

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Cr1.R.C.No.313 of 2014 &
M.P.No.1 of 2014

Easwara Srikumar

..Petitioner/Appellant/Accused

Vs

The Forest Range Officer,
Head Quarters (Wild Life)
Chennai-600 032.
(O.R.No.1/ 2011)

..Respondent/Respondent/Complainant

Criminal Revision has filed under Section 397 and 401 Cr.P.C., seeking to call for the records in O.R.No.1 of 2011 dated 29.11.2012 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai as confirmed in C.A.No.30 of 2013 dated 17.01.2014 on the file of the learned XVII Additional Judge, City Civil Court, Chennai and set aside the same.

For Appellant : Mr.V.Bhiman

For Respondent: Mr.R.Ravichandran

Govt. Advocate (Cr1.Side)

ORDER

The petitioner stood charged for an offences under sections 42, 43, 44 r/w Section 51 of the Wild Life (Protection) Act 1972. Earlier a case was registered against the petitioner in Crime No.23 of 2010 by the respondent police. It is stated that the Inspector of police Mambalam police station while conducting investigation in another crime for offences under Sections 376 & 506(i) of IPC, searched the petitioner's house, at that time a leopard skin was seized from the pooja room of the petitioner, when the possession of the said leopard skin was questioned the petitioner, has not given any proper explanation for the possession, hence, the crime was registered against him.

2. During the investigation the petitioner has stated that the said leopard skin was used by his forefathers for performing poojas and customary rituals and the petitioner has only inherited the said leopard skin.

3. Considering the above aspect, the trial Court discharged the accused holding that he has only inherited the leopard skin and he cannot be considered as an accused. However, the Trial court ordered to seize the said leopard skin and directed the same to be handed over to the respondent. Challenging the above order of confiscation, the petitioner had preferred an appeal, and the appellate Court after considering the various provisions of Wild Life Protection Act, had dismissed the appeal. Challenging the same, the present Criminal Revision has been filed.

4. The learned counsel appearing for the petitioner submitted that the Court below after considering the materials placed had come to the conclusion that the petitioner had only inherited the said lapboards skin. After coming to such conclusion the Court cannot order confiscation of the property and the petitioner is entitled to have possession of the same.

5. Per contra, learned counsel Government Advocate appearing for the respondent submit that under Section 40 of the Wild Life (Protection) Act, the petitioner who is claiming to inherited the animal article should get necessary permission from the competent authority under the Wild Life (Protection) Act, within period 90 days of such inheritance. But, the petitioner had not obtained any permission, had not filed any declaration from the competent authority declaring the possession of the animal article and has not obtained any certificate from the authority. Since under the amended Act every person inheriting any animal article should make a declaration before the Chief Wildlife Warden within 90 days of such inheritance. Since the petitioner failed to make any such declaration, he cannot claim possession of the animal article. Considering the same, both the Court below has rightly held against the petitioner and there is no illegality in the order.

6. I have heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

7. For better appreciation of facts, Section 40 of the The Indian Wildlife (Protection) Act, 1972 is extracted hereunder:

40.Declarations.-(1) Every person having at the

commencement of this Act the control, custody or possession of any captive animal specified in Schedule I or Part II of Schedule II, 1[or animal article, trophy or uncured trophy] derived from such animal or salted or dried skins of such animal or the musk of a musk deer or the horn of a rhinoceros, shall, within thirty days from the commencement of this Act, declare to the Chief Wild Life Warden or the authorised officer the number and description of the animal, or article of the foregoing description under his control, custody or possession and the place where such animal or article is kept.

(2) No person shall, after the commencement of this Act, acquire, receive, keep in his control, custody or possession, sell, offer for sale or otherwise transfer or transport any animal specified in Schedule I or Part II of Schedule II or any uncured trophy or meat derived from such animal, or the salted or dried skins of such animal or the musk of a musk deer or the horn of a rhinoceros, except with the previous permission in writing of the Chief Wild Life Warden or the authorised officer. 2[(2A) No person other than a person having a certificate of ownership, shall, after the commencement of the Wild Life (Protection) Amendment Act, 2002 acquire, receive, keep in his control, custody or possession any captive animal, animal article, trophy or uncured trophy specified in Schedule I or Part II of Schedule II, except by way of inheritance.]

