

2008 SCC OnLine Gau 406 : (2008) 4 Gau LR 815 : (2008) 64 AIC (Sum 38) 19

In the High Court of Gauhati
(BEFORE I.A. ANSARI, J.)

Hem Kanta Talukdar ... Petitioner;

Versus

Sunil Sutradhar and ors. ... Respondents.

W.P.(C) No. 1853 of 2007
Decided on February 1, 2008

Assam Forest Regulations, 1891, S. 3(2), 3(3) and 3(4)(a) — Forest Produce — Fashioned wood such as wooden frames of window and ventilator — Whether forest produce — Held: yes — Vehicle found carrying forest produce without requisite permit — Forest offence under section 3(5) committed — Owner of the vehicle failed to show that he took all reasonable and due precaution to ensure that his vehicle was not used in the commission of any forest offence — Vehicle liable to be confiscated — Order of confiscation upheld and restored.

Advocates who appeared in this case:

M.G. Uzir, Mr. R. Baruah, Mr. S. Kalita and Mr. S.M. Baruah for the petitioner.

Mr. B.K. Ghosh, Mr. B.B. Gogoi and Mr. G.N. Sahewalla, amicus curiae for the respondents.



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Cases referred: Chronological

Mulibash Hastasilpa Samabay Samity Ltd. v. State of Assam, 2006 (1) GLT 477.

Suresh Lohiya v. State of Maharashtra, (1996) 10 SCC 397.

State of Orissa v. Titaghur Paper Mills Co., 1985 Supp SCC 280.

JUDGMENT AND ORDER

1. By making this application under article 226 of the Constitution of India, the petitioner has challenged the order, dated 28.3.2007, passed, in Criminal Appeal No. 30(D-4)/2006, by the learned Sessions Judge, Darrang, setting aside the order of confiscation, dated 4.12.2006, passed by the Authorized Forest Officer-cum-Divisional Forest Officer, Mangaldoi Division, under Section 49 C of the Assam Forest Regulations, 1891 ('the AFR').

2. Before entering into the merit of this writ petition, the material facts, which have led to the making of the present writ petition, may be set out as follows:

- (i) On 29.12.2005, some forest officials of Dumunichowki Forest Check Gate intercepted a truck, bearing registration number AS-12B-9732, which was carrying wooden frames of ventilators, windows and one dining-table towards Guwahati. The said wooden frames were seized by the forest officials on the ground that the same were 'forest produce' within the meaning of section 3(4) of the AFR. As far as the vehicle was concerned, a proceeding of confiscation was initiated under section 49 of the AFR. Pursuant to the confiscation proceeding, so initiated, respondent No. 1 herein, namely, Sunil Sutradhar, who is the owner of

the vehicle, in question, appeared in the proceeding and filed his reply to the show cause notice served upon him asking him to explain as to why the said vehicle should not be confiscated the State.

- (ii) According to the case set up by the respondent No. 1 in the confiscation proceeding, M/s. Guru Furniture House, Darrang, with one Shri Paritosh Bishwa Sarma as the proprietor, had sold, on 29.12.2005, some finished wooden products to one Sri A. Sarma of Hatigaon, Guwahati. These wooden products consisted of five pieces of wooden frames of window, nine pieces of wooden frames of ventilator and one dining-table. These wooden products were finished products made out of forest produces and in terms of the Government Notification, dated 4.5.2002, no transit permit was required for transportation thereof respondent No. 2 was the driver of the said truck and an employee of respondent No. 1.
- (iii) In the confiscation proceeding both sides adduced evidence. The Authorized Forest Officer concluded that the said finished products of wood were 'forest produce' and, as the vehicle, in question, had been



found carrying the 'forest produce' without requisite documents, namely, transit permit, the vehicle was liable to confiscation for being used in the commission of forest offence. Having, thus, concluded that the vehicle, in question, was liable to be confiscated, the Authorized Forest Officer, vide order dated 4.12.2006, confiscated vehicle to the State. Aggrieved by the order, dated 4.12.2006, aforementioned, respondent No. 1 herein impugned the same in an appeal preferred under section 49C, AFR. This appeal gave rise to Criminal Appeal No. 35(D-4)/2006 aforementioned. By an order, dated 28.3.2007, passed in the said appeal, as the learned Sessions Judge, Darrang, has set aside the order of confiscation, dated 4.12.2006, and directed restoration of the vehicle to the respondent No. 1 herein, as owner thereof, the Authorized Forest Officer has, with the help of the present writ petition, impugned the said appellate order seeking to get the same set aside and quashed.

