

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.12.2019

PRONOUNCED ON : 03.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1404 of 2012

Perumal

.. Petitioner/
Accused

Vs

State rep. by its
Forest Ranger
Chennampatti Range
(O.R.No.1/2010)

.. Respondent/
Complainant

Criminal Revision preferred under Section 397 r/w 401 Cr.P.C. to set aside the judgment and order dated 03.09.2012 passed by the Principal Sessions Judge, Erode in C.A.No.82 of 2012 confirming the judgment and order dated 30.03.2012 passed by the Judicial Magistrate, Bhavani in C.C.No.18 of 2011.

For Petitioner : Mr.T.Shanmugam
for Mr.R.Karthikeyan

For Respondent : Mrs.P.Kritika Kamal,
Govt. Advocate (Crl. Side)

ORDER

This Criminal Revision has been preferred challenging the judgment and order dated 03.09.2012 passed by the Principal Sessions Judge, Erode in C.A.No.82 of 2012 confirming the judgment and order dated 30.03.2012 passed by the Judicial Magistrate, Bhavani in C.C.No.18 of 2011.

2.For the sake of convenience, the revision petitioner herein is referred to by his name.

3.On 10.02.2010, the forest officials received intelligence that some unauthorised persons were on the prowl in the Jardal lake area of the reserved forest and therefore, around 05.00 a.m., a team comprising Muthusamy (P.W.1), Forest Guard, Chinraj (P.W.2), Forester, Subramaniam (P.W.3), Forest Guard, Palanisamy (P.W.4), Forest Guard and others went into the forest to apprehend the intruders.

4.They noticed some persons, wading through the dense forest with torchlights and encircled them. There were totally four persons, one of them was possessing a country made rifle and another person was carrying a sack. When the officials tried to apprehend them, they were able to catch one of them and the others, including the one with country made rifle, escaped.

5. When questioned, the apprehended person said that his name is Perumal, S/o.Sadayappan and hails from Kadakkamarathukadu, Mettur Taluk. Perumal was holding a sack and on inspecting it, the officials found that it was a dead ant-eater (Pangolin - *Manis Crassicaudata*) listed as item No.28 in Part I - Mammals in Schedule I of the Wild Life (Protection) Act, 1972. On interrogation, he disclosed the names of the others who ran away and they were Sadayappan, S/o.Perumal, Chellappan, S/o.Aandi and Sithan, S/o.Perumal.

6. The confession statement of Perumal, which is admissible in evidence, as forest officers are not police officers within the meaning of Section 25 of the Evidence Act, 1872 was marked as Ex.P1. The ant-eater was seized under mahazar Ex.P2. Perumal was arrested and was produced along with the dead animal before the Judicial Magistrate, Bhavani, who remanded Perumal to judicial custody and made the following endorsement on the remand application :

"The dead body of ant-eater produced and seen at my residence. And it is ordered to be destroyed after post-mortem. Since, it is decaying one."

The forest officials apprehended the others named by Perumal. Post-mortem of the dead ant-eater was performed by the Government Veterinary Doctor and the post-mortem certificate was marked as Ex.P4.

7.Perumal, in his confession statement, has stated that he and the others killed the ant-eater and were taking it with them out of the forest and at that time, they were caught by the forest officials.

8.After completing the investigation, prosecution in C.C.No.18 of 2011 was launched by the Forest Department before the Judicial Magistrate, Bhavani against Perumal (A1), Sadayappan (A2), Chellappan (A3) and Sithan (A4) for the offence under Section 21(d) read with 21(2) of the Tamil Nadu Forest Act, 1882 for trespassing into reserve forest for the purpose of hunting and under Section 39 read with 51 of the Wild Life (Protection) Act, 1972 for killing and possessing a schedule animal.

9.After examining the witnesses under Section 244 Cr.P.C., charges were framed against A1 to A4 for the aforesaid offences. When questioned, they pleaded "not guilty". The witnesses were recalled for further cross-examination by the defence. On the whole, the prosecution examined six witnesses, marked 10 exhibits and one material object.

10.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 30.03.2012 in C.C.No.18 of 2011, acquitted A2 to A4, but, convicted Perumal (A1) as follows :

<i>Provision under which convicted</i>	<i>Sentence</i>
Section 21(d) read with 21(2) of the Tamil Nadu Forest Act, 1882	Pay fine of Rs.300/- in default, to undergo one month simple imprisonment
Section 39 read with 51 of the Wild Life (Protection) Act, 1972	One year simple imprisonment and fine of Rs.5,000/- in default, to undergo two months simple imprisonment

The appeal in C.A.No.82 of 2012 that was filed by Perumal was dismissed by the Principal District and Sessions Court, Erode on 03.09.2012. Challenging the concurrent findings of the two Courts below, Perumal has filed the present criminal revision under Section 397 read with 401 Cr.P.C.

