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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. T. SANKARAN
&
THE HONOURABLE MR. JUSTICE M. L. JOSEPH FRANCIS

WEDNESDAY, THE 30TH DAY OF OCTOBER 2013/8TH KARTHIKA, 1935

WA.No. 1585 of 2012

AGAINST THE JUDGMENT IN WP(C) NO. 7192/2012 OF THE
HIGH COURT OF KERALA DATED 19-06-2012

APPELLANT/PETITIONER:

SUKU ALIAS PARAVATTOM SUKU, AGED 41 YEARS
S/O. SUKUMARAN, ARUN BHAVAN
ELAVARAMKUZHI PANGUMPARA THADATHIL
AYIRANELLOOR VILLAGE, PATHANAPURAM TALUK
KOLLAM DISTRICT.

BY ADVS. DR. V. N. SANKARJEE
SRI. V. N. MADHUSUDANAN
SMT. R. UDAYA JYOTHI

RESPONDENTS/RESPONDENTS:

1. THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. THE FOREST RANGE OFFICER,
ANCHAL RANGE, KOLLAM DISTRICT.
3. THE CHIEF CONSERVATOR OF FOREST,
THIRUVANANTHAPURAM.
4. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

SPECIAL GOVERNMENT PLEADER FOR FORESTS
SRI. M. P. MADHAVAN KUTTY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 30-10-2013, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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K.T.SANKARAN &
M.L.JOSEPH FRANCIS, JJ.

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Dated this the 30th day of October, 2013

JUDGMENT

K.T.Sankaran, J.

The question involved in this Writ Appeal is whether an offence under Section 27 of the Kerala Forest Act, 1961 is bailable or non-bailable.

2. The second respondent (the Forest Range Officer, Anchal Range) filed Occurrence Report No.4 of 2012 before the jurisdictional Magistrate alleging that the appellant committed offence under Section 27(1)(d), (e)(iii) and (iv) of the Kerala Forest Act, 1961. The appellant apprehended arrest. He filed B.A.No.1458 of 2012 before this Court under Section 438 of the Code of Criminal Procedure. A learned single Judge disposed of B.A.No.1458 of 2012 as per the order dated 12.3.2012, the relevant portion of which reads as follows:

"3. Considering the nature of the offences, the adverse effect on the investigation and the possibility of the petitioner tampering the evidence, it is not in the interest of justice to grant anticipatory bail as sought for. He is at liberty to surrender before the concerned Magistrate. If he files an application for regular bail after previous notice to the APP, learned Magistrate to pass appropriate orders in the application without delay, preferably on the same day."

3. The appellant did not comply with the order in the Bail Application. He did not surrender before the Magistrate's Court and file a Bail Application. On the other hand, the appellant filed W.P.(C) No.7192 of 2012 under Article 226 of the Constitution of India for the following reliefs:

- "a) Declare that the power of the Forest Officer to release any person accused of forest offence on bail provided under Section 64 of the Kerala Forest Act 1961 is available to the Police Officer arresting any person accused of or concerned to any forest offence under Section 63 of the Act and any Judicial Magistrate considering application for bail of any person accused of a forest offence.

- b) Declare that all the forest offences defined under Section 2(e) of the Kerala Forest Act 1961 are non-cognizable and bailable.
- c) Declare that the practice of treating all forest offences defined under Section 2(e) of the Kerala Forest Act, 1961 as non bailable as unconstitutional.
- d) As consequential relief, issue a writ of mandamus or any other appropriate writ or order directing the 2nd respondent or the police officer concerned or the Judicial First Class Magistrate's Court (Forest Offences), Punalur in O.R.No.4 of 2012 on the file of the 2nd respondent, to release the petitioner on bail if he appears or surrenders or is produced before any of them.
- e) Pass such other orders as this Honourable Court deems fit and proper in the facts and circumstances of the case."

4. The learned single Judge dismissed the Writ Petition. Aggrieved by the same, the writ petitioner has filed this Writ Appeal.

5. Dr.V.N.Sankarjee, the learned counsel for the appellant, submitted that an offence under Section 27 of the Kerala Forest Act,

1961 is bailable. The learned counsel submitted that Sections 63 and 64 are the only provisions in the Kerala Forest Act providing for the power of the Forest Officer to arrest. The power under Section 63 is akin to the power conferred on a Police Officer under Section 42 of the Code of Criminal Procedure. The learned counsel submitted that if the person who was arrested under Section 63(1) of the Kerala Forest Act was taken or sent to the nearest Police Station, the Officer in charge of such station shall thereupon act in accordance with law and that procedure is akin to sub-section (3) of Section 42 of the Code of Criminal Procedure. It is submitted that there is no provision in the Kerala Forest Act indicating as to whether the offence under Section 27 is cognizable or not or whether it is bailable or not.