3. I have heard Mr. G. Uzir, learned counsel for the writ petitioner, and Mr. B.K. Ghosh, learned Senior counsel, appearing on behalf of the respondent No. 1. I have also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam, and Mr. G.N. Sahewalla, learned senior counsel, as amicus curiae. It is submitted by Mr. G. Uzir, learned counsel, that the entire scheme of the AFR and the Rules framed thereunder clearly shows that it is not only the power, but also the duty of the forest officials to ensure that no 'forest produce' is allowed to be transported except in accordance with the provisions made in the AFR and the rules framed thereunder. In terms of the rules, so framed, points out Mr. Uzir, transportation of a 'forest produce' is not possible without transit permit. Hence, when questioned, a person transporting a 'forest producer must be able to produce a transit pass authorizing him to transport such 'forest produce'. It is also the submission of Mr. Uzir that a forest official is duty bound to trace out the origin of the 'forest produce' and, hence, it is within the competence of a forest official to demand production of requisite documents on the strength of which a 'forest produce' is being carried or transported from one place to another. In the present case, the wooden frames, etc. were, according to Mr. Uzir, 'forest produce' and since the same were found being carried without requisite transit permit, 'forest offence' was found to have been committed and since such 'forest offence' was found to have been committed by making use of the vehicle, in question, the forest officer had acted within his power in confiscating the vehicle. The learned Sessions Judge,

contends Mr. Uzir, erred, in the facts and circumstances of the case and the law relevant thereto, in setting aside the order of confiscation. Since the AFR or the Rules framed thereunder do not provide for any other remedy to the forest officer, he



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has been compelled to file this application, under articles 226 and 227 of the Constitution of India, seeking interference by this court so as to uphold the law.

4. Appearing on behalf of respondent Nos. 1 and 2, Mr. B.K. Ghosh, learned senior counsel, submits that neither the wooden frames nor the dining table, which were found to have been carried in the vehicle, in question, can be said to be 'forest produce'. Far from being 'forest produce', the said materials, according to Mr. Ghosh, were 'finished products' and commercially known as new articles. Such commercial product, contends Mr. Ghosh, cannot be said to be 'forest produce' within the provisions of the AFR and no 'forest offence' can, therefore, be said to have been committed, when the vehicle was found carrying the wooden materials. It is further submitted by Mr. B.K. Ghosh that as far as the respondent No. 1 is concerned, he is the owner of the vehicle and the wooden materials, in question, were carried by the respondent No. 2 without the knowledge of respondent No. 1 and, hence, in such circumstances, the vehicle, even if found to have been carrying 'forest produce', could not have been confiscated inasmuch as a vehicle is not liable to confiscation if the vehicle carries 'forest produce' without the knowledge of the owner thereof. In support of his submission, Mr. Ghosh places reliance on the provisions of section 49(6) of the AFR. Support for his submission is sought to be derived by Mr. Ghosh also from the decisions in *Suresh Lohiya v. State of Maharashtra*, (1996) 10 SCC 397; *State of Orissa v. Titaghur Paper Mills Company Ltd.*, 1985 Supp SCC 280; and *Mulibash Hastasilpa Samabay Samity Ltd. v. State of Assam*, 2006 (1) GLT 477. In the facts and circumstances of the present case, the order of confiscation was, submits Mr. Ghosh, wholly illegal and the learned Sessions Judge committed no error of law in setting aside the same.