2[(2B) Every person inheriting any captive animal, animal article, trophy or uncured trophy under sub-section (2A) shall, within ninety days of such inheritance make a declaration to the Chief Wild Life Warden or the authorised officer and the provisions of sections 41 and 42 shall apply as if the declaration had been made under sub-section (1) of section 40: Provided that nothing in sub-sections (2A) and (2B) shall apply to the live elephant.]

3[(3) Nothing in sub-section (1) or sub-section (2) shall apply to a recognised zoo subject to the provisions of section 38I or to a public museum.]

(4) The State Government may, by notification, require any person to declare to the Chief Wild Life Warden or the authorised officer 4[any animal or animal article] or trophy (other than a musk of a musk deer or horn of a rhinoceros) or salted or dried skins derived from an animal specified in Schedule I or Part II of Schedule II in his control, custody or possession in such form, in such manner, and within such time, as may be prescribed.

As rightly contended by the learned Government Advocate, the petitioner claiming to have inherited the said animal article should have made a declaration within 90 days from such inheritance. Admittedly, the petitioner had not made any such declaration so far. In view of the same, the respondent has got every right to confiscate the animal property. Hence, I do not find any illegality or irregularity in the order passed by the Court below.

8. Taking into consideration of the fact that already the petitioner had been discharged from the criminal charge holding that he has only inherited the animal article, it is always open to the petitioner to approach the competent authority by making a declaration regarding the possession of the animal article and his inheritance, and explain the delay for making such declaration. If any such declaration is so made, the authority is directed to consider the same on its own merits and pass appropriate orders in accordance with law. With the above observation, this Criminal Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

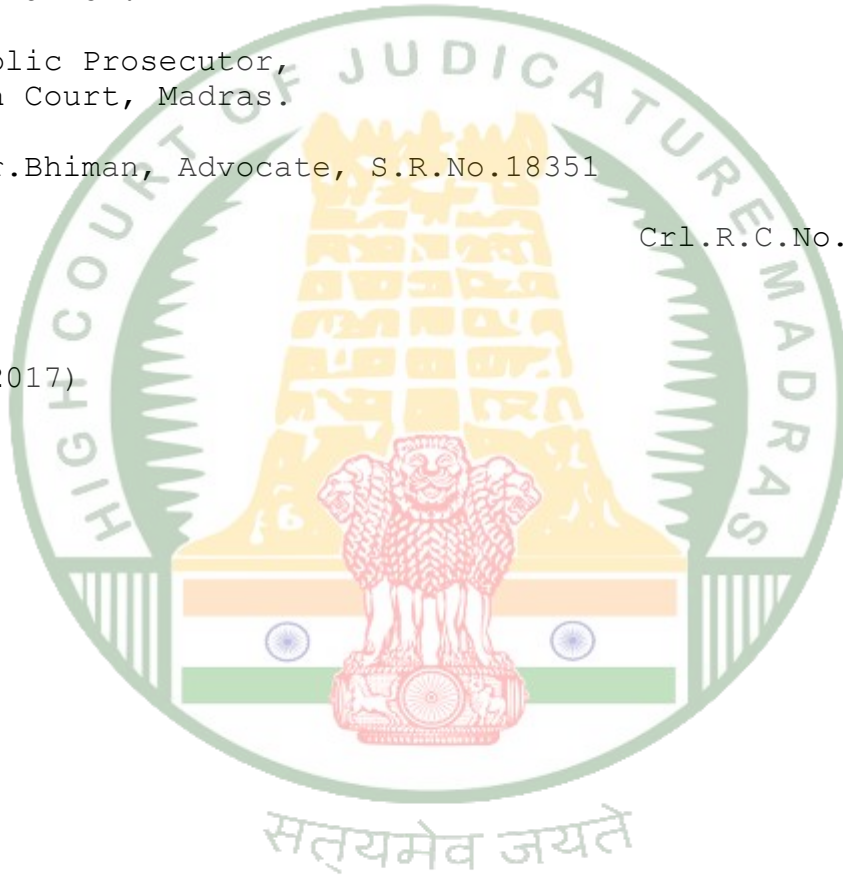
To

- 1.The XVII Additional Judge,
City Civil Court, Chennai.
2. The XVII Metropolitan Magistrate,
Saidapet, Chennai.
3. The Forest Range Officer,
Head Quarters (Wild Life)
Chennai-32.
4. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.Bhiman, Advocate, S.R.No.18351

Cr1.R.C.No.313 of 2014

PVS (CO)
RS (13/04/2017)



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