

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2018

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Cr1.A.No.1057 of 2007

Wildlife Inspector,
Wildlife Regional Officer,
Southern Region, Govt. Of India,
Minsistry of Environment of Forests,
C2-A, Rajaji Bhavan,
Besant Nagar, Chennai 600 020. Appellant/Complainant

Vs.

1.P.K.Shahjahan
2.T.Suresh Babu
3.Mohammad Mustafa Respondents/Accused

Prayer: Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the order dated 10.08.2007, passed in C.C.No.2649 of 2005, on the file of the IX Metropolitan Magistrate Court, Saidapet, Chennai 600 015.

For Appellant : Mr.K.S.Jaya Ganesan, Standing Counsel
for Forest Cases.

For Respondents : M/s.C.Samivel
Mr.Karthikeyan

J U D G M E N T

This Criminal appeal has been filed by the appellant/ Wildlife Authority as against the order of acquittal dated 10.08.2007 made in C.C.No.2649 of 2005 on the file of Learned IX Metropolitan Magistrate, Saidapet, Chennai 600 015.

2.The brief facts of the case are as follows:-

On 16.03.2003, the Wild Life Authority intercepted one licenced porter M.Ramachandran within the ship berth yard at Chennai Port Trust. The said M.Ramachandran was carrying two hand baggages. On questioning, he revealed his identity. Upon verification of the contents of two bags carried by him, the complainant found that they contain banned wild life namely sea cucumber (Holothurians). On further investigation, as per the

request of A3, who is a crew member of the ship namely M.V.Swaraj Dweep which sailed on that day from Port Blair to Chennai, seized the contraband from A3 in presence of witnesses. On the same day, the complainant took 3rd accused. However, as per the request of his immediate available superior in charge namely The Chief Officer of the ship M.V.Swaraj Dweep, the 3rd accused was not arrested on that day and he was requested to appear before the complainant office on 17.06.2003 for further enquiry.

3. On 17.06.2003, the 3rd accused appeared and made a confession statement in Ex.P2, that the banned contrabands were carried by him on behalf of the first accused and further conveyed that the first accused was due to receive the contraband from him on 18.06.2003 and he further requested that he is innocent and the main culprits are A1 and A2, thereby, the wildlife authority arranged the trap and handed over the contraband to the third accused. While A3 handed over the contraband to the first and second accused and the same was kept in the A1 Ford Ikon car. Thereafter, the trap was conducted at Besant Avenue Road in Besant Nagar. After completing the trap, the contraband, car, LG 3G-ix TATA Mobile, Nokia 8310 with Airtel Sim card, ALCATEL BE4 with Cellone sim card were seized from the accused persons. Thus the accused A1 to A3 committed an offence under Sections 39(3)(a), 48A, 49, 49B, 52 of the Wild Life (Protection) Act, 1972. After completing the enquiry, the appellant filed a complaint before the Metropolitan Magistrate under Section 55 of the Wild Life Protection Act, 1972.

4. Before the trial Court, the prosecution examined P.W.1 to P.W.5 as prosecution side witnesses and marked Exs.P1 to P3 and material objects were marked as MO1 to MO6. On behalf of the defence, no witnesses were examined and no exhibits were marked.

5. Based on the evidence and materials, the trial Judge found that the respondents did not commit any offence and acquitted the accused. Aggrieved over the same, the appellant/Wild Life Authority is before this Court with the present criminal appeal.

6. Heard the learned Standing counsel appearing for the appellant/Wild Life Authority and the learned counsel appearing for the respondents/accused.

7.The learned counsel appearing for the appellant would submit that the evidence of P.W.1 and P.W.5 clearly disclosed that A3 a crew member, smuggled contraband from Andamaan to Chennai in order to handover the contraband in favour of A1 and A2. Accordingly, the confession statement was also recorded by the complainant. The said confession statement was marked by the complainant and the authority have power to trap the other accused person. Based on the confession statement, trap was arranged. After completing the trap, the car and other incriminating materials along with the contraband were seized from the accused person, the same was produced as material objects before the trial Court. However, the trial Court arrived at a conclusion that the complainant is not a competent person to file a complaint. Being the investigating authority he has no power to file a complaint. On that ground, the trial Court acquitted the accused which is unsustainable one. The investigating officer have competent power under Section 50(9) of Wild Life (Protection) Act. Accordingly, he prays for allowing the appeal.