11.Heard Mr.T.Shanmugam, learned counsel representing Mr.R.Karthikeyan, learned counsel on record for Perumal and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent.

12.Mr.Shanmugam, learned counsel for Perumal submitted that the prosecution has failed to prove that the accused were apprehended in the reserved forest. He further contended that the alleged country made rifle was not recovered and that is fatal to the case of the prosecution. He also contended that there was no independent witness to corroborate the evidence of the forest officials with regard to the seizure of the dead animal from

Perumal.

13.Per contra, learned Government Advocate (Crl. Side) refuted the contentions put forth by the learned counsel for Perumal.

14.This Court gave its anxious consideration to the rival submissions.

15.It is trite that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See *State of Maharashtra Vs. Jagmohan Singh Kuldip Singh Anand and Others, etc.* (2004) 7 SCC 659]. Very recently, in *Bir Singh Vs. Mukesh Kumar* [(2019) 4 SCC 197], the Supreme Court has held as under:

"17. As held by this Court in *Southern Sales & Services v. Sauermilch Design and Handels GmbH* [*Southern Sales & Services v. Sauermilch Design and Handels GmbH*, (2008) 14 SCC 457] , it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. "

(emphasis supplied)

WEB COPY

16.This Court perused the evidence of P.W.1 to P.W.6. Muthusamy (P.W.1), Forest Guard, in his chief-examination, has stated that, when they were camping in Nurali Chennampatti reserve forest area on 10.02.2010, they received information that some persons were going around the forest area and

so, they went deep inside; they saw torchlights being flashed and located the intruders; when they rounded them, they found that one of them was having a country made rifle and another one was carrying a sack; when they tried to apprehend them, three of them ran away and they were able to catch only one of them viz. Perumal; they found that Perumal was having a freshly killed animal in the sack. Thereafter, he (Muthusamy/P.W.1) spoke about the seizure for the torchlight, dead animal and preparation of the mahazar for the seizure.

17.In the cross-examination, he (Muthusamy/P.W.1) explained that the officials went by their jeep up to a certain point in the lake and thereafter, they proceeded by walk. He also explained in the cross-examination, when the officials tried to encircle the accused, three of them ran away, but, they were able to catch only Perumal. The defence was not able to make any serious dent in the testimony of P.W.1 (Muthusamy).

18.Chinraj (P.W.2), Subramaniam (P.W.3) and Palanisami (P.W.4) also corroborated the evidence of Muthusamy (P.W.1). As regards the contention of the defence that the seizure is vitiated for want of independent witness, there is no mandatory requirement to join independent witnesses to effect such seizures. The fact that Perumal was in possession of a dead animal at that point of time and that, the others escaped, has been proved beyond cavil *via* the evidence of Muthusamy (P.W.1), Chinraj (P.W.2) and

Subramaniam (P.W.3). The dead animal was produced before the Judicial Magistrate, when Perumal was produced after arrest. The prosecution has marked a copy of the Government gazette and the forest map to show that the place where the accused were apprehended is a reserve forest. Both the Courts have appreciated the evidence of the prosecution witnesses in the right perspective.

19.Mr.Shanmugam submitted that Perumal is a tribal and some leniency may be shown to him.

20.The trial Court has awarded only the minimum sentence prescribed under Section 39 read with 51 of the Wild Life (Protection) Act, 1972 as it stand in 2010. In such perspective of the matter, the request of the learned counsel for Perumal cannot be considered favourably in view of the mandate of the statute.

In fine, this criminal revision is dismissed as being devoid of merits. The Registry is directed to transmit the original records if any, to the respective Courts forthwith.

