

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P.No.1934 of 2015

P.Parthasarathy

... Petitioner /Accused

Vs.

The Sub Inspector,
Madras S.P.C.A.
No.34, Veppery High Road,
Chennai-600 007

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the entire records in respect of C.C.No.163 of 2014 dated 07/04/2014 on the file of the V Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioner : Mr.D.Rajagopal

For Respondent : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.163 of 2014 on the file of the learned V Metropolitan Magistrate, Egmore, Chennai.

2. Mr.D.Rajagopal, the learned counsel for the petitioner would submit that there is no material to attract the offences under Section 11 (1) (a) (b) (e) (g)(h) (j), 26 (a) (b) (c) (d) under Prevention of Cruelty to Animals Act 1960. Under the Act, the Police officer not below the rank of the Sub Inspector or any other officer authorised by the State Government is the competent person to register and investigate the case. But in the present case, no authorisation was given by the State Government to the respondent to investigate or register case as against the petitioners. He further submitted that according to Section 36 of Prevention of Cruelty to Animals Act, the prosecution shall not institute proceedings after expiry of three months from the date of commission of offence. In the present case, according to the respondent, the offence has been committed as early as on 24.03.2014 and the respondent filed

final report in the month of November 2014. that too after lapse of three months. Therefore, the entire proceedings is vitiated and liable to be quashed. Further he submitted that Section 26 of Prevention of Cruelty to Animals Act, 1960, would not attract this case since it is not being registered under this Chapter Exhibits or trains any performing animal. There is absolutely no evidence to show ticket purchased on which the petitioner exhibited or trained the above said animals. Further he submitted that the said animals are not at all used for the purpose of training and exhibiting through sale of tickets. Further he submitted that there is absolutely no evidence to show that the petitioner tortured, beat, kicked the animals and administered injuries drug or injury substance to the animals. Therefore, no offence is made out as against the petitioner and prayed for quashment of the complaint.

3. Mr.M.Mohamed Riyaz, Additional Public Prosecutor appearing for the respondent would submit that the petitioner is the sole accused and has been charged for the offences under Section 11 (1) (a) (b) (e) (g) (h) (j), 26 (a) (b) (c) (d) under Prevention of Cruelty to Animals Act, 1960 alleging that the petitioners are maintaining Marmoset Monkey and Macaw (Panjavarna Kili) without registering under the Animal Welfare Board of India and he has not maintained them properly by not feeding food, water and providing sufficient space. He further contended that the petitioner exhibited and trained the said animals to the public. Therefore he prayed for dismissal of the quash petition.

4. Heard Mr.D.Rajagopal, the learned counsel for the petitioner and Mr.M.Mohamed Riyaz, Additional Public Prosecutor appearing for the respondent.

5. It is seen that the petitioner is the sole accused and he is charged for the offences under Section 11 (1) (a) (b) (e) (g) (h) (j), 26 (a) (b) (c) (d) under Prevention of Cruelty to Animals Act 1960 on the allegation that he has not maintained them properly Marmoset Monkey and Macaw (Panjavarna Kili) by not feeding food, water and providing sufficient space for them. It is seen that the petitioner is maintaining pet animals by running a pet shop in the name and style of AR Aquarium. He is also running a pet clinic with proper licence obtained from the Corporation of Chennai and he possessed with two gifted pet animals namely Marmoset Monkey and Macaw (Panjavarna Kili) at his shop and the above said pet animals are not for sales or for exhibition. There is also no evidence that the petitioner exhibited or trained the above animals for money and no evidence of ticket sold to the public. The Tamil Nadu Forest Department by its communication dated 23.01.2013 stated that on inspection certified that the Marmoset Monkey and Macaw (Panjavarna Kili) are not covered under the provisions of Wildlife Protection Act. It is also confirmed by the dealers in exotic birds that these

two species are exotic species and they are not covered under the Indian Wildlife Act. The Tamil Nadu Forest Department also certified that Marmoset Monkey and Macaw (Panjavarna Kili) are not protected under any provisions of Wildlife Act. The information produced by the petitioner obtained through RTI Act dated 02.07.2014 issued by the Ministry of Environment and Forest, which is extracted hereunder:

"Government of India,
Ministry of Environment and Forests
WILDLIFE CRIME CONTROL BUREAU

Southern Region

C2A, Rajaji Bhavan,

Besant Nagar, Chennai-600 090

No.35-1/WCCB-SR/2013-2001

Date 02.07.2014

To

Adv.P.Geetha Baskar, B.A.B.L.,
No.9, Second Cross Street,
Sanatorium,
Chennai-600047

Madam,

Sub: Information sought under RTI Act - Reply -
Regarding.

Ref: Your letter dated 09.05.2014

With reference to the subject and reference cited above, this office has received the payment by Post Order, furnishing the reply as given below.

Ans. to Qn.1. Exotic species (Pets of foreign origin) are not covered under "The Wildlife Protection Act, 1972". This office does not have the authority to issue license / NOC for rearing pets. Chief Wildlife Warden of the concerned State are the authority under Wildlife (Protection) Act, 1972.

Ans. To Qn.2. Marmosets (Callithrix jacchus) are not covered under schedules of the "The Wildlife (Protection) Act, 1972". Macaw are also not covered under the "The Wildlife (Protection) Act, 1972. However, Parakeets (Psittacidae) are listed under Section IV of the Wildlife (Protection) Act, 1972.

Ans. To Qn.3. This office does not have authority to issue license for Pet breeding and selling in shops. Chief Wildlife Warden of the concerned state are the authorities for the conservation / management of the Wildlife of the State.

Ans. To Qn.4. Love Birds, Emu, Turkey, Marmoset, Pug Dog, Macaw Bird, Rottweiler Dog, Persian Cats, Siamese Cats etc are mostly hybrids and exotic species.

Yours faithfully
(S.R.V.Murthy IFS)
Regional Deputy

Director,

Wildlife Crime Control

Bureau

Southern Region, Chennai"

6. Therefore, these animals are not coming under the purview of Wildlife Protection Act and as such the offence alleged by the respondent under the Prevention of Cruelty to Animal Act, 1960 are not attracted against the petitioner. On this ground alone, the entire criminal proceedings against the petitioner cannot be sustained.

7. In view of the above discussion, this Criminal Original Petition is allowed and the proceedings in C.C.No.163 of 2014 on the file of the learned V Metropolitan Magistrate, Egmore, Chennai is quashed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Inspector,
Madras S.P.C.A.
No.34, Veppery High Road,
Chennai-600 007

2. The V Metropolitan Magistrate,
Egmore, Chennai

3. The Additional Public Prosecutor,
High Court of Madras.

+4cc to Mr.D.Rajagopal, Advocate, S.R.No. 14376

CrI.O.P.No.1934 of 2015

BR(CO)
GN(20/03/2019)