

**HIGH COURT OF GUJARAT**

**DINESH KHEMCHAND PATEL**

*Versus*

**STATE OF GUJARAT**

**Date of Decision:** 02 September 1998

**Citation:** 1998 LawSuit(Guj) 470

**Hon'ble Judges:** [A K Trivedi](#)

**Eq. Citations:** 1999 1 GLR 626, 1999 1 GLH 83, 1999 1 GCD 244

**Case Type:** Criminal Revision Application

**Case No:** 469 of 1997

**Editor's Note:**

**Gujarat Minor Forest Produce Trade Nationalisation Act, 1979 - Secs 3, 15 - Bombay Prohibition Act, 1949 - Secs 60, 135 - Accused found in possession of MHOWRA flowers which is an offence u/s 3 of Act of 1979 - When there is express provision u/s 3 of Act of 1979, though sec 60 of Act of 1949 would not come into play - Entire Stocks required to be confiscate - Application dismissed**

**Acts Referred:**

[Bombay Prohibition Act, 1949 Sec 135, Sec 60](#)

[Gujarat Minor Forest Produce Trade Nationalisation Act, 1979 Sec 15, Sec 3](#)

**Final Decision:** Application dismissed

**Advocates:** [Yatin Soni](#), [M A Patel](#), [Nandish Chudgar](#), [Nanavati Associates](#)

**A. K. TRIVEDI, J.**

**[1]** Heard learned Advocate Mr. Yatin Soni for the petitioner, learned Advocate Mr. Nandi Chudgar for M/s. Nanavati Associates on behalf of respondent No. 2 and Mr. M. A. Patel, learned A.P.P., for respondent No. 1.

**[2]** The petitioner has challenged the legality, validity and propriety of the order passed by the learned Addl. Sessions Judge, Panchmahals, dated 8-8-1997 in the proceedings of Criminal Appeal No. 20 of 1996.

**[3]** Respondent No. 2 is the Manager of Gujarat Rajya Van Vikas Nigam, Dahod, Dist. Panchmahals, a public Corporation established under the provisions of the Gujarat Minor Forest Produce Trade Nationalisation Act, 1979 (hereinafter referred to as the Act). That on 17-8-1993, the staff members of respondent No. 2 carried out a raid with striking force on the godown of the present petitioner and during the search, recovered an aggregate 31 bags of minor forest produce known as Mhowra flowers. The aggregate weight of the said article was 18.60 quintal. That a criminal complaint against the present petitioner was filed in the Court of J.M.F.C, Jhalod, Dist. Panchmahals, under the provisions of Sec. 3(2) of the Act. It may be noted that the petitioner pleaded guilty for the said offence before the learned J.M.F.C. and thereby by vide order dated 22nd July 1996, the learned J.M.F.C. convicted the petitioner for the said offence under Sec. 3(2) read with Sec. 15 of the Act and ordered imprisonment till rising of the Court and to pay a fine of Rs. 100/-. That as regards muddamal article, the Court passed the order to confiscate 10% of the muddamal Mhowra flowers recovered by respondent No. 2 and produced in the Court and to return 90% of the said muddamal flowers to the present petitioner who was the accused of the said complaint.

**[4]** That being aggrieved and dissatisfied by the said order of learned J.M.F.C, Jhalod, passed on 22nd July 1996, in respect to muddamal Mhowra flowers, present respondent No. 2 preferred Criminal Appeal No. 20 of 1996 in the Court of Addl. Sessions Judge, Panchmahals, at Godhra. That vide the impugned order dated 8-8-1997, the learned Addl. Sessions Judge, Panchmahals, modified the order passed by the learned J.M.F.C, Jhalod and directed to confiscate the entire quantity of muddamal Mhowra flowers for the reasons stated in the order.