8.Per contra the learned counsel for the respondents would submit that initially contraband was recovered from one Ramachandran. As per his statement, the appellant authority arrived at a conclusion that it was smuggled by A3. However, on 16.06.2003 at 10.30 pm, the said contraband was not produced before the jurisdictional Magistrate. However, after two days, the said contraband was produced before the Magistrate as if, the said contraband was recovered from A1 and A2. Even a perusal of the evidence of P.W.1 to P.W.6, clearly disclosed the said contraband was recovered from A3. However, the complaint is filed, as if the said contraband was recovered from A1 and A2, which itself is sufficient to acquit the accused and the investigation officer acted with a malafide intention in order to implicate the respondents as accused. Hence, the alleged contraband was arranged for implicating the respondents in the above said case. However, after considering the entire material, the trial Court dismissed the complaint and acquitted the accused. The said order cannot be intercepted in a mechanical manner unless the order is perverse.

9.In the light of the above submission, now it has to be analyzed whether the prosecution has proved the guilt of accused beyond all reasonable doubt.

10.Admittedly, it is not disputed that on 16.06.2003, on inspection of one Ramachandran the contraband was found in

his possession. On his statement, they identified the crew members of the ship M.V.Swaraj Dweep which sailed on the day from Port Blair to Chennai. The said crew member allegedly smuggled the Sea Cucumber from Andamaan to Chennai, in order to handover the same to A1 and A2. The evidence of the prosecution further reveals that on the same day, the said contraband was seized from A3 and he was not arrested on the same day, however, he was directed to appear on 17.06.2003 for further proceedings. The appellant recorded the confession statement stating that he smuggled Sea Cucumber for the purpose of handing over the same to A1 and A2. However, for the reason best known to the authorities, they have not seized the Sea Cucumber on the particular day and there is no proper explanation for implicating A1 and A2. Even a perusal of the confession statement Ex.P2, clearly indicates that he smuggled the contraband for A1 and A2. Without issuing summons to A1 and A2 fixing a trap for implicating A1 and A2 not within the frame work of law. Even based on the confession statement, other accused person was called for explanation, and made as accused in the complaint. Though power of seizure available to the appellant under Section 50 of the Wild Life Protection Act. However, a perusal of the provisions makes it clear that immediately after seizure, the contraband has to be produced before the Magistrate having jurisdiction to try the offence on the account of which the seizure has been made. However, the authorities retained the contraband with them and fixed the trap against A1 and A2 which is unwarranted and the same is contrary to the provisions. A3 in his confession statement categorically stated that the said Sea Cucumber was smuggled in favour of A1 and A2. When that being the case, fixing the trap implicating A1 and A2 is not within the procedure contemplated under the Wild Life Protection Act. In this context, it is relevant to extract 58-F of the Act, in which it was held as follows:-

"58-F. Seizure or freezing of illegally acquired property.-(1) Where any officer conducting an inquiry or investigation under Section 58-E has reason to believe that any property in relation to which such inquiry or investigation is being conducted is an illegally acquired property and such property is likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceeding relating to forfeiture of such property under this Chapter, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an order that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, or of the competent authority and a copy of such order

shall be served on the person concerned:

Provided that a copy of such an order shall be sent to the competent authority within forty-eight hours of its being made.

(2) Any order made under sub-Section (1) shall have no effect unless the said order is confirmed by an order of the competent authority within a period of thirty days of its being made."

Without following procedure contemplated under the Wild Life (Protection) Act and without seizure of Sea Cucumber on 16.06.2003, seizure mahazar drawn on 18.06.2003 is not legally sustainable one.

