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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 27/03/2023

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The Hon'ble Mr.Justice **G.ILANGOVAN**

Cr1.OP(MD)No.5250 of 2023

K.Vijay Anand

: Petitioner

Vs.

1.The Assistant Administrative Officer,
Central Marine Fisheries Research Institute,
Beach Road, Tuticorin Beach Road Salt Pans,
Thoothukudi,
Thoothukudi District.

2.The Forest Ranger,
Vilathikulam Forest Range,
Vilathikulam,
Thoothukudi District.

: Respondents

PRAYER:- This Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to the order, dated 11/03/2023 passed in WLOR No.01 of 2023 on the file of the District Munsif-cum-Judicial Magistrate, Vilathikulam and set aside the same as illegal and consequently to direct the respondents to exhume the seized Dry Shark Fins and consequently to direct the respondents to keep the same in the cold storage of the 1st respondent Institute till the disposal of the WLOR No.01 of 2023 pending on the file of the 2nd respondent.



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For Petitioner : Mr.M.Ajmal Khan
for Mr.M/s.Ajmal Associates

For Respondents : Mr.B.Nambiselvan
Additional Public Prosecutor

O R D E R

This criminal original petition has been filed seeking to set aside the order, dated 11/03/2023 passed in WLOR No.01 of 2023 on the file of the District Munsif-cum-Judicial Magistrate, Vilathikulam, consequently to direct the respondents to exhume the seized dry shark fins and also to direct the respondents to keep the same in a chilling storage of the 1st respondent Institute till the disposal of WLOR No.01 of 2023 pending on the file of the 2nd respondent.

2.The facts in brief:-

On information received from the Inspector of Police, attached to 'Q' Branch, Tuticoron, at about 01.00 pm, on 10/03/2023, the Forest Range Officer attached to Vilathikulam Forest Range went, at that time, he was informed that during the course of night patrolling, they intercepted a Van TN-65-AU-1633 loaded with shark fins. On information by one of the persons, it was found that



the above said shark fins about to be transported to Srilanka illegally. The Forest Range Officer, finding that the above said shark fins are prohibited as per Schedule-I of the Wildlife Protection Act, 1972 recovered the above said shark fins along with the vehicle. The above said shark fins are weighing about 457.450 kgs. On enquiry, the Forest Range Officer was informed that at the arrangement made by K.Vijay Anand, who is the petitioner herein, the above said shark fins and shark rays were transported from S.R Sea Foods, Tuticorin to smuggle it to Srilanka. The accused were arrested and remanded to custody. Since the above said shark fins are decomposable in nature, the Judicial Magistrate, Vilathikulam ordered to destroy, after taking necessary samples, for further process. It was ordered, on 11/03/2023.

3.In pursuance of the above said order, all the seized articles were buried by treating with phenolphthalein solution.

4.To set aside the above said order, this criminal original petition has been filed stating that the above



said articles are not the prohibited as per Schedule-I Part-II-A of the Wild Life Protection Act, 1972. They were purchased through voucher by paying proper tax from S.R Sea Foods, Tuticorin, on 09/03/2023. In the petition, he also detailed the quantity as well as the description of the articles.

5. When this petition was moved, this court asked the petitioner to share the way bill with the respondents, so that they can ascertain the genuineness. On that account, it was also submitted that the above said articles were not prohibited as stated above.

6. The learned Additional Public Prosecutor was required to verify whether the above said articles are prohibited articles, and whether the way bill is genuine or not. On that account, the matter was adjourned. On the date of adjournment, the 2nd respondent is also present before this court. With regard to the genuineness of the document, there is no information from the 2nd respondent, instead they filed a counter stating that as per the order of the Judicial Magistrate, Vilathikulam, the seized goods were destroyed, on 12/03/2023. With regard



to the issue of prohibition, it is mentioned in para 7 that the Government of India, Ministry of Environment and Forests (Wildlife Division), New Delhi, issued a circular, dated 25/08/2013 in F.No.4-36/2013, directing the prohibition of fining of shark fins to prevent the illegal hunting of endangered species. So it is seen that the prosecution, based upon the policy note issued by the Government of India, wants to sustain the prosecution and seized all the articles.

7.The policy note reads as follows:-

"Whereas, India is known to be home to about 40-60 species of sharks, many of them assessed as threatened, ten species of the critically endangered Sharks and Rays are listed under the Schedule-I of the Act according them highest degree of protection.