5. Appearing as amicus curiae, Mr. Sahewalla, learned senior counsel, submits that the dining table and the wooden frames, in question, were 'finished products' in the light of the decision in *Suresh Lohiya* (supra) and, hence, in such circumstances, the vehicle ought not to have been confiscated. As far as the learned Additional Public Prosecutor is concerned, his submission is that the order of confiscation is a valid order inasmuch as the wooden frames were 'forest produce'.

6. Before I endeavour to determine the question as to whether the materials found to have been allegedly carried in the vehicle, in question, were 'forest produce' or not, it is necessary to clearly understand as to when a 'forest produce', even if found to have been carried in a vehicle, does not make the vehicle liable to confiscation.



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7. I may point out that a 'forest offence', according to section 2(5) of the AFR, means an offence punishable under the AFR or any rule framed thereunder.

8. The rule-making power of the State Government is traceable to section 40, which falls under Chapter VI of the AFR. This chapter reads, 'Control of Forest Produce in

Transit'. The relevant provisions of section 40 state as under:

"40. *Power to make rules to regulate transit of forest produce.*—(1) The control of all rivers and their banks as regards the floating of timber as well as the control of all forest produce in transit by land or water, is vested in the State Government, and that Government may make rules to regulate the transit of any forest produce.

(2) Such rules may, among other matters,—

(a) prescribe the routes by which alone forest produce may be imported into, exported from or moved within the territories to which this Regulation extends;

(b) prohibit the import, export, collection or moving of forest produce without a pass from an officer authorised to issue the same or otherwise than in accordance with the conditions of such pass:

(c) provide for the issue, production and return of such passes:

* * *

(f) provide for the stoppage, reporting, examination and marking of forest produce in transit in respect of which there is reason to believe that any money is payable to the Government or to which it is desirable, for the purposes of this Regulation, to affix a mark:

* * *

(i) authorise the transport of timber across any land, and provide for the award and payment of compensation for any damage done by the transport of such timber:

* * *

(3) The State Government may direct that any rule made under this section shall not apply to any specified class of timber or other forest produce or to any specified local area."

9. A careful reading of section 40 shows that the State Government may make rules to regulate, inter alia, the transit of any 'forest produce' by, amongst others, prescribing the Rules by which alone 'forest produce' may be allowed to be moved, prohibit movement of 'forest produce' without a pass to be issued by an officer authorized in this behalf to issue such pass, production and return of such passes, authorize



transport of timber across any land and provide for stoppage, reporting, examination and marking of 'forest produce' in transit. Section 41 empowers the State Government to make breach of any of the rules punishable by imprisonment not exceeding three years or fine, which may extend to five thousand rupees or both.

10. As correctly pointed out by Mr. Uzir, a set of Transit Rules have been framed by the State Government in exercise of its powers under sections 40 and 41 of the AFR. In fact, it was not in dispute, in the confiscation proceeding or in the appeal under section 49C, nor is it in dispute, in the present writ petition, now, that movement of 'forest produce' is not possible except in accordance with requisite transit permits, which are to be issued in terms of the Transit Rules framed under sections 40 and 41 of the AFR. It is also not in dispute that the movement of 'forest produce', without a transit pass, is a 'forest offence' within the meaning of section 3(5) of the AFR.

11. Bearing in mind what is indicated above, let me, now, turn to section 49. The relevant provisions of section 49, which prescribe the penalties and procedure in

respect of forest offence, including confiscation, read as under:

"49. *Seizure of property liable to confiscation.*—(1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce together with all tools, boats, motorized boats, vessels, cattle, carts, rafts, machinery, vehicles, trucks, ropes, chains or any other implements, articles or materials used in the commission of such offence may be seized by any Forest Officer not below the rank of a Forester or any Police Officer not below the rank of a Sub-Inspector of Police.

