

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 07TH DAY OF AUGUST 2020 / 16TH SRAVANA, 1942

Cr1.MC.No.4755 OF 2019(D)

CRIME NO.6/2018 OF KUTTAMPUZHA FOREST RANGE, POOYAMKUTTY FOREST
STATION, ERNAKULAM DISTRICT

PETITIONERS/ACCUSED NOS.1 TO 3:

- 1 LUCA BELTRAMI, AGED 33 YEARS,
S/O.ANTONIO FRANCESCO, BELTRAMI HOUSE,
(VIA) A.GRANDI-I, ROZZANO, 20089, MILANO, ITALY,
EUROPE, NOW RESIDING AT 1/391A, FORT ROAD,
UDUMBANNOOR,
PIN - 685 595.
- 2 ELIAS, AGED 53 YEARS,
S/O.MATHEW, AYAMAPPURA KARA, UDUMBANNOOR VILLAGE,
THODUPUZHA TALUK, IDUKKI DISTRICT.
- 3 BONY MATHEW, AGED 23 YEARS,
S/O.MATHEW, KANJIRATHINKAL HOUSE, BLAVANA BHAGOM,
KUTTAMPUZHA VILLAGE, KOTHAMANGALAM TALUK.

BY ADVS.
SRI.NIREESH MATHEW
SRI.ARUN JOSE THOMAS
SRI.N.P.PRAJEESH

RESPONDENT/COMPLAINANT-STATE:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 682 031.

BY SRI.C.K.PRASAD,PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
24.07.2019, THE COURT ON 07.08.2020 PASSED THE FOLLOWING:

"C.R."

O R D E R

Dated this the 07th day of August, 2020

Petitioners are accused Nos.1 to 3 in O.R. No.6/2018 of Kuttampuzha Forest Range, Pooyamkutty Forest Station, Ernakulam District. O.R. No.6/2018 was registered for offences punishable under Sections 27(1)(e) (iv) of the Kerala Forest Act, 1961 (for short 'the Act').

2. As per the case of the prosecution, petitioners trespassed into the notified Government Forest by travelling through Blavana-Kallelimedu road and committed the offence alleged against them. Accordingly, O.R (Form-I) was registered against them. The petition on hand is filed in the above circumstances to quash O.R.No.6/2018 (Form-I report) filed by the Deputy Range Forest Officer, Pooyamkutty Forest Station under Section 52(2) of the Act before the Judicial First Class Magistrate Court-II, Kothamangalam which is appended to the petition on hand as Annexure B and all further proceedings initiated by the Court pursuant to the registration of the same.

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3. It is contended by Sri.Nireesh Mathew, the learned counsel for the petitioners that the confession statements of the petitioners were recorded, copies of which have been appended to the petition on hand as Annexures C, E and F, wherefrom it can be seen that the confessions were made before the Forest Range Officer, Kuttampuzha who is not an officer empowered to do so under Section 72 of the Act. According to him, an officer below the rank of Assistant Conservator of Forests, is not empowered to enquire into a forest offence, receive and record evidence and the officer who had recorded the confession statements in the case on hand being a Forest Range Officer who is below in rank of the Assistant Conservator of Forests mentioned in Section 72 of the Act, Annexures C, E and F have no validity at all and cannot be received in evidence and relied upon. According to the learned counsel, Annexures C, E and F confession statements recorded from accused 1 to 3 being the only material pieces of evidence available for the prosecution to establish guilt against them, those having been recorded by

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an incompetent officer, is *non est* in the eye of law and being the solitary evidence, even if the petitioners are directed to face trial, a conviction cannot be procured against them on the basis of those. It is further contended by the learned counsel that the first petitioner is an Italian resident permanently residing at Udumbannoor and being the Director of Goground Beans and Spices Pvt Ltd, is engaged in the business of Cocoa Beans. Therefore, he was in search of areas where Cocoa beans are available and for the purpose, along with other petitioners, he travelled in a jeep to visit the ration shop of one Mr.Natarajan, who was informed as engaged in the business of Cocoa beans in Kallelimedu area. Annexure A is the Mahazar prepared in O.R. No.6/18 by the prosecution and it is evidenced therefrom that solely to meet Mr.Natarajan, the petitioners have visited Kallelimedu area. It is clear from Annexure C confession statement recorded from 1st accused that their visit to the area was with the permission of a Forest Officer/Guard and therefore, their entry cannot be said to be "trespass" into the notified forest area. For the

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reason itself an offence under Section 27(1)(e)(iv) of the Act, will not be attracted on the basis of the allegations. Moreover, in the case on hand there is not even an allegation against the petitioners that they have trespassed into the reserve forest area intentionally to commit any offence. Therefore, registration of Annexure B crime against the petitioners is devoid of any basis. In the above circumstances Annexure B and all further proceedings being unsustainable in law are sought to be quashed.

4. Annexure A is the copy of the mahazar prepared in O.R. No.6/2018. Annexure B is the certified copy of Form-I prepared under Section 52(2) of the Act. Annexures C, E and F are the statements recorded from the petitioners. It is recorded in Annexure C, E & F statements that the petitioners went to Kallelimedu to locate areas wherefrom Cocoa Beans could be collected. It is stated that they have been to Kallelimedu particularly to meet one Mr.Natarajan, who is the owner of a shop and permission has been taken from an officer from the opposite side of Blavana area. Though the

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officer concerned tried to call his superior officer and since he was not reachable, as directed by him, they reached the forest station on their way back. Annexure A is the Mahazar prepared in O.R. No.6/2018. It is reported therein that the petitioners were taken by the forest officials as part of enquiry to Kallelimedu bhagam and they have occasion to see the shop of Mr.Natarajan, to meet whom the petitioners claimed to have visited the place. On enquiry with Mr.Natarajan also the purpose of petitioners' visit was evidenced as true.

