REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 834 OF 2009

BHARATH BOOSHAN AGGARWAL ...APPELLANT(S)

VERSUS

STATE OF KERALA ...RESPONDENT(S)

J U D G M E N T

S. RAVINDRA BHAT, J.

1. This appeal by special leave, questions a judgment of the Kerala High Court[1] reversing the judgment of the learned Sessions Judge and consequently, restoring the conviction and sentence (of 3 years' imprisonment) for the offence punishable under Section 27 of the Kerala Forest Act (hereafter "the Act").

2. The first appellant is a partner of the appellant's firm, and claims to be manufacturer and trader of sandalwood oil. On 4 January 1994, upon receipt of information, officials of the Kerala Forest Department seized 37 cartons containing 460 kgs of sandalwood oil at Karipur airport, belonging to the appellants. Later a criminal complaint was filed by the State, wherein it was alleged that the appellants' premises were searched in the course of investigation, which in turn yielded in seizure of another 73.6 kgs of sandalwood oil. The appellant resisted the charges of illegal possession of forest produce, and its movement, stating that they processed and manufactured sandalwood oil, which was then exported to four different countries. The

[1]Dated 19-12-2008, in Crl. A No. 556/2001

complaint filed by the Kerala Forest Department, alleged that sandalwood oil was a forest produce and without a transit licence, its movement too was illegal.

3. In the criminal proceedings which ensued after initiation of the complaint, the appellant denied criminal responsibility arguing, among others, that sandalwood *oil* was not a forest produce and rather, that sandalwood was. It was urged, that regardless of this, a valid and subsisting licence authorized the appellant to manufacture sandalwood oil. The prosecution examined four witnesses; the appellant relied on the testimony of two defense witnesses. After considering the materials on record, the Judicial Magistrate Thamarasserry (hereafter "the trial court") by judgment[2] convicted the appellant as charged and sentenced him to pay Rs. 2000 as fine and undergo rigorous imprisonment for three years under Section 27 (1) (d) of the Act and six months, under Rule 3 (iii) read with Rule 23 of the Kerala Forest Produce Transit Rules (hereafter "the Rules").

4. Aggrieved by the conviction recorded and sentence imposed on him, the appellant approached the Court of Session, Kozhikode Division (hereafter "the Sessions Court") which by its judgment[3], upset the findings of the trial court. The Sessions Court accepted the appellant's plea and held that in view of the certificate issued by the Central Excise authorities, his possession of sandalwood oil in the factory could not be termed as illegal and that a conviction under Section 27 could be recorded only if it was found that sandalwood oil was removed illegally, or without authorization from any reserve forest, or area proposed to be constituted as reserve forest.

5. Aggrieved by the appellant's acquittal and in view of the findings of the learned Sessions Judge, the State appealed. The High Court, which considered this appeal reversed the judgment of the Sessions Court on two counts. It was

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[2] dated 19.08.1997

[3]dated 20.11.2000

held by the impugned judgment that though the appellants held a licence to manufacture sandalwood oil, nevertheless they failed to account for possession of such a large quantity of sandalwood oil. When charged with commission of the offence in question, the accused concerned or individual was bound to show a proper account of the raw materials collected and used to manufacture sandalwood oil. Relying upon the testimony of PW-4, who had stated that the accused failed to furnish the dates and details regarding procurement of crude sandalwood and crude sandalwood oil (popularly known as 'red oil'), the court held that during the trial too, the appellant had failed to give any particulars with respect to persons from whom purchase of these raw materials were made. The failure of the defence to explain this vital aspect rendered the findings of the Sessions Court, vulnerable. Taking note of Section 69 of the Act, which mandated a presumption of culpability in the event possession was found in any given case, the High Court held that the accused should have given an account regarding the raw materials collected and used. Noting the state's submission that to manufacture 5430 kilos of sandalwood oil at least 5600 kilograms of crude sandalwood oil was required, which in turn needed to be extracted from at least 200 metric tons of sandalwood, the High Court concluded that the reliance on the manufacturing licence alone to explain the possession of sandalwood oil did not in any manner absolve the appellant of criminal responsibility.