**[5]** Learned Advocate Mr. Yatin Soni contended on behalf of the petitioner that learned Addl. Sessions Judge has erred while passing the order of confiscating the entire quantity of muddamal Mhowra flowers which is a minor forest produce under the provisions of the Act. It is submitted by Mr. Soni that, in the facts and circumstances of the case, there was no offence committed by the present petitioner while possessing the disputed quantity of Mhowra flowers. Elaborating the submission, Mr. Soni referred to and relied upon the provisions of Sec. 3(2) of the Act and submitted that the provisions of sub-sec. (2) of Sec. 3 of the Act are subject to the provisions of the Bombay Prohibition Act, 1949 (hereinafter referred to as the Prohibition Act). It is further submitted that in view of the said preceding clause of sub-sec. (2) of Sec. 3 of the Act, it was lawful for petitioner to purchase minor forest produce from another person, because during the relevant period when the said raid was carried out in the godown of the present petitioner, a vacation was declared by the State Government under the provisions of Sec. 60 of the Prohibition Act. Mr. Soni has referred to a true

copy of the notification produced on record which is dated 12th July 1993, bearing reference No. OM/100/ 2575. The text of the said notification is as under :

In exercise of the powers conferred by clause (d) of sub-sec. (1) of Sec. 139 of the Bombay Prohibition Act, 1949, (Bombay Act XXV of 1949), the Government of Gujarat, hereby exempts Mhowra flowers, which may be the produce of any years and of any areas from the provisions of sub-sec. (2), of Sec. 60, of the said Act, insofar as the said sub-sec. (2) relates to their collection, transport, sale, purchase or possession, in the area notified in column 2 of the schedule to Government Notification, Labour, Social Welfare and Tribal Development Department, No. GH/L/196/MFL/1078/21435/(79)/M, dated the 17th March, 1979, for the period commencing on the date of the publication of this Order in the Official Gazette and ending on the 31st December 1993.

**[6]** Referring to the contents of the notification, it is submitted by Mr. Soni that as there was a vacation, possession of Mhowra flowers does not amount to an offence and respondent No. 2 had no cause or power to prosecute the present petitioner for illegal possession or alleged transport of Mhowra flowers under Sec. 3(2) read with Sec. 15 of the Act. That the said submission though lucid logic, could hardly be accepted on true interpretation of the provisions of Sec. 3(2) of the Act in the context of Sec. 60 of the Prohibition Act.

**[7]** The provision of Sec. 3(2) of the Act is as under :

2. Subject to the provisions of the Bombay Prohibition Act, 1949, it shall be lawful for -

(a) any person to sell any minor produce to, or purchase any minor forest produce from, the State Government, authorised officer or an agent;

(b) a grower to transport any minor forest produce grown by him from any place in a unit where such produce has been grown to a purchasing centre or depot set up in that unit under Sec. 8 or to any other place in that unit;

(c) (i) any person who has purchased any minor forest produce from the State Government, or an authorised officer or an agent, and,

(ii) any person who has purchased any minor forest produce from another person under clause (e) to transport the same, in accordance with the terms and conditions specified in a permit issued by such authority and in such manner as may be prescribed, for the purpose of being used in the manufacture of finished

goods within the State or for the purpose of sale outside the State, or for the purpose of resale to the State Government, an authorised officer or an agent;

(d) any person to import any minor forest produce or to transport the minor forest produce so imported, in accordance with the terms and conditions of a permit issued by such authority and in such manner as may be prescribed; and

(e) (i) any person, who has purchased any minor forest produce from the State

Government or authorised officer, or an agent to sell such of the minor forest produce, as may be specified by the State Government by general or special order published in the Official Gazette, to any other person; and (ii) other person to whom the minor forest produce is so offered for purchase to purchase the same, in accordance with the terms and conditions specified in a permit issued to the seller for the purpose of sale and to the purchaser for the purpose of purchase, by such authority and in such manner as may be prescribed. It may be noted that the Preamble of the Nationalisation Act states that the said Act is enacted to provide for the nationalisation of trade in certain minor forest produce in the State of Gujarat. That under Sec. 9, Mhowra flowers is declared as minor produce. As such, the object of the Act is to regulate and control the trade of Mhowra flowers within the specified area of the State of Gujarat and thereby under Sec. 3, a restriction on sale, purchase or transport of minor forest produce is imposed and penalty is prescribed vide Sec. 15 for violation of the provisions of Sec. 3 of the Act.

**[8]** That Sec. 60 of the Prohibition Act is as under : "60. (1) No person shall export or import Mhowra flowers except under a pass granted by the Collector or an officer authorised in this behalf.

