



Bail Slip

The Appellants / Accused namely (1) KALIDASS, S/o.Ravichandran and (2) SAKTHIVEL, S/o.Subramani were directed to be released on bail as per order of this Court dated 06.11.2015 and 18.12.2015 in MP Nos.1 + 1 of 2015 in Criminal Revision Nos.1175 of 2015 and 1301 of 2015 respectively on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders protectedd on : 27.08.2021/04.10.2021

Orders Pronounced on : 08.11.2021

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.Nos.1175 and 1301 of 2015

Kalidass ...Petitioner in Crl.R.C.No.1175 of 2015

Sakthivel ...Petitioner in Crl.R.C.No.1301 of 2015

Vs

State Rep.by
The Forest Ranger,
Bhavanisagar Forest Division
(O.R.No.6 of 2010) ...Respondent in Crl.R.C.No.1175 of 2015

State represented by the
Range Officer,
F.R.O, Bhavanisagar,
In O.R.No.6/2010 ...Respondent in Crl.R.C.No.1301 of 2015

PRAYER in Crl.R.C.No.1175 of 2015 : Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., to set aside the conviction imposed in judgment dated 29.10.2015 made in Crl.A.No.72 of 2014 on the file of the III Additional District Sessions Court, Gobichettipalayam confirming the conviction order dated 14.10.2014 made in C.C.No.160 of 2010 on the file of the Judicial Magistrate, Sathyamangalam.

PRAYER in Crl.R.C.No.1301 of 2015 : Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., to set aside the



order passed by the III Additional District and Session Judge, Gobichettipalayam in Crl.A.No.78 of 2014 dated 29.10.2015, in confirming the judgment, conviction passed in C.C.No.160 of 2010 dated 14.10.2014 by the Judicial Magistrate Court, Sathyamangalam.

Crl.R.C.No.1175 of 2015:-

For petitioner : M/s.R.Shase
for Mr.M.Guruprasad

For Respondent : Mr.R.Vinoth Raja,
Government Advocate (Crl.Side)

Crl.R.C.No.1301 of 2015:-

For Petitioner : Mr.J.Kingsly Solomon

For Respondent : Mr.R.Vinoth Raja,
Government Advocate (Crl.Side)

C O M M O N O R D E R

This Court, earlier reserved orders in these revision petitions on 27.08.2021 and subsequently they were listed under the caption 'For being spoken to' on 04.10.2021 and orders were finally reserved on 04.10.2021.

2. The first accused preferred the Crl.R.C.No.1301 of 2015 while the second accused preferred Crl.R.C.No.1175 of 2015.

3. Crl.R.C.No.1175 of 2015 has been filed against the order dated 29.10.2015 made in Crl.A.No.72 of 2014 on the file of the III Additional District Sessions Court, Gobichettipalayam, confirming the conviction order dated 14.10.2014 made in C.C.No.160 of 2010 on the file of the Judicial Magistrate, Sathyamangalam sentencing him to undergo 2 years Rigorous Imprisonment and to pay fine of Rs.1,000/- in default to undergo imprisonment for three months for the offence under Chapter V Sections 39(1)(b)(d), 39(2), 39(3) and 44(1)(a) of Tamil Nadu Wild Life Protection Act, 1972.

4. The respondent-Range Officer, Forest Range office, Bhavanaisagar filed a private complaint in O.R.No.6 of 2010 before the learned Judicial Magistrate, Sathyamangalam, which was taken on file as C.C.No.160 of 2010. The complaint came to be registered on 05.06.2010 for offences under Section 39(1)(b)(d), 39(2), 39(3)(a) and 44(1)(a) of Wild Life Protection Act, 1972, read with Schedule V, by the respondent for the offences committed on 05.06.2010, on the allegation that the petitioners



along with co-accused, have travelled to a protected forest in a Suzuki Fiero. On a sudden confinement of the accused, it was contended that the de-facto complainant was able to see that there was a hide of Leopard found in the yellow bag.