6. The High Court also relied upon a decision of this court in *Ghure Lal v. State of Uttar Pradesh*[4]to say that the appellate court can interfere with the order of acquittal only for substantial and compelling reasons. It was held that there were no compelling or substantial reasons justifying interference by the Sessions Court of the appellant's conviction. The High Court thereafter concluded by observing that a purposive interpretation of the Act had to be given in view of the underlying objects which were for the general public good.

[4](2008) 10 SCC 450

7. It is argued on behalf of the appellant by Mr. Ranjit Kumar, learned senior counsel, that the High Court failed to appreciate that an offence is said to be committed only when the article in question is *"forest produce"*. Relying on the definition of that term in the Act, it was submitted that Section 2(f)(i)[5] specifically states that *sandalwood* is one such produce. The reference to *wood oil* cannot, therefore, be said to include *"sandalwood oil"*. The appellants' counsel relied on the decisions of this court in *Suresh Lohiya v. State of Maharashtra*[6] and the recent ruling in *Standard Essential Oil Industries v. Forest Range Officer*[7] to urge that courts cannot expand the scope of a legislation, departing from its text, especially if it entails fastening of criminal liability.

8. It was argued that as the appellant proved that he held a valid licence to manufacture sandalwood oil out of red oil, no offence was made out. It was argued that acquisition of raw materials was established through the documents maintained by the appellant, in accordance with the procedure prescribed by the Central Excise Rules, 1944.There could resultantly have been no inference of illegality committed in the possession of sandalwood oil. Mr. Ranjit Kumar said that the High Court fell into the error in not appreciating that the appellants had duly maintained the register containing information as to where and how raw material required for manufacture of the sandalwood oil was obtained; and that in the absence of any evidence to the contrary by the individuals or firms which had supplied such raw material, no presumption could be drawn that the

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[5] Section 2 (f) reads as follows:

(f) "forest produce" includes- (i) the following whether found in or brought from a forest or not that is to say.- timber, charcoal, wood-oil, gum, resin, natural varnish bark lac, fibres and roots of sandal wood and rosewood; and (ii) the following when found in, or brought from, a forest, that is to say,- (a) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees; (b) plants not being trees (including grass, creepers, reeds and moss) and all parts or produce of such plants; and (c) silk cocoons, honey and wax; (d) peat, surface soil, rock and minerals (including limestone, laterite, minerals oils and all products of mines or quarries);"

[6](1996) 10 SCC 397

[7](2018) 16 SCC 180

finished product originated from illegally procured sandalwood or red oil extracted from sandalwood. It was pointed out that the appellants had in the course of their business relied on the licence to manufacture sandalwood oil and had been exporting it through proper channels for several years. This resulted in valuable acquisition of foreign exchange to the country. Had there been any illegality, such exports would have ceased a long time back.

9. Learned counsel submitted that the High Court failed to consider the distinction between Section 27 and Section 69 of the Act. It was emphasised that Section 69 refers to only forest produce whereas Section 27 refers to forest produce illegally removed from a reserve forest. The High Court convicted the appellant holding that the presumption under Section 69 applied. The appellant had in fact, discharged the burden placed upon them by producing registers maintained regarding details of individuals and firms from whom they had purchased the red oil. Therefore, the prosecution was under a duty to prove that such entries were false. Having been maintained in the ordinary course of business, the courts, especially the trial court and the High Court, failed to consider that the prosecution was unable to establish that the source of the sandalwood oil and therefore, the basis for its possession was illegal.

10. Highlighting that Section 27 applied only where the court found that when a firm or concern knowingly receives, or has possession of any forest produce illicitly removed, learned senior counsel urged that the prosecution in this case failed to prove either. The prosecution never alleged that the appellant had knowingly received or were in possession of any forest produce illicitly removed from the reserve forest. Likewise, it was not its case that any forest produce had been illegally removed from the reserve forest and that any proceedings were pending for that purpose. Learned counsel submitted that the courts below failed to appreciate that the complaint did not allege illicit removal of forest produce from the reserve forest. Likewise, the evidence of the four witnesses showed, that none of them remotely suggested that the forest produce

found had been illicitly removed from the reserve forest. Accordingly, the elements making up the offence under Section 27 (1) (d) of the Act had not been proved.

