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Crl.O.P.(MD)No.17680 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23/11/2023

CORAM

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

Crl.OP(MD)No.17680 of 2023

and

Crl.MP(MD)No.14001 of 2023

Mr.R.Alex Pandi : Petitioner/Sole Accused

Vs.

State,
Rep. by the Forest Range Officer,
Forest Range Office,
Madurai.

(WLOR No.1 of 2023) : Respondent/Complainant

PRAYER:-Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to CC No.670 of 2023 on the file of the Judicial Magistrate Magistrate Court No.VI, Madurai and quash the same as illegal and pass such further orders.

For Petitioner : Mr.S.Vasanth
for Mr.S.Rajasekar

For Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate
(Criminal side)

O R D E R

This criminal original petition has been filed seeking quashment of the case in CC No.670 of 2023 on the file of the Judicial Magistrate No.VI, Madurai.



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2. The facts in brief:-

On 10/01/2023 inspection was made by the Forest officials. At that time, they found the petitioner alleged to have installed life wire fencing to his property situated in Survey No.88/2 measuring about 03.50 Acres for protection by drawing electricity illegally from the free service scheme introduced for farmers. On the basis of the above said occurrence, occurrence report was filed and a case was registered in WLOR No.1 of 2023. After completing the investigation, final report has been filed and it was taken cognizance in CC No.670 of 2023 by the Judicial Magistrate No.VI, Madurai, for the offences under sections 2(1), 2(12-b), 2(14), 2(15), 2(16-b), 2(35), 2(36), 2(37), 9, 39, 50, 51 and 56 of the Wildlife (Protection) Act, 1972 .

3. Seeking quashment of the same, this petition has been filed stating that none of the allegations mentioned in the complaint attract any of the ingredients of the offences mentioned alleged against him.

4. Heard both sides.



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5. Section 9 of the Wild Life (Protection) Act, 1972

reads as under:-

'9. Prohibition of Hunting. - No person shall hunt any wild animal specified in Schedules I, II, III and IV, except as provided under section 11 and section 12."

6. Now word '**hunting**' is defined in section 2(16) of the Wild Life (Protection) Act, 1972 reads as under:-

"2(16) '**hunting**', with its grammatical variations and cognate expressions, includes.-

(a) killing or poisoning of any wild animal or captive animal and every attempt to do so;

(b) capturing, coursing, snaring, trapping, driving or baiting any wild or captive animal and every attempt to do so;

(c) injuring or destroying or taking any part of the body of any such animal or, in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles, or disturbing the eggs or nests of such birds or reptiles."



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7.By pointing out this definition clause, the petitioner would submit that absolutely, it is not a case of hunting. But it is a case of protecting the property from invasion of animals; His aim was to protect the property and not hunting of animals.

8.No doubt that there was no intention on the part of the petitioner to hunt any animals. But having known that if live electric wire fencing is made, there is every likelihood of danger not only to the human life, but also animals. Whether the act on the part of the petitioner will attract the offence punishable under section 9 of the Wild Life (Protection) Act is a debatable one.

9.No doubt that there was no causality. The intention on the part of the petitioner is not to hunt the animals. But however, naturally the petitioner has to proceed for violation of the conditions to supply the electricity.

10.On a question raised by this court, the learned counsel appearing for the petitioner would rely upon the notification issued by the Government in exercising of the power conferred in sub-section (1) of 64 of the Wild



Life (Protection) Act, 1952, wherein installation of power fencing has been dealt.

10. Section 3 of the Rules reads as under:-

"3. Application for permission to erect power fence and for Certificate of Registration.-(1) No person shall erect a power fence within 5 Kilometers from a Reserve Forest boundary, in or around his property without getting permission from the District Forest Officer.

(2) Every application for permission to erect a power fence shall be made by the owner in Form-I to the District Forest Officer.

(3) The District Forest Officer, on receipt of an application in Form-I shall cause inspection of the property along with an Officer, not below the rank of Assistant Divisional Engineer of the Tamil Nadu Electricity Board and may grant permission in Form-II, to erect a power fence for the entire extent or to a lesser extent, depending on the nature of topography of that area and animal trails, subject to the condition that the power fence should be in conformity with the specifications mentioned in the



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Schedule or reject the application, recording the reasons therefor.

Provided that no application shall be rejected or no applicant shall be granted permission to erect power fence for lesser extent, unless the application has been given a reasonable opportunity of being heard.