WEB COPY

5. The brief history in the filing of the above case are as under:-

The petitioners were charged for the above offences and a Criminal Case was taken on file by the learned Judicial Magistrate Court in C.C.No.160 of 2010 and based on the examination of witnesses, the petitioner and co-accused were imposed with sentence of punishment on 29.08.2015, by imposing a punishment as under Sections 39(1)(b)(d), 39(2), 39(3)(a) and 44(1)(a) of Wild Life Protection Act, 1972 to undergo two years Rigorous Imprisonment and to pay a fine of Rs.1,000/-

6. Challenging the above sentence passed by the Judicial Magistrate Court, Sathyamangalam, in C.C.No.160 of 2010 dated 14.10.2014, the petitioner/A1 filed a Appeal in Crl.A.No.78 of 2014 and A2 filed appeal in Crl.A.No.72 of 2014 before the III Additional District and Session Judge, Gobichettipalayam. The Appellate Court dismissed the appeals vide its order dated 29.10.2015 in the said Crl.As.

7. Criminal Revision Petitions are filed against the order passed by the learned III Additional District and Session Judge, Gobichettipalayam in Crl.A.No.78 of 2014 dated 29.08.2015, in confirming the judgment, conviction passed in C.C.No.160 of 2010 dated 14.10.2014 by the Judicial Magistrate Court, Sathyamangalam as stated above.

8. Against the order of conviction passed in Crl.C.C.No. the first accused preferred Crl.A.No.78/2014, while the second accused preferred Crl.A.No.72 of 2014 and on 29.10.2015, by a separate judgment, both appeals were dismissed and hence these revisions petitions are separately filed by both the accused.

9. Heard both sides and perused the materials available on record.

10. The learned counsel for the petitioners contended that except the Forest Officer who have registered the case against the accused, no independent witnesses were examined to establish the offences and the explanation offered by the accused that they went to the forest to worship the family God inside the forest, ought to have been accepted by the Courts below.

11. The learned counsel for the revision petitioners further contended that the confession statement cannot ipso facto establish to prove the prosecution and the material objects that



WEB COPY

are alleged to have been recovered, were not there in the presence of independent witnesses and further notification regarding whether the forest is a protected area, was not filed and preparation of Observation Magazar is not proved in the manner known to law and he prayed to allow the revision.

12. Heard the learned Government Advocate (Crl.Side) who has made submissions in support of the judgment of the trial Court.

13. Both the accused stand charged for the offences under Sections 39(1)(b)(d), 39(2), 39(3)(a) and 44(1)(a) of Wild Life Protection Act, 1972.

14. In support of the charges framed, the prosecution had examined P.W.1 Forest Ranger, who had presented Ex.P1 Mahazar. P.W.2 is a Forester Chandran. P.W.3 is the Forest Guard Krishnan. P.W.4 is a Forest Guard Subramaniam. P.W.5 is a Forest Watcher Mohan. P.W.6 is a Forest Officer Rajmohan. Ex.P2 is the confession statement of the Sakthivel-first accused and Ex.P3 is the confession statement of Kalidoss-second accused. Ex.P4 is the 'H' Memo (Form) and Ex.P5 is the 'A' Form and Ex.P6 is the 'C' Form which are annexed to be Wild Life Protection Act. The material objects seized are the skin of Leopard and the Suzuki Bureo having Registration No. TN 72 V 6463 which were marked as M.O.1 and M.O.2 respectively.

15. The rival submissions of the respective counsels are taken note of and the lower Court records are perused.

16. The record reveals that the scene of the crime namely the place where P.W.2, P.W.3 and P.W.4 have found both the accused standing along with M.O.2 Maruti Suzuki two wheeler situated in Sri Rangarayan Karadu protected forest. It is a protected forest. Necessary Gazette Notification has been issued therefor and in view of the provisions of 81 and 83 of the Indian Evidence Act, Gazette Notification said to have been published and copy is available in the lower Court records. It is to be stated that declaration of Sathyamangalam forest division as wild life sanctuary under the wild life (Protection) Act, 1972 issued as early as on August 2011 in G.O.M.S.No.93, Environment and Forest (FR V), dated 11.08.2011. The Wild Life Transit Tamil Nadu Rules 1991 authorized the Chief Wild Life Warden to sanction transportation permission for any wild life or wild life protect.