(4) Subject to the provisions of sub-sections (5) and (6), where the Authorised Officer upon production before him of the property seized or upon receipt of a report about seizure as the case may be,; and after such personal inspection of verification as he may deem fit and necessary, is satisfied that a forest offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded therein, confiscate the forest produce so seized together with all tools, vehicles, cattle, trucks, motorised boats, boats, carts, machineries rafts, vessels, ropes chains or any other implements or articles used in committing such offence. A copy of the order of confiscation shall, without any undue delay, be forwarded to the Circle Conservator of Forests of the Circle in which the forest produce has been seized and the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

(5) No order confiscating any property shall be made under the preceding provisions unless the Authorised Officer—



- (a) sends an intimation in the prescribed form about the initiation of the proceeding for confiscation of property to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made;
- (b) issue a notice in writing to the person from whom the property is seized and to any other person who may appear to the Authorised Officer to have some interest in such property and in cases of motorised boats, vessels, vehicle trucks etc. having a registered number to the registered owner thereof;
- (c) affords to the persons referred to in clause (b) above a reasonable opportunity of making a representation within such reasonable time as may be specified in the notice, against the proposed confiscation; and
- (d) gives to the Officer effecting the seizure and the person or persons referred to in clause (b) or (c) above, a reasonable opportunity or being heard on a date or dates to be fixed for the purpose.

(6) Notwithstanding anything contained in the foregoing provisions, no order of confiscation under sub-section (4) of any tools, boats, motorised boats, vessels cattle, carts, rafts, machinery, vehicles, trucks, ropes, chains or any other implements, articles (other than timber or forest produces) shall be made if any person referred to in clause (b) of subsection (5) proves to the satisfaction of the Authorised Officer that such tools, vehicles, machinery, trucks, vessel boats, motorised boats, rafts, carts, cattle, ropes, chain or any other implements or articles were used without his knowledge or connivance or abetment or as the case may be, without the knowledge or connivance or abetment of his servant or agent and that all reasonable and due precautions had been taken against the use of the object aforesaid for the commission of forest offence."

12. A careful reading of section 49(1) shows that when there is reason to believe that a 'forest offence' has been committed in respect of any 'forest produce', then, a forest officer, not below the rank of a Forester, is empowered to seize not only the 'forest produce', but also, amongst others, all the tools, the vehicle, etc., which may have been used in the commission of such 'forest offence'. Section 49(6) shows that an order of confiscation cannot be made if the person, proceeded against in a confiscation proceeding, proves, to the satisfaction of the forest officer, that such tools, vehicle, etc., were used without his knowledge or connivance or abetment or, as the case may be, and without the knowledge or connivance or abetment of his servant or agent and that all reasonable and due precautions had been taken against the use of the object(s) aforesaid for the commission of forest offence, no order of confiscation of such tools, vehicles, etc., shall be made.



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13. From a minute reading of section 49(6), it becomes clear that in order to avoid confiscation of a vehicle, it is not enough for the owner of the vehicle to show that the vehicle was used in the commission of 'forest offence' without his knowledge or connivance or abetment, rather, the owner of the vehicle must also show that all reasonable and due precautions had been taken against the use of his vehicle for the commission of any forest offence. In the case at hand, it had been contended, in the confiscation proceeding, that the vehicle, in question, was not found to have been carrying 'forest produce', for, wooden window or ventilator frames were not 'forest produce' nor was the dining-table a 'forest produce'. If it is, now, found that the items aforementioned were not 'forest produce', no 'forest offence' can be said to have been committed and the vehicle, in question, would, then, not be liable to confiscation. If, however, the said wooden frames were found to be 'forest produce' and, since the same were, admittedly, being carried in the vehicle aforementioned without requisite transit permit, a 'forest offence' would be deemed to have been committed. In the later case, it would not be enough for the owner of the vehicle, i.e., the respondent No. 1, to show that his vehicle was used for commission of forest offence without his knowledge or connivance or abetment, rather, he must also prove that he took all reasonable and due precautions to ensure that his vehicle was not used for commission of such forest offence.

14. In the present writ petition, though it has been the case of respondent No. 1 that the materials, in question, were carried in his vehicle without his knowledge or connivance or abetment, what is of utmost importance to note is that there is neither any assertion in this regard nor any evidence, direct or indirect, showing that respondent No. 1 took all reasonable and due precautions to ensure that his vehicle was not used for carrying 'forest produce'. Nowhere, in his reply to the said notice issued in the said confiscation proceeding, nor in his evidence, the respondent No. 1, as owner of the vehicle, had contended that he had given clear instructions to respondent No. 2, who was, admittedly, driving the vehicle, that his said vehicle must not be used for carrying any 'forest produce' without requisite transit permit.