6. Sri.M.P.Madhavankutty, learned Special Government Pleader for Forests, submitted that Part II of the First Schedule of the Code of Criminal Procedure will apply in the case on hand and the only conclusion that could be arrived at is that the offence under Section 27 of the Kerala Forest Act is cognizable and non-bailable. He also submitted that Section 4 of the Code of Criminal Procedure,

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particularly sub-section (2) thereof, would apply and, therefore, the Forest Officer is empowered to arrest even in respect of the cases other than the cases covered under Sections 63 and 64 of the Kerala Forest Act.

7. For the sake of convenience, we think it would be apposite to extract Sections 63 and 64 of the Kerala Forest Act, 1961.

“63. Power to arrest without warrant.-- (1) Any Forest Officer or Police Officer may, without orders from a Magistrate and without a warrant, arrest any person reasonably suspected of having been concerned in any forest offence, if such person refuses to give his name and residence, or gives his name or residence which there is reason to believe to be false, or if there is reason to believe he will abscond.

(2) Any person arrested under this section shall be informed, as soon as may be, of the grounds of arrest and shall forthwith be taken or sent to the nearest Police Station and the Officer-in-charge of such station shall thereupon act according to law.

64. Power to release on bonds persons arrested under Section 63.-- Any Forest Officer of a rank not inferior to that of a Ranger who or whose subordinates have arrested any person under the provisions of Section 63 may release such person on bail on his executing a bond to appear, if and when so required, before the Magistrate having jurisdiction in the case, or before the Officer-in-charge of the nearest Police Station."

8. The Kerala Forest Act does not say that an offence under Section 27 of the Act is either cognizable or non-cognizable or bailable or non-bailable. The First Schedule of the Code of Criminal Procedure deals with classification of offences and Part I thereof deals with offences under the Indian Penal Code. Part II of the First Schedule deals with classification of offences against other laws, which shows that if the offence is punishable with imprisonment for three years and upwards but not more than seven years, such offence would be cognizable and non-bailable. The offence under Section 27 of the Kerala Forest Act provides for a punishment of imprisonment up to five years and, therefore, applying Part II of the

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First Schedule of the Code of Criminal Procedure, the said offence shall be treated as cognizable and non-bailable. The expressions "bailable offence" and "cognizable offence" are defined respectively under Sections 2(a) and 2(c) of the Code of Criminal Procedure, which read as follows:

"2. **Definitions.--** In this Code, unless the context otherwise requires,--

(a) "bailable offence" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence;

(b) xxxx xxxx

(c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;"

9. Section 63 of the Kerala Forest Act confers power on any Forest Officer or Police Officer to arrest any person without orders from a Magistrate and without a warrant, if the following conditions are satisfied:

- (i) The person concerned is suspected of having been concerned in any forest offence;
- (ii) If such person refuses to give his name and residence; or
- (iii) If such person gives his name or residence and there is reason to believe it to be false; or
- (iv) If there is reason to believe that such person will abscond.

It is significant to note that under Section 63(1) there is no word 'or' after the words "arrest any person reasonably suspected of having been concerned in any forest offence". Thereafter "or" occurs at two places which separates three different aspects, namely (i) if such person refuses to give his name and residence; or (ii) gives his name or residence which there is reason to believe to be false; or (iii) if there is reason to believe he will abscond. That means that "any person reasonably suspected of having been concerned in any forest offence" can be arrested if any of the aforesaid three aspects is also available.

10. Going by Part II of the First Schedule of the Code of Criminal Procedure, an offence under Section 27 of the Kerala

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Forest Act is cognizable and non-bailable. The expression "cognizable case", as defined in the Code of Criminal Procedure means a case in which a Police Officer, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant. On a plain reading of Section 2(c) of the Code of Criminal Procedure, that does not include a Forest Officer. However, we are of the view that Section 4 of the Code of Criminal Procedure also should be read in this context.

"4. Trial of offences under the Indian Penal Code and other laws.-- (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

Sub-section (2) of Section 4 provides for the investigation, inquiry or trial of the offences under any other law in accordance with the

provisions of the Code of Criminal Procedure. However, it will be subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. The expression "otherwise dealing with such offences" includes everything in connection with the power of the Forest Officer in dealing with the offence under the Kerala Forest Act. If so, it can only be assumed that the Forest Officer also will have power to arrest a person who has committed an offence under Section 27 of the Kerala Forest Act. A Police Officer would also be entitled to arrest such a person. A person who is arrested for having committed an offence under Section 27 has to be dealt with in accordance with the procedure provided in the Code of Criminal Procedure. Section 63 of the Kerala Forest Act makes this position clear.

11. We are of the view that an offence under Section 27 of the Kerala Forest Act is non-bailable. Section 64 contemplates cases in which offences other than those under Section 27 of the Act are involved and which are punishable with imprisonment for less than three years or with fine.

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For the aforesaid reasons, we are of the view that the reliefs prayed for by the writ petitioner/appellant cannot be granted. The learned single Judge was right in dismissing the Writ Petition. The Writ Appeal is, accordingly, dismissed. No order as to costs.

Sd/-
(K.T.SANKARAN)
Judge

Sd/-
(M.L.JOSEPH FRANCIS)
Judge

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(True copy)

Zahid
P.S. to Judge

True copy

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[Signature]
Section Officer

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