*wrongly mentioned as "16.5 c.m." in the depositions*). However, these witnesses have not stated anything and not made any enquiry about the period when the said house was built up by the respondent.

14. Reading of provision of Section 26 (1) (h) of the Act 1927 clearly shows that any person who clears or breaks up any land for cultivation or any other purpose shall be punished for the such offence, however, in the present case no witnesses have seen the respondent/accused while clearing the land of reserved forests for construction of house. One other witness Gwalram Sahu (PW-2), posted as Chowkidar in the Forest Department at the relevant time, has completely turned hostile and not supported the case of the prosecution. Even, in the cross-examination nothing has been elicited by this witness in support of the prosecution'

case.

15. Further, learned trial Court in the judgment of acquittal assigned cogent reason that no demarcation has been made with respect to the reserved forest and no independent witness has been examined by the prosecution. The trial Court also considered the fact that no seizure has been effected from the accused and thereafter extended the benefit of doubt in favour of the respondent/accused.
16. It is well established that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. {See: **VN. Ratheesh vs. State of Kerala [(2006) 10 SCC 617]}**}
17. In view of the aforesaid discussion and considering the provisions of the Act 1927, this Court is of the view that the prosecution has failed to make out a case for interference in the judgment of acquittal and the view taken by the trial Court was possible one.
18. Accordingly, the Appeal fails and is hereby **dismissed**.

Sd/-

(Deepak Kumar Tiwari)

Judge

Ajay