15. Bearing in mind what is indicated above, let me, now, determine as to whether the 'wooden frames', in question, can be held to be 'forest produce'.

16. My quest for an answer to the question, as to whether 'wooden frames' of window and ventilator can be regarded as 'forest produce' or not, brings me to the definition of 'timber' and, when I turn to the definition of 'timber', I notice that section

3(3), which contains the definition of 'timber', reads, thus: 'timber' means trees, when



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they-have felled or have been felled, or all wood, whether cut out or fashioned or hollowed out for any purpose or not and includes trees when cut into pieces or sizes or peeled out or sliced out (veneer) for manufacturing of ply-board, block board or any other purposes or not.

17. Turning to Section 3(4), I notice that 'forest produce' stands defined as follows:
"3(4) "forest produce" includes—
(a) the following, whether found in, or brought from, a forest or not that is to say, -timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, myrabolams and rhinoceros horns and
(b) the following when found in, or brought from, forest that is to say
(i) trees and leaves: and fruits and all other parts or produce not hereinbefore mentioned of trees,
(ii) plants not being trees (including grass creepers, reeds and moss) and all parts or produce of such plants,
(iii) wild animals and skins, tusks, and horns other than rhinoceros horns, bones, silk, cocoons, honey and wax and all other parts or produce of animals, and
(iv) peat, surface-soil, rock and minerals (including limestone, late rite mineral oils and products of mines or quarries)."

18. A careful reading of section 3(4)(a) shows that 'forest produce' includes 'timber' and when one turns to section 3(3), it becomes clear that 'timber' means, amongst others, tree. One is, therefore, required to know the definition of 'tree' too. It is section 3(2), which defines 'tree' thus: 'tree' includes palms, bamboos, stumps, brushwood and canes.

19. What is, however, important to note is that a tree, ordinarily, mean a thick natural wooden stump from which branches grow usually with leaves on them; whereas bamboo is a tall tropical plant, which is a member of the grass family. Bamboo has hard hollow stumps, which are used for making furniture, poles, etc. Cane is the solid stem of small, slender palms (sometimes climbers but usually branchless), such as Calamus or Rattan, Sugar-cane, etc., or the hard hollow stump of the larger grasses, such as, Bamboo, etc. The word 'Cane' is defined, in *Chambers Twentieth Century Dictionary* (Revised Edition-1976), as "the stem of one of the small palms (as calamus or rattan) or the larger grasses (as bamboo, sugar-cane), or raspberry or the like. In *The Oxford English Dictionary* (Vol. IIC-1933), the word 'Cane' is defined as "The hollow jointed ligneous stem of various giant reeds or grasses, as Bamboo and Sugar cane, and the solid stem of some of the more slender palms, esp. the genus calamus (the Rattan); also the stem of the Raspberry



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and its congeners". A three Judge Bench, in *T.N. Godavarman Thirumulpad v. Union of India* — IA 707 (decided on 18.2.2002), clarified as under:

"Clarification—Order prohibiting cutting of trees not to apply to bamboos except areas that are National Parks or Sanctuaries.

ORDER

It is clarified that the order of this court prohibiting cutting of trees does not apply to bamboos including cane, which really belongs to the grass family, other than those in the national parks and sanctuaries. In other words, no bamboos including cane in national parks and sanctuaries can be cut but the same may be cut elsewhere.

The IA stands disposed of.”

