

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.881 of 2011

Mujeeb Hussain
S/o.Dastagir Hussain

..Petitioner/Accused

Vs

State by
The Forest Range Officer,
Wild Life,
Head Quarters Range,
Chennai - 6

..Respondent/Complainant

Prayer:-

This Criminal Revision is filed under Section 397(1) r/w. 401 of Cr.P.C., against the conviction and sentence dated 16.06.2011 passed by the V Additional Sessions Judge, Chennai, in C.A.No.221 of 2010 modifying the sentence imposed by the II Metropolitan Magistrate, Egmore, Chennai in C.C.No.446 of 2000 dated 20.10.2010.

For petitioner : Mr. S.Karthikeyan

For respondent : Mrs. M.F.Shabana,
Gov. Advocate (Crl. Side)

सत्यमेव जयते
O R D E R

The petitioner is the sole accused in C.C.No.446 of 2000 on the file of the II Metropolitan Magistrate, Egmore, Chennai. He stood charged for an offence under Section 39(3), 44(1)(4), 51(1), 54 and 50 of Wild Life Protection Act,1972. The trial Court, by judgment dated 20.10.2010, convicted the petitioner/accused, under Section 39 (3) d, 44 r/w. 51 (1) of Wild Life Protection Act,1972 and sentenced him to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.5000/- in default, to undergo simple imprisonment for two weeks. Challenging the above said conviction and sentence, the petitioner/accused filed an appeal in C.A.No.221 of 2010 on the

file of the V Additional Sessions Judge, Chennai and the lower-appellate court partly allowed the appeal and while confirming the conviction, modified the sentence into that of rigorous imprisonment for 6 months and to pay a fine of Rs.5000/-, in default to undergo simple imprisonment for 6 months. Aggrieved by the same, the petitioner is before this court with this revision.

2. The case of the prosecution, in brief, is as follows:-

P.W.1, Forest Range Officer, working in the Wild Life Enforcement Department, Chennai, on 07.08.1997, he received a secret information that the accused was transporting wild life birds like Munias, Jungle Fowls, at Central Railway Parcel Station, Chennai and he, along with other officials, rushed to the Railway Station Parcel Office and found 3 baskets containing wild birds, out of which 2 baskets containing Munias and one basket containing Jungle Fowl. On investigation, he came to know that the accused has transported the birds to other states. Since the above birds were scheduled birds under Section 4 of Wild Life Protection Act, 1972, they seized the birds under mahazar, and P.W.1 arrested the accused and registered a case in O.R.No.9/97-98 and he released the birds in the Birds Sanctuary, thereafter, he laid a final report.

3. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove its case, on the side of the prosecution, as many as 5 witnesses were examined and 6 documents were exhibited.

4. Out of the witnesses examined, P.W.1 is the Forest Ranger. According to him, on receipt of a secret information that some birds scheduled under Wild Life Protection Act, has been transported illegally by the accused, he proceeded to the Central Railway Station and found 3 boxes of wild life birds and thereafter, he arrested the accused and registered the case.

5. P.W.2, the Forest Guard, working in the Wild Life Enforcement, Chennai, along with P.W.1, went to the Parcel Office, Central Railway Station, Chennai, where they found 200 Munias and 3 Forest Fowls in 3 baskets and they seized the same and they arrested the accused. On such arrest, he has given a confession admitting his guilt. P.W.3, is another Forest Ranger in the same department. He has also spoken about the seizure of the birds. P.W.4 is the Forest Range Officer. He also went along with the team and seized the birds. P.W.5 is the Forest Guard. He went along with other witnesses while

seizing the birds.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not chose to examine any witness or marked any documents.

7. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this order. Challenging the same, the appellant/accused filed an appeal before the V Additional Sessions Judge, Chennai and the lower-appellate court partly allowed the appeal, confirmed the conviction and modified the sentence as mentioned in the first paragraph of the order. Aggrieved by the same, the petitioner is before this Court with this revision.

8. I have heard Mr.S.Karthikeyan , learned counsel appearing for the petitioner and Mrs.M.F.Shabana, Government Advocate (Crl. Side), appearing for the respondent.

9. The specific case of the prosecution is that on receipt of the secret information, P.Ws.1 to 5 went to the Parcel Office of Southern Railway Central Station, Chennai and found 3 baskets containing birds, out of which, 2 baskets containing 200 birds of Munias and one basket containing 3 Jungle Fowls. On enquiry, they came to know that the petitioner/accused was transporting the same to other states, illegally. As all the birds fall under scheduled in Section 4 of the Wild Life Protection Act, he has committed an offence. But, admittedly the birds were not in possession of the petitioner/accused and it was seized from the Parcel Office, in the Southern Railway Station, Chennai. In order to establish that only the petitioner was intended to transport all the birds to other states, the prosecution did not produce any material to show that it is only this petitioner who booked the Parcel at Central Railway Station. None of the officials, working in the Parcel Office, Central Railway Station was examined. Apart from that no receipt has also been marked to show that it is only this petitioner who has booked the above parcel in the Parcel Office. In the absence of any material to connect the petitioner with the booking of the parcel in the Parcel Office, Central Railway Station, it cannot be presumed that it is only this petitioner has intended to transport the birds. Even though there is a presumption under Section 57 of the Wild Life (Protection) Act,1972 that if it is established that a person in possession and custody or control of any captive animal, etc., it shall be presumed until the control is proved, the burden of proof shall lie on the accused. But, in this case, the prosecution failed to establish that the petitioner was in possession of the above birds. In the above circumstances, the

presumption under Section 57 of the Act is not applicable to the facts of this case, and it cannot be inferred against the petitioner herein. In the above circumstances, I am of the considered view that the prosecution has failed to establish that the birds were in the possession of the petitioner and it is only this petitioner has intended to transport the same to other places. Both the courts-below convicted the petitioner without considering the evidence in proper perspective. In the said circumstances, the conviction and sentence imposed on the petitioner is liable to be set-aside and the petitioner is entitled for acquittal.

10. In the result, the petition is allowed and the conviction and sentence imposed on the petitioner in C.A.No.221 of 2010 by the learned V Additional Sessions Judge, Chennai, is set -aside and the petitioner is acquitted from all the charges.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The V Additional Sessions Judge,
Chennai.
2. The II Metropolitan Magistrate,
Egmore, Chennai.
3. The Public Prosecutor,
High court, Madras.

4. The Forest Range Officer
Wild Life, Head Quarters Range,
Chennai-6

copy to
The Section Officer
Crl.Section Records
High Court Madras

+1 cc to M/s.Norton & Grant Advocate sr 4634

Crl.R.C.No.881 of 2011

aa20/12/2017