11. It was urged that Section 69 enacts a presumption that forest produce is deemed to be a property of the government, where ownership is disputed. At the same time, Section 27 (1)(d) makes it an offence where anyone is in conscious possession of forest produce which is illicitly removed from a reserve forest. In this context, it was argued that the appellant's firm holds a valid L-4 licence issued by Central Excise authorities to manufacture sandalwood oil. Registration of the appellant's firm under the Kerala General Sales Tax Act, 1963 and Central Sales Tax Act, 1956 was established. The firm had no infrastructure to manufacture sandalwood oil from sandalwood. Therefore, it is apparent that the department did not lead any evidence to prove that the forest produce involved was in fact illicitly removed. The firm was entitled to possess and deal with sandalwood oil in its godown and elsewhere. By no stretch of imagination therefore, could it be said that possession of sandalwood oil in the firm's godown, as well as in the airport was illegal or unauthorised. Furthermore, the learned senior counsel submitted that if the appellant had indulged in any illegality with respect to procurement of the raw materials, their exports would not have been permitted.

12. The State argues that this court should not interfere with the findings and conviction recorded by the impugned judgment. Its counsel, Mr. C. Sashi, submits that there can be no debate as to whether sandalwood oil is a forest produce. Learned counsel relied upon the judgment of this court reported as *Forest Range Officer v. P. Mohammed Ali*[8] and submitted that the decision later rendered in *Standard Essential Oil Industries* (*supra*), in fact, emphatically states that "*forest produce*", as defined in the Act, includes sandalwood oil.

[8]1993 Supp (3) SCC 627

Learned counsel for the State submits that once there is no dispute with respect to possession of sandalwood oil – as in this case –the onus clearly lay upon the appellant to prove that such possession was lawful, that the forest produce was procured through legitimate sources and not in a manner contrary to law.

13. Learned counsel argued that the mere statement on the part of the appellant that they used to deal in sandalwood oil, processed or produced from red oil as the raw material (which in turn was extracted from sandalwood), was insufficient to discharge the initial burden placed upon them by law. Counsel highlighted that once their possession of the forest produce was established the appellant relied upon certain entries in the central excise registers and other records, to explain that the source of such articles were legitimate. By themselves, such documents were insufficient. The presumption under Section 69 operated firstly after the State established possession of forest produce. In this case, sandalwood oil is a forest produce. The seizure of the appellant's sandalwood oil at the airport and the subsequent search and seizure of 73.6 kgs of sandalwood oil from their premises, resulted in the discharge of the foundational onus that lay upon the State. Therefore, Section 69 and the presumption enacted by it were attracted. The burden was then shifted to the appellant to establish that the forest produce was sourced legitimately and that they had a lawful right to the articles. It was reiterated that this burden could not be simply discharged by stating that some traders had supplied varying quantities of red oil. The traders, or some of them should have stepped into the witness box and proved that the statements made by the appellant was correct. The appellant only relied on the invoices and the registers, which were inadequate and did not provide all the details for a proper verification. The trial court observed that these facts were established by the deposition of the investigating officer. In the circumstances it could not be said that the appellant had discharged the burden of proving that the forest produce was legitimately secured or sourced by them and that its possession was legal.

14. Learned counsel relied upon the ruling of this court in *Ghure Lal* (*supra*)to argue that if the appellate court reverses the conviction unreasonably without any compelling reason, and contrary to record, based upon a misappreciation of evidence or the law, the High Court can interfere with such findings. On the basis of all these submissions, the state urges that this court should dismiss the appeal and confirm the conviction recorded by the trial court.

Relevant provisions of the Act

15. Section 2 (f) defines "forest" and states:

"2. ....(f) "forest" includes:

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

timber, charcoal, wood-oil, gum, resin, natural varnish, bark, lac, fibres and roots of sandalwood and rosewood; and

(ii) the following when found in or brought from a forest, that is to say-

a) trees and leaves, flowers and fruits and all other parts or produce not here-in-before mentioned, of trees.

b) plants not being trees including grass, creepers, reeds and moss and all parts or produce of such plants;

c) silk cocoons, honey and wax, and

d) peat, surface soil, rock and minerals (including lime- stone, laterite), mineral oils and all products of mines or quarries".

Section 27 reads as follows:

"27. (1) Any person who-

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

(b) sets fire to a Reserved Forest or kindles or 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 Forest and land proposed to be constituted a Reserved Forest; or

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

(e) in a Reserved Forest or in a land proposed to be constituted a Reserved 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 plant trees; or

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

(iii) cuts of fells any trees or girdles, marks, lops, taps, 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 subject 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 team 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.".