(4)On grant of permission under sub-rule (3), the owner shall erect a power fence and apply for registration of the power fence in Form-III along with an Undertaking in Form-IV and a copy of the permission, within ninety days from the date of grant of the permission.

(5)On being satisfied that the power fence has been erected as per the specifications mentioned in Schedule, the District Forest Officer shall issue a Certificate of Registration in Form-V. Otherwise, the District Forest Officer may direct the owner to rectify the defects and to make a fresh application for erection under sub-rule (4).

(6)An order under sub-rule(3) or sub-rule (5) shall be passed by the District Forest Officer within a period of not more than 45 days from the date of receipt of the application."



11. Section 5 of the Rules reads about the existing power as under:-

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"5. Application for Certificate of Registration for existing power fences.-(1) Every owner who has a power fence erected on his property on the date of coming into force of these rules, shall within sixty days from that date, after ensuring that the power fence has been erected as per the specifications mentioned in the Schedule, apply in Form-III to the District Forest Officer for registration of the power fence along with an Undertaking in Form-IV.

(2) On receipt of an application under sub-rule (1), the District Forest Officer shall cause inspection of the property along with an Officer not below the rank of the Assistant Divisional Engineer of the Tamil Nadu Electricity Board and on being satisfied that the power fence has been erected as per the specifications mentioned in the Schedule, issue a Certificate of Registration in Form-V. Otherwise, the District Forest Officer may direct the owner to rectify the defects and to make a fresh application for erection under sub-rule (1).



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(3)Any order under this rule shall be passed by the District Forest Officer within a period of not more than 45 days from the date of receipt of the application."

12.So this enables the petitioner to apply for Certificate of Registration. The Rules came into force on 03/07/2023. Time specified is not expired so far.

13.The learned counsel appearing for the petitioner would submit that the petitioner is also ready to make proper application for getting the Certificate as per Rules. At that time, the source of power supply is to be enquired.

14.In the light of the Rules framed, now let us go to section 64 of the Wild Life (Protection) Act, 1972.

15.Section 64 of the Wild Life (Protection) Act, 1972 reads as under:-

"64.Power of State Government to make rules.-(1)*The State Government may, by notification, make rules for carrying out the provisions of this Act in respect of matters which do not fall within the purview of section 63.*



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(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the term of office of members other than those who are members, ex officio, the manner of filling vacancies and the procedure to be followed by the Board under sub-section (2) of section 6;

(b) allowances referred to in sub-section (3) of section 6;

(c) the forms to be used for any application, certificate, claim, declaration, licence, permit, registration, return or other document, made, granted, or submitted under the provisions of this Act and the fees, if any, therefor;

(d) the conditions subject to which any licence or permit may be granted under this Act;

(dd) the conditions subject to which the officers will be authorised to file cases in the court;]

(e) the particulars of the record of



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wild animals (captured or killed) to be kept and submitted by the licensee;

(ee) the manner in which measures for immunisation of live-stock shall be taken;]

(f) regulation of the possession, transfer and the sale of captive animals, meat, animal articles, trophies and uncured trophies;

(g) regulation of taxidermy;

(ga) the manner and conditions subject to which the Administrator shall receive and manage the property under sub-section (2) of section 58G;

(gb) the terms and conditions of service of the Chairman and other members under sub-section (3) of section 58N;

(gc) the fund from which and the manner in which payment of reward under section 60B shall be made;]

(h) any other matter which has to be, or may be, prescribed under this Act."



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16. So the conjoint reading of the Sections and Rules framed is very clear that there is absolute bar for erecting the line for protecting the property. But it is subject to the Rules now it has been framed.

17. In the light of the above development, I am of the considered view that since no casualty occurred and there was no intention on the part of the petitioner to hunt animals, then automatically the prosecution is liable to be quashed and accordingly, it is quashed. Of course the petitioner must comply the Rules, framed by Government, dated 03/07/2023. If any violation is noticed, then proper action may be initiated by the concerned authorities.

18. In the result, this criminal original petition is **allowed**. The case in CC No.670 of 2023 on the file of the Judicial Magistrate No.VI, Madurai is quashed against the petitioner. Consequently connected Miscellaneous Petition is closed.

23/11/2023

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Judicial Magistrate No.VI,
Madurai.
- 2.The Forest Range Officer,
Forest Range Office,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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