(2) No person or head of household on his behalf or on behalf of the members of his household, shall in the aggregate collect or transport or sell or buy or have in his possession Mhowra flowers exceeding the prescribed limit in weight, except under the authority and subject to the conditions of a licence, permit or pass granted by the Collector or an officer authorised in this behalf :

Provided that no licence, permit or pass shall be necessary for the collection, transport, sale, purchase, or possession within such area and during such period (hereinafter called vacation period) as the State Government may, by notification in the Official Gazette, notify, of any quantity of Mhowra flowers which shall be the produce of that year and of that area :

Provided further that unless the State Government by a notification in the Official Gazette, otherwise directs, no licence, permit or pass shall be necessary for the

transport by rail of any quantity of Mhowra flowers through an area which has no vacation period or the vacation period for which has expired at the time when the transport takes place, provided that -

(i) the said flowers are not unloaded in transit, and

(ii) there is a vacation period at the place from which and to which the said flowers are transported at the time when the said flowers are depatched or arrive, as the case may be."

A mere perusal of the provision suggests that possession of Mhowra flowers which is also an offence under the provisions of the Prohibition Act, 1949, has been exempted during certain period in certain area by declaring notification under Sec. 60 of the Prohibition Act. That above stated notification is issued under the provisions of the Prohibition Act, 1949 and as such, possession of Mhowra flowers may not be an offence under the provisions of the said Act, but per se, it cannot exempt the said possessed quantity of Mhowra flowers from the regulatory provision of the Nationalisation Act. In other words, even during the period of vacation declared under Sec. 60 of the Prohibition Act, 1949, any person who desired to purchase, sale or transport Mhowra flower, which is a minor forest produce under the Nationalisation Act, could purchase, sale or transport under the provisions of the said Act which requires obtaining a permission from an authorised authority and purchase or sale could be made only through authorised person.

**[9]** In the instant case, as per the statement recorded of the present petitioner, the disputed quantity of Mhowra flowers was purchased from one Gopaldas Makhandas of Jhalod. However, said Gopaldas Makhandas, in his statement has stated that, though he has sold the said goods to the petitioner, he has not issued any bill. It is not the case of the petitioner that said Gopaldas Makhandas was an authorised agent appointed by respondent No. 2, whereby he could legally sale or transport the Mhowra flowers as a minor forest produce under the provisions of the Nationalisation Act. In view of the same, on admission of the present petitioner that he has purchased the said Mhowra flowers from a person who was not authorised to sell, admittedly, has purchased and possessed Mhowra flowers which amounts to violation of the provisions of Sec. 3(2) of the Act and as per Sec. 15, the petitioner could be prosecuted for the same.

**[10]** Learned Advocate Mr. Soni has also canvassed an argument that to confiscate the minor forest produce on violation of the provisions of the Act is a discretionary power under Sec. 15 of the Act and the Court ought to have exercised the discretion on a sound proposition of law. That learned J.M.F.C. had exercised the discretion of

confiscating only 10% of the Mhowra flowers and had returned 90% of the Mhowra flowers to the accused which order is modified by the learned Addl. Sessions Judge and has committed an error of law. It is difficult to accept the said submission. No discretion could be exercised contrary to the prescribed provisions of law. Thereby, the error which was committed by the learned J.M.F.C., Jhalod by returning 90% of the muddamal Mhowra flowers to the accused has rightly been rectified by the learned Addl. Sessions Judge, Panchmahals by ordering the confiscation of the entire quantity of the goods.

**[11]** In view of the above stated discussion, on true interpretation of Sec. 3(2) of the Act, in my opinion, the petitioner had no right or authority to possess or transport the disputed quantity of Mhowra flowers without any lawful permit issued by or on behalf of respondent No. 2 and as such the learned Addl. Sessions Judge, Panchmahals has rightly ordered to confiscate the said muddamal article, Mhowra flowers.

**[12]** On the basis of the above discussion, I hold that as there is no error of law in the impugned order, which is just, proper and reasonable, the petition is not maintainable at law and deserves to be rejected. The petition stands disposed of as rejected. Rule is discharged. Interim relief granted earlier stands vacated. No order as to costs.

Application dismissed.