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Section 69 is in the following terms:

"69. When, in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest produce is the property of the Central or State Government, such produce shall be presumed to be the property of the Central or State Government, as the case may be, until the contrary is proved."

16. Rule 3 of the Rules prescribes that no one can import or export timber or other forest produce or transport it, unless a pass as prescribed by the Rules, accompanies its movement. Rule 3 (3) prescribes the procedure for obtaining such a pass. Rule 23 of the Rules, prescribes that any contravention of the rules would attract a punishment for a term that can extend to six months or fine that can extend to rupees five hundred, or both.

17. In *Forest Range Officer v. P. Mohammed Ali* (*supra)* the provisions of the Act, which this court is concerned with in this case, i.e. the Kerala Forest Act, were interpreted in the context of a submission that, *sandalwood oil* was not

"forest produce" and that the expression *"wood oil"* was referrable to items other than those enumerated (such as sandalwood, rosewood, roots, etc.) and further that *wood oil* referred to natural products and not those derived through processing. This court repelled such an interpretation and held that:

> *"**6.** ... It must be noted in this context that there are several types of essential oils in India, the important ones being sandalwood oil, agar-wood oil, deodar oil and pine oil, apart from oleo-resin and wood oil derived from exudation from living trees in the forest area. These essential oils are obtained from any forest wood. Sandalwood as observed by the High Court is forest produce. Even its roots thereof are also included as forest produce. They are also timber within the meaning of Section 2(k) of the Act. The purpose of the Act is to conserve forest wealth which is very dear for preservation to maintain ecology. Forest produce defined under Section 2(f) is an inclusive definition. It is settled law that the word 'include' is generally used as a word of extension. When used in an interpretation clause, it seeks to enlarge the meaning of the words or phrases occurring in the body of the statute. Craies on Statute Law, 7th Edition at p. 64 stated the construction to be adopted to the meanings of the words and phrases that*
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> *"The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the law giver".*
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> *At p. 214 it is stated that an interpretation clause which extends the meaning of a word does not take away its ordinary meaning. An interpretation clause of the inclusive definition is not meant to prevent the word receiving its ordinary, popular and natural sense whenever that word would be properly applicable, but to enable the word as used in the Act, when there is nothing in the context or the subject-matter to the contrary, to be applied to somethings to which it would not ordinarily be applicable…. An interpretation clause should be used for the purpose of interpreting words which are ambiguous or equivocal, and not so as to disturb the meaning of such as are plain. At p. 216 it is stated that another important rule with regard to the effect of an interpretation clause is that an interpretation clause is not to be taken as substituting one set of words for another, or as strictly defining what the meaning of the term must be under all circumstances, but rather as declaring what may be comprehended within the term where the circumstances require that it should be so construed.*
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> ***8.*** *The word include in the definition under Section 2(f) would show that it did not intend to exclude what would ordinarily and in common*

parlance be spoken of as wood oil. The expression being technical and being part of an inclusive definition has to be construed in its technical sense but in an exhaustive manner, it cannot be restricted in such a manner so as to defeat the principal object and purpose of the Act. The process by which the oil is extracted is not decisive as oil may be extracted by natural process of exudation or it may be extracted by subjecting to chemical or mechanical process and sandalwood (Santalum album) is cut into pieces. Its heartwood and roots of sandalwood trees removed from the forest are used as a raw material at a factory level that too by mechanised process to extract sandalwood oil. The purpose for which the oil is used is not decisive. Therefore, the word wood oil used in the Act will require purposive interpretation drawing upon the context in which the words are used and its meaning will have to be discovered having regard to the intention and object which legislature seeks to subserve. The restricted meaning sought to put up by the accused would frustrate the object and the literal interpretation would defeat the meaning. The legislature does not intend to restrict the word wood oil nor do we find any compelling circumstances in the Act to give restricted meaning that only oil derived from Dipterocarpus trees to be wood oil as contended for the accused and which found acceptance by the learned Single Judge. The purposive interpretation would aid conservation of sandalwood, a valuable forest wealth, prevent illicit felling and transportation of them and make the manufacturers of sandalwood oil accountable for the possession of sandalwood trees or chips or roots etc. Incorporation of sandalwood oil ex abundenti cautela in Karnataka Act and absence thereof in sister Acts operating in South India does not detract from giving it its due meaning. The expert opinion is only an opinion evidence on either side and does not aid us in interpretation. This Court in Aditya Mills Ltd. v. Union of India [(1988) 4 SCC 315] did not adopt the dictionary meaning as it may be to some extent delusive guide to interpret entries in Central Excises and Salt Act. In Kishan Lal v. State of Rajasthan [1990 Supp SCC 742] of which one of us, Sahai, J. was a Member, this Court was to consider the word 'sugar' whether under Rajasthan Agricultural Produce Marketing Act, 1961 an agricultural produce. It was contended that the Khandsari Sugar was not an agricultural produce. Repelling that contention, this Court held that the word agricultural produce includes all produce whether agricultural, horticultural, animal husbandry or otherwise as specified in the Schedule. The legislative power to add or include and define a word even artificially, apart, the definition which is not exhaustive but inclusive neither excludes any item produced in mills or factories nor it confines its width to produce from soil. If that be the construction then all items of animal husbandry shall stand excluded. It further overlooks the expression "or otherwise as specified in the Schedule". Accordingly it was held that Khandsari Sugar is an agricultural produce under that Act…."