20. From what has been clarified by the Supreme Court, in *T.N. Godavarman Thirumulpad* (supra), it is clear that ‘bamboo’ or ‘cane’ does not, ordinarily, mean ‘timber’. In this light, one has to, now, consider the definition of ‘tree’ and determine if ‘timber’, as defined under section 3(3), would include not only ‘tree’, as is, ordinarily, understood, but also ‘bamboo’ and ‘cane’; and if ‘bamboo’ and ‘cane’ falls within the definition of ‘timber’, whether fashioned ‘bamboo’ and ‘cane’ shall be treated as ‘timber’ or it is only ‘fashioned wood’, which can be treated as ‘timber’? To put it differently, the question is as to whether ‘fashioned cane’ and ‘fashioned bamboo’ are same as ‘fashioned wood’ or ‘fashioned wood’ is distinct and different from ‘fashioned cane’ and ‘fashioned bamboo’.

21. In the backdrop of the fact that ‘bamboo’ or cane does not, ordinarily, mean ‘timber’, let me revert to the definition of ‘timber’. A careful and microscopic reading of the definition of ‘timber’, as given in section 3(3) and quoted above, shows that the definition of the word ‘timber’ stands divided into two distinct parts, which are to be read disjunctively and not conjunctively. The first part of the definition of the word ‘timber’ shall be read to mean ‘trees’, when they have felled or have been felled; whereas the second part of the word timber shall be read to mean all ‘wood’, whether cut out or fashioned or hollowed out for any purpose or not and includes trees, when cut into pieces or sizes or peeled out or sliced out. (veneer) for manufacturing of ply-board, block board or any other purposes or not. A correct manner of reading the definition of ‘timber’, is, in the view of this court, thus: ‘timber’ means trees, when they have felled or have been felled, or all wood, whether cut out or fashioned or hollowed out for any purpose or not and includes trees, when cut into pieces or sizes or peeled out or sliced out (veneer) for manufacturing of ply-board, block board or any other purposes or not.



Why such construction is required to be given to the definition of ‘timber’, contained in section 3(3), is that ‘wood’, as described in *Oxford Dictionary* (3rd edn.), is a hard, fibrous substance of tree; whereas bamboo belongs to grass family and, cannot, therefore, be treated as wood. In *Websters (Third) New International Dictionary* (1981 Edition), the word ‘wood’ means the hard fibrous substance that makes up the greater part of the stems and branches of trees or shrubs beneath the bark, found to a limited extent in herbaceous plants, and consists technically of the aggregated xylem elements intersected in many plants with the rays; the trunks or large branches of trees sawed or otherwise prepared for commercial use; a form or condition of wood substance or timber; esp, the wood of a particular kind of tree; something made of wood. The *Shorter Oxford English Dictionary* (Vol. II) defines ‘wood’ as the substance of which the roots, trunks and branches of trees or shrubs consist; trunks of other parts of trees collectively (whether growing or cut down ready for use). In the *Advance Law Lexicon Dictionary* (3rd edn.), the word ‘wood’ is defined as the word often used in the plural to indicate a large and thick collection of trees. It is synonymous with forest, although the term forest is sometimes said to imply a wood of considerable

extent. Both terms include not only the trees but the land on which they stand.

22. What logically follows from the above is that the word 'wood', is not relatable to the word 'bamboo' or 'cane'; hence, the word 'wood', occurring in the definition of the word 'timber' in section 3(3), would not relate to bamboo or cane, but only to the word 'tree' as is, ordinarily, understood. This aspect becomes clear, when one reads carefully the decision in *Suresh Lohiya v. State of Maharashtra*, (1996) 10 SCC 397, which the respondents rely upon. In *Suresh Lohiya* (supra), the Supreme Court had an occasion to determine whether 'wood', in the given definition of 'timber', in the Indian Forest Act, 1927, would include 'fashioned bamboo', such as, betti and chetti.

