



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Second day of March Two Thousand and Twenty One

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) Nos.470 and 471 of 2021
in
CRL RC(MD)No.33 of 2021

1 DEIVASIGAMANI
2 SANTHANAKUMAR
3 MURUGAN

... PETITIONERS/PETITIONERS
ACCUSED 1 TO 3
IN BOTH PETITIONS

Vs

THE STATE REP.BY
THE FOREST RANGER',
VILATHIKULAM FOREST RANGE,
THOOTHUKUDI DISTRICT.
CRIME NO.1 OF 2008.

... RESPONDENT/COMPLAINANT
IN BOTH PETITIONS

PRAYER IN CRL MP(MD)No.470 of 2021 IN CRL RC(MD)No.33 of 2021:

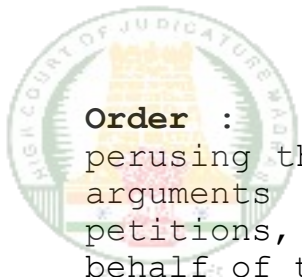
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to pass an order of suspending the Execution of sentence passed in C.A.No.44 of 2018 in Crime No.1 of 2008 dated 05.07.2019 on the file of the learned Principal Sessions Judge, Thoothukudi, confirming the judgment passed by the Learned District Munsif Cum Judicial Magistrate Court, Vilathikulam in C.C.No.171 of 2009 dated 21.06.2018.

PRAYER IN CRL MP(MD)No.471 of 2021 IN CRL RC(MD)No.33 of 2021:

To dispense with the surrender of the petitioners before the Learned District Munsif Cum Judicial Magistrate Court, Vilathikulam in C.C.No.171 of 2009 dated 21.6.2018 as per the Judgment of the Learned Principal Sessions Judge, Thoothukudi in C.A.No.44 of 018 dated 05.07.2019, pending disposal of this Criminal Revision Petition.

PRAYER IN CRL RC(MD)No.33 of 2021:

Pleased to call for the records pertaining to the order passed in C.A.No.44 of 2018 in Crime No.1 of 2008 dated 05.07.2019 on the file of the learned Principal Sessions Judge, Thoothukudi, confirming the Judgment passed by the learned District Munsif Cum Judicial Magistrate Court, Vilathikulam in C.C.No.171 of 2009 dated 21.6.2018 and set-aside the Judgments of the Courts below, acquit the petitioners.



Order : These petitions coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.R.MURUGAN, Advocate for the petitioners in both petitions, and of Mr.KR.BHARATHI KANNAN, Government Advocate on behalf of the Respondent, the court made the following order:-

WEB COPY

This petition has been (i) filed to suspend the sentence imposed by the learned Principal Sessions Judge, Thoothukudi in Crl.A.No.44 of 2018 confirming the judgment dated 21.06.2018 in CC.No.171 of 2009 on the file of the learned District Munsif cum Judicial Magistrate, Vilathikulam, till the disposal of the revision case (ii) to dispense with the surrender of the petitioner before the trial Court.

2.The case against the petitioners is that on 29.06.2008 the petitioners were found in possession of 1 dead peacock and 7 dead peahens in a bag. A case was registered against the petitioners in Crime No.1 of 2008. The case was later taken on file as CC.No.171 of 2009. The District Munsif cum Judicial Magistrate, Vilathikulam found the petitioners guilty under Sections 9, 39(3), 44, 29(a)(a1) and 51(1) of the Wild Life (Protection) Act and sentenced him to undergo 3 years simple imprisonment and to pay fine of RS.10,000/-, in default to undergo further a period of six months simple imprisonment. Against the conviction and sentence, the petitioners preferred an appeal in Crl.A.No.44 of 2018. The learned Principal Sessions Judge, Thoothukudi dismissed the appeal and confirmed the conviction and sentence. Aggrieved over the same, the petitioners filed the revision in Crl.R.C.No.33 of 2021. Along with revision, they have filed the present applications (i) for suspension of sentence, pending disposal of the revision case and (ii) to dispense with from surrendering before the trial Court.

3.On the side of the petitioners it is stated that eye witness for the occurrence is the Investigating Officer, who registered FIR and investigated the case. The offence under the Section of the law was not made out, since the peacock and peahens were not hunted at the National Park. The person, who registered the FIR, should not investigate the case. The judgment of the Hon'ble Supreme Court reported in **AIR 1995 SC 2340** in the case of **Wardington Lyngdoh and others Vs., The Collector, Mawkyrwat** is cited on the side of the petitioners.

4.On the side of the respondent it is stated that the accused were arrested on 29.06.2008 under the Wild Life (Protection) Act. The confession statement of the petitioners were marked as Ex.P.1 to Ex.P.3. Postmortem report of the peacock and peahens is marked as Ex.P.6. The prosecution has examined five witnesses and marked six documents and five materials objects and prove the case beyond all reasonable doubts. If the sentence is suspended, there is a possibility of the petitioners to escape from the clutches of law and played the petition to be dismissed.



5.It is seen that the petitioners were not available before the First Appellate Court at the time of pronouncement of the order. The offence of killing the national bird is serious in nature. Though the appeal was dismissed on 05.07.2019, the petitioner had not approached this Court until 2021. The petitioner is directed to surrender before the trial Court and then to file this petition.

6.With the above direction, this petition is disposed of. Consequently, the Crl.M.P(MD).No.471 of 2021 is dismissed.

sd/-
02/03/2021

/ TRUE COPY /

/ /2021

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1.THE PRINCIPAL SESSIONS JUDGE, THOOTHUKUDI.
- 2.THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
VILATHIKULAM.
- 3.DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THOOTHUKUDI DISTRICT.
- 4.THE FOREST RANGER,
VILATHIKULAM FOREST RANGE,
THOOTHUKUDI DISTRICT.
- 5.THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN
CRL MP(MD) Nos.470 and
471 of 2021 in
CRL RC(MD)No.33 of 2021
Date :02/03/2021

RMK
TK/PN/SAR.4/11.03.2021/3P/6C