18. In the other judgment, relied on by both parties, i.e. *Standard Essential Oil Industries (supra),* the issue was whether sandalwood oil could be

confiscated by virtue of provisions of Section 61A of the Kerala Forest Act.[9] This court held that *sandalwood oil*, though a forest produce, could not be the subject matter of Section 61A in view of its restrictive wording:

> *"**21.** A perusal of the definition of forest produce, as given by Section 2(f) of the Act, shows that other than timber, charcoal, firewood it includes wood oil, gum, resin, natural varnish bark, roots of sandalwood, etc. However, the use of the specific words "timber, charcoal, firewood and ivory" under Section 61-A instead of "any forest produce or ivory" makes it clear that the intention of the legislature in providing armoury under Section 61-A is only with regard to certain category specified therein and not for every forest produce as defined under Section 2(f) of the Act. Undoubtedly, sandalwood oil is a forest produce but Section 61-A of the Act is limited only to the categories specified therein and does not give power of confiscation of sandalwood oil.*
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> *22. Further, we find force in the contention of the appellants that Section 69 of the Act is only a rule of evidence which raises a mandatory presumption that a forest produce, unless proved otherwise, is a property of the Government in case where any proceedings are going on under the Act or anything is done under the Act. The section operates only as a tool to help the Government in proving its title to the property but the said section cannot be read as to give any power of confiscation of the property." (emphasis supplied)*

19. In *Suresh Lohiya* (*supra*), this court struck a discordant note, drawing a distinction between *"nature's gifts"* such as charcoal, mahua flowers, or minerals and, article *"produced with the aid of human labour"* which, according to it, was not included in the definition of *"forest produce"* under the Act:

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[9]That provision, i.e Section 61A, was inserted in 1975 by the State Assembly, and prescribed *inter alia*, the procedure to be followed in cases where the state, apart from seizing the forest produce, also intended to confiscate the property and the articles used for commission of the offence. The material part of Section 61A reads as follows:

> *"61A. **Confiscation by Forest Officers in certain cases**.-(1) Notwithstanding anything contained in the foregoing provisions of this Chapter, where a forest offence is believed to have been committed in respect of timber, charcoal, firewood or ivory which is the property of the Government, the officer seizing the property under sub-section (1) of section 52 shall, without any unreasonable delay, produce it, together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence, before an officer authorized by the Government in this behalf by notification in the Gazette, not being below the rank of an Assistant Conservator of Forests (hereinafter referred to as the authorized officer)."*