17. My attention is drawn to evidence of P.W.1 and P.W.2 regarding preparation of Mahazar. There is a minor deviation therein prepared the Magazar Exs.P1 and P4. P.W.2 is only a Forester and hence the minor deviation is not fatal to the prosecution.



18. From the rice bag found in M.O.2 TVS 50, they seized the a complete skin of the Leopard skin (சிறுத்தை தோல்).

19. From the records of lower Courts, it reveals that it is a hide of Leopard. The skin of the same is remanded as a case property in C.P.No.239 of 2010. As per the prescription in the C.P, it is seen that Form 91 of the Cr.P.C have been followed with regard to the hide of the Leopard, which is noticed herein.

"சிறுத்தை தோல் அன்று அரிசி சாக்கு பை சிறிது (Maharajha Rice) - விலை மதிப்ப, அற்றது"

சிறுத்தை தோலின் அளவ, விபரம்

(Length) நீளம் - 105 cm

(Tail) வால் - 70 cm

(chest) மாம்ப, - 49 cm

(Stomach) வயிறு - 35 cm

(Hip) இடுப்பு, - 54 cm

இடதுகால் முதல் வலதுகால் வரை - 92 cm முன்பகுதி (front)

இடதுகால் முதல் வலதுகால் வரை - 101 cm பின்பகுதி (back)

20. The two wheeler M.O.2 suzuki Bureo was also seized and custody was given to the learned Judicial Magistrate. The second accused/revision petitioner Kalidoss filed C.M.P.No.239/2010 for return of the two wheeler and the same was allowed and interim custody was given in the said application. A2 was shown as the owner of the vehicle in R.C.No.Book as reflected in CrI.M.P.No.867 of 2011 and interim custody was handed over to A2 Kalidoss (revision petitioner in CrI.R.C.No.1175 of 2015).

21. Both the learned counsels appearing for the accused contended that P.W.1 to P.W.4 are officials of the Forest and in the absence of independent witnesses, their version has to be eschewed from consideration. This Court is unable to accept the above contention for more than one reason. In the decision of Kerala High Court reported in 1989 CrI.L.J Page No.2038 [Forest Range officer vs. Aboobacker and another], it is held that in appreciation of evidence, the testimonial of Forest Range Officer can be relied on without corroboration.

22. It remains to be stated that the accused were found to be in possession of two wheeler M.O.2. In the said two wheeler, a bag was seized. In the said bag M.O.2 Leopard skin was found. From the description of the case property and also from the report of remand of property before the learned Magistrate, as extracted supra, which goes to show that it is a complete animal after removal of the flush inside and the entire description clearly demonstrate that A1 and A2 are actively participating



like professionalism in the activity of poaching of the leopard and hide of schedule animal was fetched from the said bag in the two wheeler owned by the second accused. Both the first and second accused were found inside the protected Forest.

WEB COPY

23. After perusal of the evidence of P.W.1 to P.W.4, both the trial Court as well as the Appellate Court have found that their evidence is clear and cogent as to the presence of A1 and A2 with M.O.1 skin of Leopard and M.O.2 Motor Vehicle, owned by A2. So is the confession statement of A1 and A2 marked as Exs.P2 and P3. It is a forest offence. It cannot be expected of any independent witnesses to present at the time of the seizure of M.O.2.

24. Admittedly, the possession of M.O.1 along with M.O.2 in the possession of A1 and A2, had been clearly demonstrated by P.W.1 to P.W.4 along with Exs.P1 to P6. Both the Courts below based upon the above analysis, have come to the conclusion that the prosecution has proved that A1 and A2 were inside the protected Forest with their bike (M.O.2) along with A1 and A2. M.O.1 skin of the Leopard and hence, rightly the Courts below convicted the A1 and A2 in the above said sections.

25 (a) Thus, on re-appreciation of the evidence with regard to the contention raised by the respective counsels, I find that from the version of the prosecution witnesses P.W.1 to P.W.5 that P.W.1 Forester along with P.W.2 and P.W.3 whereon watch over the forest in the Sri Rangarayan Karadu protected area which is a ' protected forest ' as defined under Section 24-A of the Act as pursuant to the notification issued under Section 80 of the Act as could be seen from the map annexed with the charge sheet and the accused were found to be in possession of the two wheeler Suzuki Bureo Registration No.TN 72 B 6463 with a yellow rice bag in which they find in the hide of leopard the M.O.1 as described in the previous paragraphs.