03.01.2020

gya

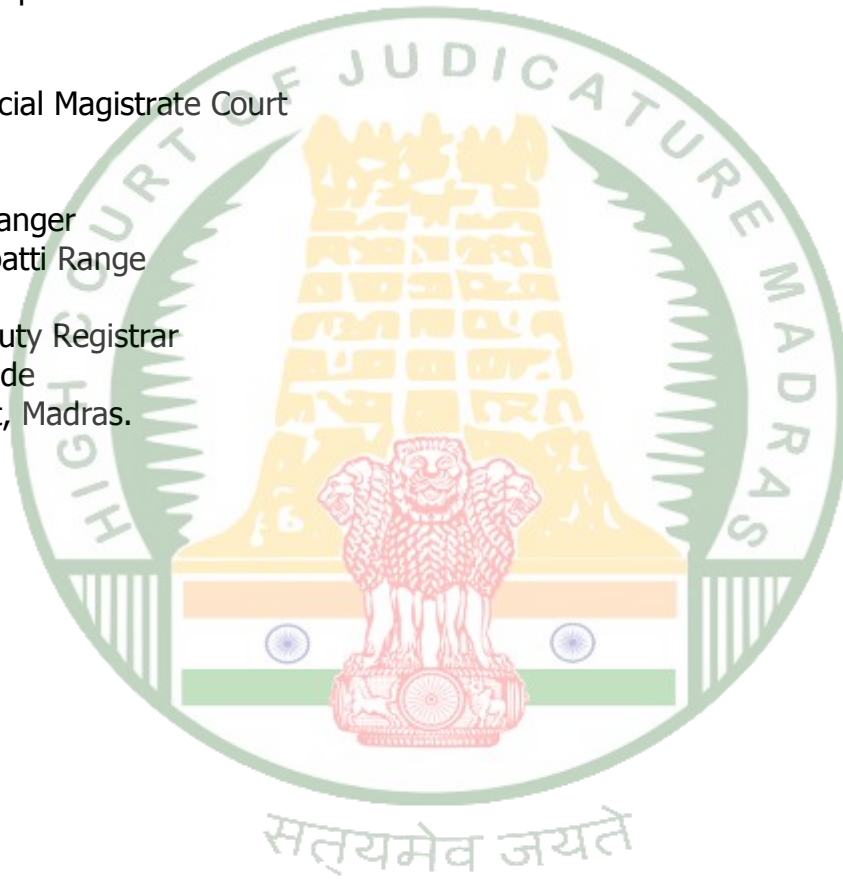
To

1.The Principal Sessions Court
Erode

2.The Judicial Magistrate Court
Bhavani

3.Forest Ranger
Chennampatti Range

4.The Deputy Registrar
Criminal Side
High Court, Madras.

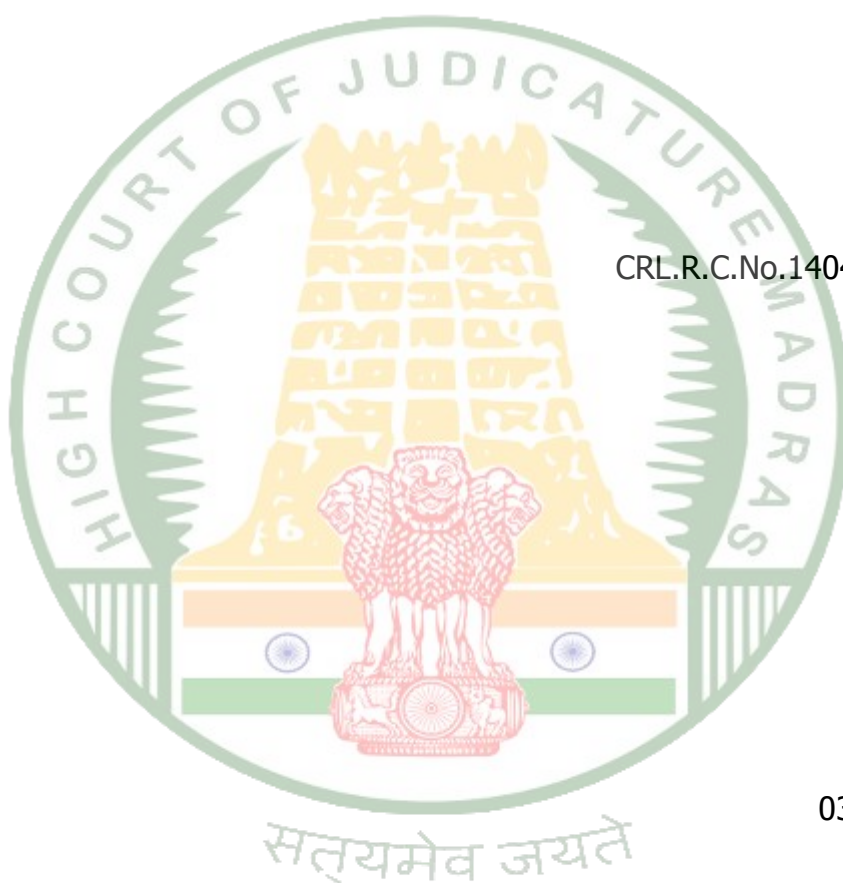


WEB COPY

CRL.R.C.No.1404 of 2012

P.N.PRAKASH, J.

gya



CRL.R.C.No.1404 of 2012

03.01.2020

WEB COPY