> *"7. The legislature having defined "forest-produce", it is not permissible to us to read in the definition something which is not there. We are conscious of the fact that forest wealth is required to be preserved; but, it is not open to us to legislate, as what a court can do in a matter like at hand is to iron out cresses; it cannot weave a new texture. If there be any lacuna in the definition it is really for the legislature to take care of the same.*
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> *8. We may also state that according to us the view taken by the Gujarat High Court in Fatesang's case is correct, because though bamboo as a whole is forest produce, if a product, commercially new and distinct, known to the business community as totally different is brought into existence by human labour, such an article and product would cease to be a forest-produce. The definition of this expression leaves nothing to doubt that it would dot take within its fold an article or thing which is totally different from, forest-produce, having a distinct character. May it be stated that where a word or an expression is defined by the legislature, courts have to look to that definition; the general understanding of it cannot be determinative. So, what has been stated in Strouds' Judicial Dictionary regarding a "produce" can not be decisive. Therefore, where a product from bamboo is commercially different from it and in common parlance taken as a distinct product, the same would not be encompassed within the expression "forest-produce" as defined in Section 2 (4) of the Act, despite it being inclusive in nature. that bamboo mat is taken as a product distinct from bamboo in the commercial world, has not been disputed before us and rightly."*

20. It is noteworthy that in *Suresh Lohiya* (*supra*) this court made no reference and did not advert to *Forest Range Officer v. P. Mohammed Ali* (*supra*). In *Suresh Lohiya* also, we notice this Court sought to interpret the interplay between *"forest produce", "timber"* and *"tree"* and concluded that articles or products created by human toil are not *per se* forest products. This court is of the opinion that the distinction sought to be made defeats the purpose of the Act, because illegally procured forest produce, such as sandalwood, rosewood, or other rare species, and then worked upon, resulting in a product - predominantly based on the essential forest produce, would escape the rigors of the Act. Therefore, *Suresh Lohiya* cannot be considered a binding authority; its *dicta* should be understood as confined to the facts of that case. For these reasons, it is held that the impugned judgment, so far as it proceeded on the assumption that sandalwood oil is forest produce, is based on a correct appreciation of law.

21. In the present case, the appellant did not dispute ownership of the articles seized. Section 69 of the Act enacts presumption, that when possession of a forest produce is found with someone, that it is deemed to belong to the state (or central) government. Now, this presumption is a rebuttable one; several decisions of this court have said that the burden of proving the foundational facts, which will give rise to the presumption, is upon the prosecution.[10]In the present case, there is no contest about the fact that the goods were seized from the premises of the appellant, and belonged to him. The goods seized from the airport, were to be shipped to overseas destinations. In these circumstances, this court is of the opinion that the foundational facts, i.e. possession of the forest produce, were proved by the State.

22. The next question is whether the appellant proved that the produce was procured properly. Their case was twofold: one that as holder of a Central Excise licence to manufacture sandalwood oil, the prosecution had to fail. The appellant had sought to rely on the statutory registers which they were bound to keep. It was also submitted that the oil was produced by the appellant from the raw materials, i.e. red oil, which they had purchased from many traders for which some 45 invoices were relied upon. According to the statement made to the forest authorities, at the time of the search and seizure, these raw materials were obtained in the course of 104 transactions, where smaller quantities of red oil were purchased. PW-2, the flying squad officer of the forest department who deposed during the trial, in the course of cross examination stated that the cartons were kept in the open in the airport and bore the labels of the appellant firm. The witness further stated that the goods were seized because it was not known where they originated from, nor where they were bought. He also stated that the goods, i.e. sandalwood oil cartons *"were seized for the reason that documents to show from where they came were not produced."* The appellants

[10]*Noor Agha v. State of Punjab* (2008) 16 SCC 417; *Bhola Singh v. State of Punjab* (2011) 1 SCC 653 and *Gangadhar @ Gangaram v. State of Madhya Pradesh,* judgment dated 5th August, 2020 in Cr. A. No. 504/2020.

had alleged that the red oil was purchased for processing from several persons, and that particulars had been furnished to the forest authorities. PW-4 was silent about verification of these details; he stated in cross examination, generally, that the addresses of the traders who sold the oil to the appellant were provided, but incomplete. Secondly, it was urged that the prosecution did not produce any material to support the plea that the appellant's information was suspect, or lacked credibility. PW-4 had further stated that the appellant purchased the seized goods when they were auctioned by the state, after the applications for their release (to the accused/appellants) were dismissed by the court. This witness also stated that the yield of sandalwood oil is to the extent of 4% from sandalwood.