(b) The said M.O falls under Schedule I Part I and accordingly, it is a schedule animal which falls under these above said schedule and they found to be in possession of the hide of the leopard which is uncured trophy (skin without the flush of the leopard) and the same is a animal article. Both the accused does not have any previous permission in writing of the Chief Wild Life Wardener. Accordingly, they are found to be in possession of the uncured trophy of Schedule animal leopard.

26. Accordingly, there were Seizure Magazar of both M.O.1 and M.O.2 and Ex.P4 ' H' Form was prepared based upon the version of P.W.1. The evidence of the prosecution witnesses are clear and cogent as to the presence of the accused in the protected forest and they were found to be in possession of M.O.1 and M.O.2 as stated supra.



WEB COPY

27(a) Admittedly, the material objects I seized from the custody of the accused falls under Schedule I Part I of the Wild Life Protection Act. During the cross-examination, the classification of M.O.1 has remained unchallenged and the accused has not produced any letter of permission has required under Section 44 of the Act from the Chief Wild Life Warden and thus, this Court finds that the seizure mahazar and the evidence of P.W.1 to P.W.4, the prosecution has established that the accused persons are in possession and custody of an animal article in the nature of uncured trophy.

(b) Consequently, they are entitled to for presumption under Section 57 of the Wild Life Protection Act and hence, the accused are presumed to be in unlawful possession of the said animal article of uncured trophy and thus, it is for the accused to rebut the same as to the level of preponderances of the probability. As submitted the earlier the classification of the material object M.O.1 under the category of Schedule I and Part I remains unchallenged and the area in which the possession was taken as notified as a 'protected area' under the Act and it is an uncured trophy of schedule animal and they have found to be in possession and hence, it is presumed that they are in unlawful possession and the same in the absence of any licence or permission from the Chief Wild Life Warden. They failed to rebut the presumption under Section 57 of the Act. Consequently, both the Courts below has rightly laid the conviction.

28. சிறுத்தை ப,லி தோல் (Schedule I Part I) possession of hide of Leopard for sale is made as an offence. The animal is a schedule animal as described in the Schedule I Part I under Section 39 (1) (b) (d), a pillar in trophy or uncured trophy without any licence and he is keeping in possession the uncured trophy of the schedule animal which is an offence under Section 39 (3) (a). The said leopard is a schedule animal falls under the category of Schedule I Part I is defined under 49 (a) of the Wild Life Protection Act and the hide which was found in his possession is a schedule animal article is defined under Section 49 (a) of the Act. The sketch indicating the scene of the crime as protected the area in the reserve forest has been annexed thereto and it is a specific evidence of P.W.2 that the document was filed along with the final report.

29. Taking note of the above facts and circumstances of the case, this Court, while confirming the conviction against on both the accused, reduces the sentences imposed on them from two years to six months Rigorous Imprisonment. Since the revision petitioner/A1 and A2 are on bail, the trial Court is directed to take steps to secure their custody to undergo the remaining period of sentence if any. Fine already imposed is hereby awarded kept intact.



30. With these observations, both the Criminal Revision Petitions are partly allowed to the extent of reducing the sentence as above.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

nvi

To

- 1.The III Additional District Sessions Court,
Gobichettipalayam.
- 2.The Principal District and Sessions Judge,
Gobichettipalayam.
- 3.The Judicial Magistrate,
Sathyamangalam.
- 4.(do through) The Chief Judicial Magistrate,
Erode. (For Information)
- 5.The Forest Ranger,
Bhavanisagar Forest Division,
(O.R.No.6 of 2010).
- 6.The Range Officer,
F.R.O, Bhavanisagar,
In O.R.No.6/2010
- 7.The Superintendent,
Central Prison,
Coimbatore.
- 8.The Public Prosecutor,
High Court of Madras,
Madras.

Copy To

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

+1cc to M/s.Kingsly Solomon, Advocate SR.No.57583
+1cc to M/s.M.Guruprasad, Advocate SR.No.57363

Crl.R.C.Nos.1175 and 1301 of 2015

VSN-II (CO)
RVM(29/11/2021)