11.Above all, it is well settled that an order of acquittal need not be interfered with by the Appellate court unless it is shown that an order of acquittal was rendered by the lower Court by considering irrelevant material or without application of mind to the relevant materials. In fact, the Honourable Supreme Court in (Murugesan and others vs. State through Inspector of Police) 2012 SCW 5627 held that in case of an appeal against acquittal, the presumption of innocence available to the accused has been reinforced by such order of acquittal and it need not be slightly interfered with. In yet another decision of the Honourable Supreme Court reported in (Hydru vs. State of Kerala) (2004) 13 Supreme Court Cases 374 it was held that an order of acquittal need not be interfered with by the higher Courts unless there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate Court.

12.Considering all these aspects, I am of the view that the prosecution has not proved the guilt of the accused beyond all reasonable doubt. Thus the appellant is entitled to benefit of doubt. Thus, the acquittal order passed by the trial Court need not be interfered with.

13.In the result, the criminal appeal is dismissed. The judgment passed in C.C.No.2649 of 2005 dated 10.08.2007 by the learned IX Metropolitan Magistrate Court, Saidapet, Chennai 600 015, is confirmed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The IX Metropolitan Magistrate Court, Saidapet,
Chennai 600 015.

2.The Sanding Counsel for Forest Cases,
High Court, Madras.

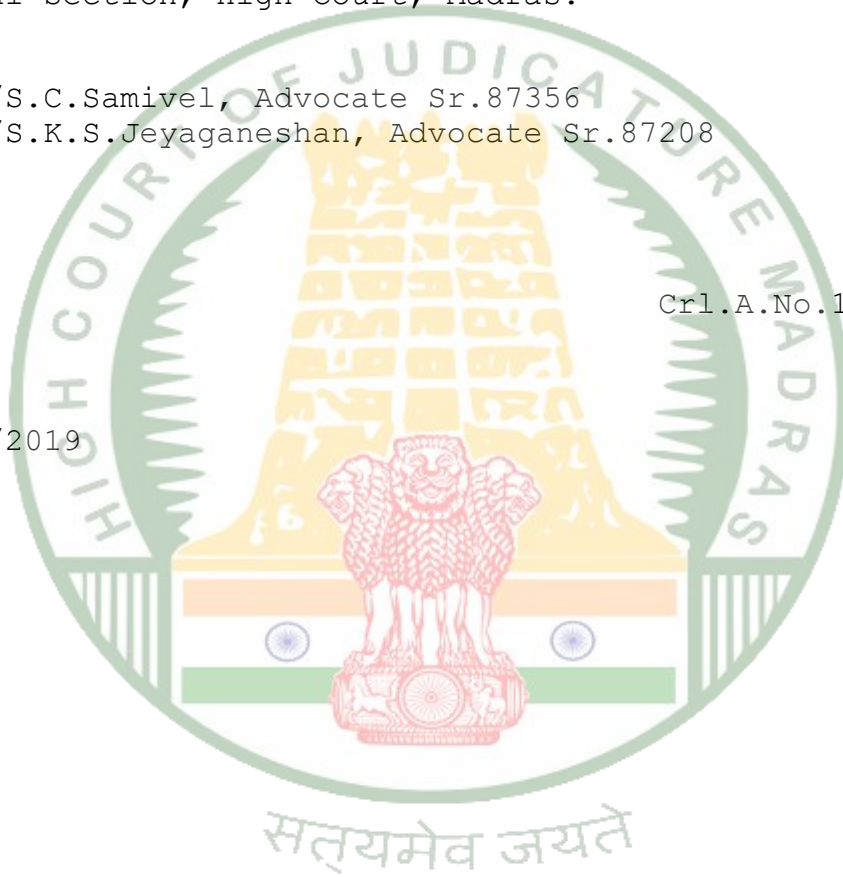
3.The Section Officer,
Criminal Section, High Court, Madras.

+1cc to M/S.C.Samivel, Advocate Sr.87356

+1cc to M/S.K.S.Jeyaganeshan, Advocate Sr.87208

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srg 28/02/2019



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