23. There can be no dispute that sandalwood oil is a forest product. However, Section 27 (1) (d)- which enacts the offence- and which has been applied in this case, points to the offender's conscious mental state when it enacts that whoever *"knowingly receives or has in possession any major forest produce illicitly removed from a Reserved Forest"* would be subjected to the prescribed punishment. The presumption under Section 69 is with respect to *not a conscious mental state,* or a direction by the legislature that a certain state of affairs is deemed to exist, but with respect to *ownership of the property* i.e. that it *"belongs to the state, unless the contrary is proved."*

24. This is a significant aspect, because unlike some statutes[11], the Act in the present case, does not create a presumption about a culpable mental state of the

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[11]For example, Income Tax Act, 1961:

*"**Section 278E.** (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.*

Explanation - In this sub-section, 'culpable mental state' includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability."

alleged offender. Instead, the nature of the presumption is that it relates to the ownership of the forest produce. This important aspect has a bearing on the matter. Whether an offence can be said to have been committed without the necessary *mens rea* has often arisen for consideration. Generally, there is a presumption that *mens rea* is an essential ingredient in every offence. Yet, that presumption can be displaced either by the phraseology of the law creating the offence or by the subject matter with which it deals; both must be considered.[12] This court, in *Nathulal v. State of Madhya Pradesh*[13], in that context, observed as follows:

> *"Mens rea is an essential ingredient of a criminal offence. Doubtless a statute may exclude the element of mens rea, but it is a sound rule of construction adopted in England and also accepted in India to construe a statutory provision creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication excluded mens rea. The mere fact that the object of the statute is to promote welfare activities or to eradicate a grave social evil is by itself not decisive of the question whether the element of guilty mind is excluded from the ingredients of an offence. Mens rea by necessary implication may be excluded from a statute only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated. The nature of the mens rea that would be implied in a statute creating an offence depends on the object of the Act and the provisions thereof."*

Umashanker v. State of Chhattisgarh[14] underlined the existence of *mens rea*, as follows:

Section 10E of the Essential Commodities Act is as follows:

*"**10E. Presumption of culpable mental state**.—(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.*

Explanation.—In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability."

[12]*Sherras v. De Rutzen* (1895) 1 QB 918; *State of Maharashtra v. Mayer Hans George*1965 (1) SCR 123.

[13]AIR 1966 SC 43

[14](2001) 9 SCC 642

> *"7. Sections 489-A to 489-E deal with various economic offences in respect of forged or counterfeit currency notes or banknotes. The object of the legislature in enacting these provisions is not only to protect the economy of the country but also to provide adequate protection to currency notes and banknotes. The currency notes are, in spite of growing accustomedness to the credit card system, still the backbone of the commercial transactions by the multitudes in our country. But these provisions are not meant to punish unwary possessors or users.*
>
> *8. A perusal of the provisions, extracted above, shows that mens rea of offences Under Sections 489-B and 489-C is "knowing or having reason to believe the currency notes or banknotes are forged or counterfeit". Without the aforementioned mens rea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency notes or banknotes, is not enough to constitute offence Under Section 489-B Indian Penal Code. So also possessing or even intending to use any forged or counterfeit currency notes or banknotes is not sufficient to make out a case Under Section 489-C in the absence of the mens rea, noted above."*

In *Raghunath Singh v. State of M.P.*[15] this court held that use of the word "know" would mean that *mens rea* of the offender has to be established:

> *"Section 368 speaks of "knowledge" when it says, "Whoever knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person..." The Indian Penal Code uses two different expressions in its different parts. Sometimes the gist of the offence is dependant on knowledge and the words "knowing" or "knowingly" are used to indicate that knowledge as such must be proved either by positive evidence or circumstantially before mens rea can be established. Sometimes (see for example Sections 212, 411, etc), the expression "has reason to believe" is used. The words "knowing" or "knowingly" are obviously more forceful than the words "has reason to believe" because they insist on a greater degree of certitude in the mind of the person who is said to know or to do the act knowingly. It is not enough if the evidence establishes that the person has reason to suspect or even to believe that a particular state of affairs existed. When these words are used, something more than suspicion or reason for belief is required. Before an offence under Section 368 could be brought home it must be established that accused knew that the person had been kidnapped or abducted."*

25. Therefore, in the present case, the State had to show, that the forest produce was *illicitly* removed, or was illicitly in the possession of the accused, and in either case, that the same was within his knowledge. This foundational

[15] 1967 JLJ 234 (SC)

fact, as previously discussed, has to be proved beyond reasonable doubt. Thereafter, the accused has to establish, a *credible or reasonable* explanation.