23. In the definition of 'timber', which had been considered by the Apex Court, in *Suresh Lohiya* (supra), the definition read,

"2.(6) 'timber' includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not;"

24. It is worth pointing that there is no noticeable difference between the essential parts of the definition of 'timber' under the Indian Forest Act, 1927, as had been considered in *Suresh Lohiya* (supra), and in the Assam Forest Regulation except that in *Suresh Lohiya* (supra), in the definition of the word 'timber', the words 'tree' and 'wood' stand connected by the word 'and'; whereas, in the case at hand, the two words, namely,



'tree' and 'wood' stand disjoined by the use of the word 'on Even when the two expressions, occurring in the definition of 'timber' in *Suresh Lohiya* (supra), stood connected by the word 'and', the Apex Court still pointed out that the second part of the definition of 'timber', namely, all wood, whether cut out or fashioned or hollowed out for any purpose or not and includes trees when cut into pieces or sizes or peeled out or sliced out (veneer) for manufacturing of ply-board, block board or any other purposes or not, does not take within its fold 'fashioned bamboo', for, the second part of the definition of 'timber' is relatable to the word 'wood' and not 'tree'. This inference gets strengthened, when one carefully reads the relevant observations made in *Suresh Lohiya* (supra), which read,

"..... we agree with Shri Bhatia that the second part of the definition does not take within its fold fashioned bamboo as that part is relatable to wood, and not tree. We have said so because the definition of tree includes even canes, and a cane cannot be taken as a wood, even if a tree could be."

25. The above observations, made in *Suresh Lohiya* (supra), clearly reflect that 'bamboo' or 'cane' is not relatable to the word 'wood' in the definition of the word 'timber' even in the Assam Forest Regulation.

26. What follows from the above discussion is that while reading the definition of 'tree', as given in section 3(2), the word 'tree' would include palms, bamboos, stumps, brushwood and canes. However, while construing the definition of 'timber' as given in section 3(3), the word 'wood' would not be relatable to 'fashioned cane' or 'fashioned bamboo'. That is why, 'fashioned bamboo' or 'fashioned cane', such as, 'chetti' and 'betti' would not be regarded as timber'; whereas the word 'tree', even in the definition of 'timber', would mean and include not only 'tree' as is ordinarily understood, but also 'fashioned wood', such as, wooden frames of window and ventilator. To put it a little differently, 'betti' and 'chetti', which are fashioned bamboos and canes, will not fall within the definition of 'timber', as given in section 3

(3); but all wood, whether cut out or fashioned for any purpose, would remain 'timber'.

27. It is because of the reason that the 'fashioned wood' does not include 'bamboo' that the Apex Court, in *Suresh Lohiya* (supra), held that though bamboo, as a whole, is a 'forest produce', but when 'fashioned bamboo' is brought into existence by human labour, a new and distinct product, commercially known to the business community totally different from its original, such an article and product would cease to be 'forest produce'. All observations, made in *Suresh Lohiya* (supra), have to be read in the light of the conclusions reached by the Apex Court as indicated hereinbefore. It cannot, therefore, be said that whenever a commercially new and distinct product is brought into existence by



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human labour out of 'wood', it too would cease to be tree. At the cost of repetition, I must point out that when 'fashioned wood' is, admittedly, tree, one cannot escape from the conclusion that when 'wood' is cut or fashioned, it becomes 'fashioned wood', but it nevertheless still remains a freehand it will fall within the ambit of the definition of 'forest produce', as given in section 3(4)(a).

28. In short, what emerges from the above discussion is that even 'fashioned wood', such as, wooden frames of window and ventilator are 'forest produce' within the meaning of section 3(4)(a). Hence, when the vehicle, in question, was, admittedly, found carrying 'forest produce' without requisite permit, a forest offence, within the meaning of section 3(5), was committed and since the vehicle was used in the commission of the forest offence and the respondent No. 1, who is the owner of the vehicle, has miserably failed to show that he took all reasonable and due precaution to ensure that his vehicle was not used in the commission of any forest offence, the vehicle was liable to confiscation and had been correctly confiscated. Viewed thus, it is clear that the impugned appellate order, passed by the learned Sessions Judge, Darrang, is contrary to law and cannot be allowed to survive.

29. Because of what have been discussed and pointed out above, this writ petition succeeds. The impugned appellate order, dated 28.3.2007, is hereby set aside and the order of confiscation, dated 4.12.2006, passed, by the Authorized Forest Officer, is hereby restored. With the above observations and directions, this writ petition shall stand disposed of.

30. No order as to costs.