Whereas, Section 9 of the Wild Life (Protection) Act, 1972 prohibits hunting of any wild animal specified in Schedule-I, II, III and IV, except in provisions provided under Section 11 and 12 of the Act.



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Whereas, it has been noticed that large number of sharks have been decimated by the act of "finning" on board the vessel in the mid-sea, and the 'de-finned' sharks are subsequently disposed in the sea.

Noting that the enforcement of provisions of the Wild Life (Protection) Act, 1972 is extremely difficulty as it is often difficult to identify the species of the shark from the fins alone, without the corresponding carcass, from which the fines have been detached;

Also noting that bringing in this policy would enable the enforcement agencies to monitor the illegal hunting/poaching of the species of sharks that are listed in the Schedule-I of the Wild Life (Protection) Act, 1972.

It is expedient for the Ministry of Environment and Forests to prohibit removal of shark fins on board a vessel in the sea.



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Any possession of shark fins that are not naturally attached to the body of a shark, would amount to "hunting" of a Schedule-I species and thereby, attracting penal provisions under Section 51 of the Act. Further, in accordance with Section 57 of the Act, the burden of proof for unlawful possession, custody, control of such animal, animal article, meat etc. shall lie on the accused.

All the concerned State Governments shall strictly implement this policy initiative through appropriate legislative, enforcement and other measures.

This issues with the approval of competent authority."

8. So the circular, at the concluding portion of the letter, requested the State Governments to bring proper legislation, enforcement and other measures to implement the policy note. It is nothing, but a policy note sent by the Government of India to various States making recommendation for proper legislation.



9.It is fairly admitted by the respondents that so far, no legislation has been passed by way of amendment to Schedule to bring the above said shark fins.

10.But reading of the schedule shows that whale shark fins and stingrays are prohibited as per the Schedule-I Part II-A of the Wild Life Protection Act. Here two varieties have been seized. First variety is Thirukai fins namely stingray and shark fins.

11.Reading of the above schedule shows that the second variety of shark is a prohibited species. So far as the first variety Thirukai fins, it is not mentioned in the schedule. So the Wild Life Protection Act, 1972 may not be attracted the above said 246.080 kgs of fins of Thirukai. Only after the sample analysis, it will come to light, whether the above said fins of Thirukkai are the prohibited species namely stingrays. Similarly, the whale shark is also prohibited. Whether the fins that have been recovered belongs to the above said shark can be ascertained in the sample analysis.



12.The banning of even possession of shark fins is mentioned in the policy note. It is seen that if fins are removed from shark, sharks are abandoned in the sea. The fins are sold in the open market. Even though the shark is mentioned in the schedule, but so far as the possession of fins are concerned, it is not mentioned as an offence so far.

13.As has been stated in the policy note, it may not be possible to ascertain the fins without carcass of shark. It is not easy to find out, which category or variety of shark, the above said fins belong. So the analysis will give the result.

14.As things stand today, only depending upon the sample analysis, it will come to light, whether *prima facie* case has been made out against the petitioner to book them under the provisions of the Wild Life Protection Act, 1972. Till then, the buried articles may be exhumed and stored in a chilling storage unit, so that the loss may not occur to the petitioner. In the event of sample analysis does not say the commission of offence. So I am of the considered view that this is the genuine



grievance expressed by the petitioner. So this petition can be allowed with the following conditions:-

(a) The 2nd respondent is directed to exhume the buried articles in the presence of the petitioner at his own costs and it may be stored in a chilling plant at the arrangement to be made by the petitioner at his own costs, till the sample analysis report is received; and

(b) Depending upon the analysis report, further orders may be passed by the Judicial Magistrate, Vilathikulam, on this aspect.

15. With the above said direction, this petition stands **allowed** and the impugned order passed in WLOR No. 01 of 2023, dated 11/03/2023 by the Judicial Magistrate, Vilathikulam, is set aside.

27/03/2023

Index: Yes/No
Internet: Yes/No

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Note: Issue order copy on 28/03/2023



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To,

- 1.The District Munsif-cum-Judicial
Magistrate,
Vilathikulam,
Thoothukudi District.
- 2.The Assistant Administrative Officer,
Central Marine Fisheries Research Institute,
Beach Road, Tuticorin Beach Road Salt Pans,
Thoothukudi,
Thoothukudi District.
- 3.The Forest Ranger,
Vilathikulam Forest Range,
Vilathikulam,
Thoothukudi District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVA, J

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