



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28.01.2020

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

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Crl.RC(MD)No.475 of 2019

and

Crl.MP(MD)No.6479 of 2019

R.Mala

: Petitioner/Accused

Vs.

The Divisional Forest Officer,
Wildlife Division,
Madurai.

: Respondents/Accused

Prayer: Criminal Revision filed under sections 397 r/w 401 of the Code of the Criminal Procedure against the order, 05.07.2019 passed by the Judicial Magistrate No.6, Madurai, made in Crl.M.P. No.2072 of 2019.

For Petitioner

: Mr.E.Sathish Rajkumar

For Respondent

: Mr.A.P.G. Ohm Chairma Prabhu
Government Advocate
(Criminal side)

J U D G M E N T

This criminal revision is directed against the order, 05.07.2019 passed by the Judicial Magistrate No.6, Madurai, made in Crl.M.P. No.2072 of 2019.

2.The learned counsel appearing for the petitioner submitted that the petitioner purchased an elephant with permission and then decided to take the elephant to Tamil Nadu, but he received a letter from the respondent directing to take back the elephant to Bihar, since the transit pass expired and then, he gave complaint as against Saris Phandey and Bhavan Phandey, who took steps to renew the ownership certificate and transit pass, but the respondent registered a case against him for illegal transport the said elephant and the respondent directed him to prove the ownership and in the meantime, the learned Judicial Magistrate No.6, Madurai passed an order directing him to send the elephant to Kozhikamuti Elephant Home, Pollachi and when the elephant is ordered to hand over to the home, prejudice will be caused to him and prays to stay the order passed by the Judicial Magistrate No.6, Madurai.

3.On the other hand, the learned Government Advocate (Criminal side) appearing for the respondent/State argued that the ownership certificate and transit certificate were found to be fake by the Principal Chief Conservator of Forests and Chief Wild Life



Warden and hence, criminal case has been registered as against the petitioner and the trial court passed the order to protect the elephant since the petitioner transported the elephant with fake certificate and the order passed by the trial court is correct and prays for dismissal of the petition.

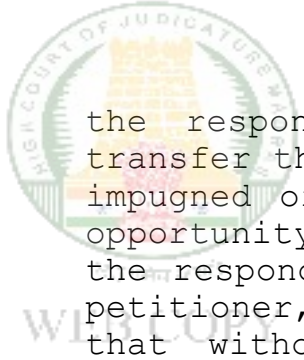
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4.The case of the petitioner is that with fake receipts, the elephant was transported from Bihar to Tamil Nadu. Hence, the trial court ordered to hand over the above elephant to the Elephant Home at Pollachi. In this case, only at the time of trial, it will be decided whether the records submitted by the petitioner/accused are fake or not by examining the witnesses and producing documents. At this stage, it cannot be decided that with fake records, the accused transported the elephant from Bihar to Tamil Nadu. Further, the reasons stated in the petition are acceptable.

5.The main contention raised on the side of the petitioner/accused is that the impugned order has been passed by the trial court without taking any cognizance and also not giving any opportunity to the petitioner and any summon to the petitioner the court below passed the order, which is not correct and no proper provision was considered and all the steps were taken in hurried manner and the impugned order has been passed in mechanical way and the petitioner is taking care of the elephant with due care, protection and healthy as per the advise and guidelines issued by the respondent for the past 13 years and this petitioner is the owner of the above elephant and she has valid document to prove his ownership and traditionally the petitioner family raising elephants for the past 30 years and she has known very well to maintain the elephant and hence, the criminal revision has to be allowed.

6.On the other hand, on the side of the respondent is is argued that on perusal of the documents submitted by the petitioner, the respondent came to understand that the validity of the transit pass was expired and it was found that the ownership is fake one and it was not issued by the concerned authority and the transit pass issued was also a fake one and the transit pass was issued without NOC for the destination State and hence, it was ordered to take criminal action against this petitioner and this respondent tried to enquire the petitioner, but she was not in adamant and hence, the above case has been registered as against the petitioner and hence, this respondent filed a petition directing this petitioner to send the elephant to the Kozhikamachi and hence, public and the order sent to the address of the same was affixed in the door of the petitioner's house and hence, the order passed by the court below is legally correct and the elephant was transported from Bihar to Tamil Nadu with the fake certificate and prays that the criminal revision may be dismissed.

7.The petitioner stated that she is the owner of the elephant. But on the side of the respondent, it is stated that the ownership claimed was found as a fake one. Further, on the side of



the respondent, it is stated that the transit pass issued to transfer the elephant also found to be a fake one. On perusal of the impugned order passed by the trial court, there was no reasonable opportunity was given to the petitioner before passing the order. On the respondent side, it is admitted that they tried to enquire the petitioner, but she was not in the above address. Hence, it is held that without any reasonable opportunity to the petitioner the impugned order was passed. Hence, it is necessary to interfere in the findings of the court below.

8. For the reasons stated above, this court is of the considered view that the impugned order passed by the trial court is liable to be set aside and the learned trial court is directed to dispose of the petition Crl.MP No.2072 of 2019 after giving opportunity to the petitioner, purely on merit and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

9. In the result, this criminal revision is **allowed**. The impugned order passed by the Judicial Magistrate No.6, Madurai, in Crl.M.P.No.2072 of 2019, dated 05.07.2019 is set aside. The case is remitted back to the trial court and the trial court is directed to dispose of the Crl.MP No.2072 of 2019 afresh after giving reasonable opportunity to the petitioner and pass a detailed order purely on merit and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

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To,

1. The Judicial Magistrate No.VI, Madurai.

2. The Divisional Forest Officer,
Wildlife Division,
Madurai.

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

+1 CC to Mr.E.SATISH RAJKUMAR, Advocate (SR-3428[F] dated 28/01/2020)