

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.11.2016

PRONOUNCED ON: 05.12.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.5118 of 2015 & Crl.M.P. No.9685 of 2016

V.S. Gunaseelan

Petitioner

vs.

The Forest Range Officer
Pollachi Forest Range
Annamalai Tiger Reserve Forest
Pollachi Taluk
Coimbatore District

Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the entire records in respect of the case registered by the respondent in WL.O.R. No.3/2014 dated 01.07.2014 and quash the same.

For petitioner Mr. K.M. Srirangan
 for Mr. D. Rajagopal

For respondent Mr. C. Emalias
 Addl. Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to call for the entire records in respect of the case registered by the respondent in WL.O.R. No.3/2014 dated 01.07.2014 and quash the same.

2 On intelligence, the officials of the Forest Department searched the residence of V.S. Gunaseelan (the petitioner herein) on 01.07.2014 around 9 a.m. and seized various animal articles and trophies like elephant tusks, tiger

teeth, elephant teeth, cheetah skins, tiger skins, deer skins and other materials, the possession of which, without valid licence, is an offence under the Wild Life (Protection) Act, 1972 (for brevity "the Act"). Gunaseelan was arrested and was produced before the Judicial Magistrate No.II, Pollachi, who remanded him to custody. Later, he was released on bail. Challenging the prosecution, Gunaseelan is before this Court.

3 Heard Mr. K.M. Srirangan, learned counsel, appearing for the petitioner and Mr. C. Emalias, learned Additional Public Prosecutor appearing for the respondent.

4 At the outset, Mr. K.M. Srirangan, learned counsel, relying on Section 55(c) of the Act, submitted that the search was conducted on 01.07.2014 and till date, no complaint has been filed by the officials before the competent Court and hence, the prosecution is barred by limitation.

5 To appreciate his contention, it may be relevant to extract Section 55 of the Act as under:

"55. Cognizance of offences:

No Court shall take cognizance of any offence against this Act except on the complaint of any person other than--

(a) the Director of Wild Life Preservation or any other officer authorised in this behalf by the Central Government; or

(aa) Member-Secretary, Central Zoo Authority in matters relating to violation of the provisions of Chapter

IV-A; or

(ab) Member-Secretary, Tiger Conservation Authority;
or

(ac) Director of the concerned tiger reserve; or

(b) the Chief Wild Life Warden, or any other officer authorised in this behalf by the State Government subject to such conditions as may be specified by that Government; or

(bb) the officer-in-charge of the zoo in respect of violation of provisions of section 38-J; or

(c) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Central Government or the State Government or the officer authorised as aforesaid."

6 I am unable to persuade myself to agree with the submission of the learned counsel for the petitioner for the following reasons:

7 A bare reading of the above provision shows that, only the officers mentioned therein, can file a complaint against a person before a competent Court for violation of the provisions of the Act. Section 55(c) of the Act carves out an exception to clauses (a) to (bb) of Section 55 of the Act, inasmuch as, it empowers any other person to launch a prosecution, but, before launching a prosecution, he is required to give a notice of not less than 60 days to the Central Government or State Government or the officer authorised in clauses (a) to (bb) of Section 55 of the Act. Thus, Section 55(c) will not apply to the officers mentioned in Section 55(a) to (bb). In this case, the search and seizure has been conducted by Mr. Ravichandran, Forest Ranger, Pollachi Forest Range.

8 The State Government has issued the following notification in G.O.Ms.No.63, Environment and Forests (FR 5) Department dated 05.07.2006 published in the Tamil Nadu Gazette dated 23.08.2006, Part II, Section 2, under Section 55(b) of the Act empowering the Forest Rangers to lay a complaint and the same reads thus:

"NOTIFICATION

In exercise of the powers conferred by clause (b) of Section 55 of the Wild Life (Protection) Act, 1972. (Central Act 53 of 1972) and in supersession of the Environment and Forest Department Notification No.11(2)/EFR/6590/88 published at Page 359 in Part II-Section 2 of the Tamil Nadu Government Gazette, dated the 30th November 1988, the Governor of Tamil Nadu hereby authorises all the officers not below the rank of Rangers in the State Forest Department to lay complaints before the competent courts for taking cognizance of offences committed against the said Act."

9 Thus, a Forest Ranger is now empowered by virtue of the aforesaid notification issued under Section 55(b) of the Act to lay a complaint before the competent Court and his powers are not circumscribed by Section 55(c) of the Act. This is evident from the very construction of the provision, inasmuch as, after every clause, there is a semicolon followed by a disjunctive "or". This means that each class of officers mentioned in clause (a) to clause (bb) of Section 55 are empowered to lay a complaint.

10 Mr. K.M. Srirangan, learned counsel, further contended that the petitioner's father was a Forest Contractor and he had a lease agreement for the enjoyment of huge forest lands given by the Raja of Palakkad; that the petitioner's father was given certificate of possession in the year 2006 in

respect of the articles that were seized in his residence and that at the time of seizure, the petitioner was not able to produce the said certificate to show his licit possession, on account of which, he had to suffer arrest.

11 In the considered opinion of this Court, whether the petitioner had a valid possession certificate or not, is a question of fact which cannot be gone into by this Court in a quash petition filed under Section 482, Cr.P.C.

12 Hence, this Court directs the respondent to conduct a thorough investigation and if it is found that the petitioner had a valid certificate of possession or alternatively, he is entitled to such possession by inheritance, the same shall be enquired into and further action dropped.

With the above direction, this Criminal Original Petition stands dismissed. Connected Crl.M.P. is closed.

cad

05.12.2016

P.N. PRAKASH, J.

cad

To

- 1 The Forest Range Officer
Pollachi Forest Range
Annamalai Tiger Reserve Forest
Pollachi Taluk
Coimbatore District
- 2 The Public Prosecutor
High Court of Madras
Chennai 600 104

Crl.O.P. No.5118 of 2015

05.12.2016