26. The state no doubt has led evidence to show that the goods seized bore the labels of the appellant's firm and further that no transport licence was available. However, this *per se* does not establish *illicit possession of* forest produce within his knowledge. For a court to so conclude, the prosecution had to, in addition, prove *beyond reasonable doubt*, the foundational fact that the accused had *knowingly* removed the forest produce illicitly. It is here, that the presumption under Section 69 cannot apply; it merely directs a presumption that the forest produce belongs to the government.

27. In the opinion of the court, the impugned judgment, by reversing the decision of the Sessions Court, is in error. The Sessions Court had clearly recorded that the appellant's explanation that as L-4 Central Excise licence holders they were absolved of any responsibility in relation to observance of any other law, was misplaced and wholly inadequate. The appellant could legitimately bring into existence an *excisable* produce but that did not absolve them of the liability to follow other obligations in regard to procurement of regulated or controlled commodities, or even other aspects relating to them, such as licensing or permissions to store, transport them, etc. The appellant had produced documents (in the form of 45 invoices and receipts) to show the origin of the goods, and where they were purchased from, to say that they were procured in 104 transactions. The question, therefore, is whether by operation of Section 27 (1) (d), the initial presumption was established. The evidence on record showed that the cartons seized from the airport were bound to destinations in Germany, France, Spain etc. The State's main argument is that there was no prior permission, or clearance as required by the rules. Apart from stating that the invoices and other documents could not be verified, the State made no effort to establish, independently, in its evidence that any such effort

was made. The receipts, or primary evidence produced by the appellant, was not exhibited in the court; nor was any evidence led to show that in fact, such effort to trace the sellers of the oil was made by the State, and that the evidence furnished by the appellant was unbelievable. In these circumstances, it could not be said that the State had discharged its burden of proving beyond any doubt, that the appellant had *knowledge of the fact that the goods were illicit in origin.*

28. The High Court, in our opinion, fell into error, in holding that the presumption that the seizure of forest produce belonging to the State, *automatically* can result in a presumption of culpable mental state of the accused- in other words, that seizure of the goods *ipso facto* meant that the appellant had conscious knowledge about their illicit nature or origin, or that the accused's inability to account for a transit pass, implied that they procured the goods illegally, thus attracting Section 27. Such a leap of reasoning is not justified, given that the appellants had furnished a series of documents explaining how they had sourced the oil in question. The State's absence of diligence in producing those materials (which were in its possession) and proving that they were without credibility, cannot result in a conviction. Nor could the court have concluded adversely that the appellant's participation in the auction of the seized goods and their purchase, implicated them. There can be several reasons for such a conduct, including their wish to fulfil contractual obligations.

29. This court is of the opinion that the interference by the High Court, with the acquittal recorded by the Sessions Court, in this case, is not warranted. *Ghure Lal* (*supra*) no doubt, reviewed the consistent law declared that an appellate court should not interfere with the findings of the trial court merely because it prefers a plausible view, unless there are compelling reasons for it to do so. It is precisely in such cases, where appellate interference is unwarranted, that the State is entitled to appeal to the High Court under the Criminal

Procedure Code, 1973.[16] However, the facts reveal otherwise: one, the High Court concluded incorrectly that the result of Section 69 is a presumption that places the reverse burden of proof in respect of an offence - no such inference can be drawn from the plain text of that provision; and two, Section 27 (1) (d) requires *conscious knowledge*, of the nature of the goods, i.e. their illicit origin, which compels proof by the prosecution, *beyond reasonable doubt.* As explained earlier, the materials on the record show that the evidence in the possession of the defence and furnished to the state, was not even produced in court, nor was the primary evidence to substantiate the state's contentions in that regard, proved.

30. In view of the above discussion, this court is of opinion that the impugned judgment is in error. It is accordingly set aside. The appeal succeeds and is allowed, but with no order on costs.

.....J.
[INDIRA BANERJEE]

.....J.
[S. RAVINDRA BHAT]

NEW DELHI
OCTOBER 06, 2021

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[16] The relevant provision is as follows:

*"**378. Appeal in case of acquittal.***

(1) Save as otherwise provided in sub- section (2) and subject to the provisions of sub- sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court or an order of acquittal passed by the Court of Session in revision."