5. The confession statements recorded from petitioners and produced as Annexures C, E and F are undoubtedly material pieces of evidence in a forest offence. According to the learned Public Prosecutor, the confession statements and the mahazar prepared by the Forest Range Officers and Deputy Forest Range Officers are the only materials proposed to be relied on by the prosecution to establish the alleged trespass into the forest area. According to the petitioners, they have sought for permission to enter into the forest area from an officer available at the entry point, and since his

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attempt to contact his superior officer failed, as he was not reachable, the officer whom the petitioners have contacted originally directed them to travel and to intimate the factum at their office at the other side. As stated by the petitioners, their visit was also to meet one Mr.Natarajan, a ration shop owner at Kallelimedu, who is conversant with the areas wherein Cocoa beans are available for collection. The petitioners when taken to the area admittedly visited by them were able to point out the ration shop of Mr.Natarajan, whom they had met in the morning of the day. When Mr.Natarajan was enquired by the forest officials, he also told them that their visit was solely for enquiring about the availability of Cocoa Beans. It is pertinent to note from Annexure A that a road namely 'Blavana-Kallelimedu' is running through the reserve forest of Malayattoor area. It is also pertinent to note that the area is comprised in Kuttampuzha Panchayat and Mr.Natarajan who was visited by the petitioners is residing in house No.257 of Ward VI of Kallelimedu Bhagam.

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6. In the case on hand as indicated from the materials available, the entry of the petitioners into the notified reserve forest area was with permission from a forest official and solely for the purpose of meeting one Mr.Natarajan, who is residing therein. In prohibited areas check posts will be available and officers will also be available to check the entry of outsiders thereto. In the above circumstances, on the strength of the materials available, a conviction of the accused for the offence under Section 27(1)(e)(iv) is unlikely to be secured even if the petitioners are sent to face trial.

7. Section 72 of the Act is extracted hereunder:

"72. Investing Forest Officers with powers.- 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 inquiries into forest offences and, in the course of such inquiries, 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.

Any evidence recorded under clause (d) of this section shall be admissible in any subsequent trial of the alleged offender before a Magistrate; provided that it has been taken in the presence of the accused person and recorded in the manner provided by the Code of Criminal Procedure, 1898."

In exercise of the power conferred under the provision supra, the Government of Kerala has issued a Notification, which reads:

"S.R.O. No.19/66.- In exercise of the powers conferred by Section 72 of the Kerala Forest Act, 1961 (Act 4 of 1962), the Government of Kerala hereby invest the 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 with the following powers, namely:-

- (a) Power to enter upon any land and to survey, demarcate and make a map of the same;

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- (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; and
- (e) Power to accept compensation under Section 68 of the Forest Act for forest offences.

Note.-(i) The powers of Forest Settlement Officer under clause (b) shall not be exercised without a reference to Government as and when necessity arises.

(ii) Any Forest Officer duly empowered to exercise the powers defined in Section 68 of the Forest Act shall, in compounding an offence under that Section, immediately record a statement setting forth the circumstances of the case and the sum for which the case is compounded.

(Notification No.G.O.(P) 14/66/Agri.
dt.10/01/1966, published in K.G. dt.01/02/1966.)”

Therefore, Government of Kerala has invested the Assistant Conservator of Forests, Deputy Conservator of

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Forests and Conservator of Forests within their respective jurisdiction and the Chief Conservator of Forests for the whole State with the power to hold enquires 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.

8. Therefore, the Forest Range Officer and the Deputy Forest Range Officer by whom the enquiries into the alleged offence have been made and confession statements of the petitioners have been recorded, are not empowered by the Act to do so. In the said circumstances, the proceedings conducted by them are without authority invested by the Act and therefore illegal. The evidence in the case on hand, having been collected by officers not empowered to do so, the prosecution undoubtedly is devoid of basis and is only to fail. Absolutely no purpose would be served by letting the prosecution against the petitioners to continue. It will only be a futile exercise.

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In the result, Crl.M.C stands allowed. Annexure B and all further proceedings initiated against the petitioners pursuant to that by Judicial First Class Magistrate Court-II, Kothamangalam stand quashed forthwith.

Sd/-

MARY JOSEPH, JUDGE

ttb/NAB

APPENDIX

PETITIONER'S/S EXHIBITS:

ANNEXURE A	CERTIFIED COPY OF THE MAHAZAR DATED 30/10/2018.
ANNEXURE B	CERTIFIED COPY OF FORM-I IN O.R.NO.06/2018 OF KUTTAMPUZHA FOREST RANGE OFFICE DATED 30/10/2018.
ANNEXURE C	CERTIFIED COPY OF THE CONFESSION STATEMENT OF THE 1ST ACCUSED DATED 30/10/2018.
ANNEXURE D	PHOTOCOPY OF THE READABLE COPY OF ANNEXURE C.
ANNEXURE E	CERTIFIED COPY OF THE CONFESSION STATEMENT OF THE 2ND ACCUSED DATED 30/10/2018.
ANNEXURE F	CERTIFIED COPY OF THE CONFESSION STATEMENT OF THE 3RD ACCUSED DATED 30/10/2018.

//TRUE COPY//

P.S. TO JUDGE