



timber in question before the appropriate Court within one month from the date of receipt of copy of the order. With the said direction, the learned Judge disposed of the writ petition.

3). Aggrieved by the said direction, the State of Kerala and two officers of the Forest Department filed Writ Appeal No.2246 of 2000 before the Division Bench. The Division Bench, by impugned order dated 31-01-2006, placing reliance on Section 54 of the Act and finding no infirmity in the direction issued by the learned Single Judge for production of the timber before the appropriate Court dismissed the writ appeal. The said order is under challenge before this Court in this appeal.

4). Heard both sides.

5). In the instant case, the forest officials had allegedly seized 41 rosewood timber and 54 rosewood billets. The High Court has relied on Section 54 of the Act which refers "disposal of the property accordingly to law", would necessarily mean that the disposal of the property confiscated under the provisions of Section 61A has to be under the orders of Magistrate. It is true that in addition to the criminal prosecution, the appellants are entitled to proceed against timber under Section 61A of the Act, but timber can also be disposed of after obtaining necessary orders from the Magistrate concerned under Section 54 of the Act. However, the Single Judge and the Division Bench has mis-interpreted the above provision, namely, Section 54 and held that disposal can only be done after physical production of timber before the Magistrate and after obtaining necessary orders. This is a perverse finding. The same was not warranted by the provisions of law, as the prosecution has to produce the relevant records showing such seizure and the officer, who has seized those

articles, has to satisfy that an offence has been committed by the accused. As rightly pointed out, the High Court did not consider the effect of the non-obstante clause in Section 61A as well as the legal presumption available under Section 69 of the Act. Likewise, the interpretation to Section 54 is not acceptable. We accept the stand taken by the State and set aside the order of the High Court and the Special Magistrate is permitted to proceed with the trial of the accused in accordance with law.

6). The appeal is allowed accordingly. No costs.

.....CJI.

(K.G.BALAKRISHNAN)

.....J

(P.SATHASIVAM).

.....J

(J.M.PANCHAL)

NEW DELHI  
11<sup>TH</sup> JULY, 2008.

ITEM NO.39.

COURT NO.1.

SECTION XI A

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No (s). 10382/2007

(From the judgement and order dated 31-01-2006 in W.A No.2246/2000 of the HIGH COURT OF KERALA AT ERNAKULAM).

STATE OF KERALA & ORS

Petitioner (s)

VERSUS

ANCY PHILLIP & ANR.

Respondent (s)

(With prayer for interim relief and office report).

Date: 11/07/2008. This Petition was called on for hearing today.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR.JUSTICE P.SATHASIVAM

HON'BLE MR.JUSTICE J.M.PANCHAL

For Petitioner(s) Mr.G.Prakash, Adv.

For Respondent (s) Mr.Wills Mathews, Adv.

Mr.Koshy Jacob, Adv.

Mr.M.K.Michael, Adv.

UPON hearing counsel the Court made the following ORDER

Leave granted

Heard both sides

The order of the High Court is set aside and the appeal is allowed, in terms of the signed order. No costs.

(G.V.Ramana)

Court Master

(Signed order is placed on the file).

(Veera Varma)

Court Master

**“Equivalent Citation” 2006 CriLJ2180, 2006(1) KLT 699.  
IN THE HIGH COURT OF KERALA  
W.A.NO.2246 OF 2000  
Decided on 31-01-2006**

Appellants: State of Kerala

Vs

Respondent: Ancy Philip

Hon'ble Judges:

V.K.Bali, C.J. and S.Siri Jagam, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Susheela R.Bhat, Government  
Pleader

For Respondents/Defendant: Pirappancode V Sreedharan Nair,  
Pirappancode V.S.Sudhir, S.P.Amvindakshan Pillay, Reshmi G Nair and  
T.G.Rajendran, Advs.

Subject: Civil

Catch Words

Mentioned IN

Acts/Rules/Orders:

Kerala Forest Act, 1961 – Sections 52, 52 (2), 53, 54 and 61 A.

Disposition:

Appeal dismissed.

## **JUDGEMENT**

S.Siri Jagan,J

1. This appeal is at the instance of the State of Kerala and two of its officers challenging the judgement of the learned Single Judge in O.P.No.25171 of 1999. The subject matter of the Original Petition was certain timber alleged to be forest produce, which was seized by the forest officials from the custody of the respondents. The respondents filed the Original Petition seeking release of the timber and a direction to the appellants to issue pass and permit enabling them to transport the timber. The appellants resisted the Original Petition on the ground that the timber in question belonged to the Government, which was illegally cut and tried to be removed by the respondents. Since the same involved forest offences, the respondents are not entitled to the reliefs prayed for according to the appellants. Although the learned Single Judge accepted the contentions of the appellants, he directed that the officer who has registered the case shall, after taking necessary steps, produce the timber in question before the appropriate court within one month from the date of receipt of a copy of the judgment. This judgment of the learned Single Judge is impugned by the appellants on the ground that by virtue of the provisions of the Kerala Forest Act, the appellants are not bound to produce the timber before the Court.

2. We have heard counsel on both sides in detail.

3. The contention of the learned Special Government Pleader (Forests) appearing for the appellants is that by virtue of Section 61 A of the Kerala Forest Act, the timber in question is liable to confiscation and therefore the appellants need not produce the timber before the

court but need only file a report regarding the seizure thereof. In support of this contention, the Special government Pleader relies on Sections 52 and 54 of the Kerala Forest Act, 1961. She would submit that under Section 52 (2), an officer seizing any timber in respect of a forest offence believed to have been committed under Sub Section (1), shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made. According to the learned Government Pleader, on such report being filed, the Magistrate is to take such measures as may be necessary for the trial of the accused as provided under Section 54. She lays stress on the provisions of Section 53 whereby any forest officer of a rank not inferior to that of a Ranger has powers to release tools, boats, vehicles or cattle under Section 52 to the owner thereof on execution of a bond for production of the property so released, if and when so required before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

4. On due consideration of the contentions of the learned Government Pleader (Forests), we are not satisfied that the same are sustainable. When timber or other forest produce are seized alleging commission of forest offence in respect thereof, the same has necessarily to be tried by the Magistrate having jurisdiction to try the same. In order to have a successful prosecution of the accused, it is essential that the forest produce, which is the subject matter of the offence complained of, is produced before the Magistrate. Without the 'thondi' article, it is impossible to have a successful prosecution. Further, the accused should necessarily be given an opportunity to contest the case of the prosecution relating to the nature of the timber

seized which can be done only if the timber is produced before the Magistrate. This is further abundantly clear by Section 54 itself, which is relied on by the learned Government Pleader. For convenience, we shall extract the said Section:

54. Procedure thereupon:- Upon the receipt of any such report, the Magistrate shall take such measures as may be necessary for the trial of the accused and the disposal of the property according to law.

The words "and the disposal of the property according to law" would mean that the disposal of the property has to be necessarily under orders of the Magistrate. No doubt, in addition to the prosecution, the appellants are entitled to proceed against timber under Section 61 A of the Kerala Forest Act. But that also can be done only after production of the timber before the Magistrate and after obtaining necessary orders in this regard as provided under Section 54 of the Kerala Forest Act. In that view, we do not find any infirmity in the direction issued by the learned Single Judge to the appellants to produce the timber in question before the appropriate court.

Therefore, the Writ Appeal is without any merit and the same is accordingly dismissed but without any order as to costs.