



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No. 16122 of 2021

and

Crl.M.P.(MD)Nos.8658 & 8659 of 2021

1.Mandena
2.P.D.Jothikumar

... Petitioners/
Accused Nos.1 & 2

Vs.

The State represented by
The Forest Ranger,
Project Tiger,
Ambasamudram,
Tirunelveli District.
(O.R.No.74 of 1995)

... Respondent/Complainant

Prayer : Criminal Original Petition is filed under Section 482 Cr.P.C., to call for records in connection with C.C.No.105 of 1997 on the file of the learned Judicial Magistrate, Ambasamudram, Tirunelveli District, in O.R.No.74 of 1995 on the file of the Forest Ranger, Project Tiger, Ambasamudram, Tirunelveli District and quash the same.

For Petitioners : Mr.S.Ashok Kumar,
Senior Counsel,
for Mr.S.Palani Velayutham.

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor.

ORDER

The petitioners are figuring as accused in C.C.No.105 of 1997 on the file of Judicial Magistrate, Ambasamudram and facing trial for the offences under Sections 9, 32 and 58 of The Wild Life (Protection) Act, 1972. On 12.03.1995, a leopard cat was found dead within the boundaries of Manjulai Estate belonging to Bombay Burmah Trading Corporation Limited. The jurisdictional Forest Ranger registered a case in O.R.No.74 of 1995. After investigation, he filed a private complaint before the learned Judicial Magistrate, Ambasamudram. Cognizance of the offences mentioned above was taken. The case was taken on file in C.C.No.105 of 1997. To quash the

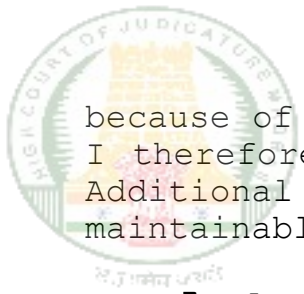


same, this Criminal Original Petition has been filed.

2. The learned Senior Counsel appearing for the petitioners reiterated all the contentions set out in the memorandum of grounds and submitted that the impugned prosecution deserves to be quashed. Per contra, the learned Additional Public Prosecutor appearing for the Complainant / State submitted that no case for quashing has been made out.

3. I carefully considered the rival contentions and went through the materials on record.

4. The learned Additional Public Prosecutor questioned the maintainability of this petition. He pointed out that the petitioners herein had earlier filed Crl.O.P.No.6660 of 1997 seeking the relief now sought for. The said O.P. has not been disposed of till date. Therefore, a second quash petition on the same set of facts will not lie. No doubt, this is a formidable objection. But the circumstances that led to filing of this petition will have to be looked into. The earlier O.P was filed in the year 1997 before the Madras High Court. Following the constitution of the Madurai Bench in the year 2004, cases in which cause of action arose within the territorial jurisdiction of the Madurai Bench were transferred to this Bench. I can take judicial notice of the fact that during such process of transfer a few hundred bundles got lost. Whenever case bundles go missing, under orders of the Court, they are re-constructed. Registry either on their own or at the instance of either of the parties must have done so. No such re-construction of the bundle was done in this case. The petitioners also did not bother. That was because interim stay had been granted in Crl.O.P.No.6660 of 1997. The petitioners began to feel the heat when the learned trial Magistrate invoked the direction set out in ***Asian Resurfacing of Road Agency (P) Ltd. V. CBI ((2018) 16 SCC 299)***. The Hon'ble Supreme Court had directed that in all pending cases where stay against proceedings of a civil or criminal trial is operating the same will come to an end on expiry of six months unless in an exceptional case by a speaking order, such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. It is in these circumstances, the present O.P for quashing came to be filed. It is settled law that the High Court is entitled to entertain a second quash petition even after the dismissal of the first one provided the change in circumstances warrants it. (***Supdt. And Remembrance of Legal Affairs V. Mohan Singh ((1975) 3 SCC 706)***). Of course in the case on hand, the first petition had not reached its logical conclusion. But then, the petitioners cannot be fastened with any blame. Instead of calling upon this Court to re-construct the lost bundle, they have chosen the easier option of filing a fresh petition. It is a fundamental maxim that no person should suffer



because of the mistake of the Court (Actus curiae neminem gravabit). I therefore reject the preliminary objection raised by the learned Additional Public Prosecutor and hold that the petition is maintainable.

5. According to the prosecution, the petitioners committed the offences under Sections 9, 32 and 58 of The Wild Life (Protection) Act, 1972. Let us examine if the ingredients of the offences are made out.

6. According to the prosecution, inside the dead body of the animal, a chemical substance, namely, phorate was found. This is evident from the postmortem certificate. This chemical is used as an insecticide. The company staff had liberally sprayed the same. Manjulai estate is basically a tea plantation. The animal had strayed into the estate and consumed the insecticide which led to its death. Since any company operates only through human agency, the officials in-charge of the company will have to face the prosecution. That is why, invoking Section 58 of the Act, Section 32 has been pressed into service against the petitioners.

7. Section 32 of the Act is as under:-

32. Ban on use of injurious substances.-No person shall use, in a sanctuary, chemicals, explosives or any other substances which may cause injury to, or endanger, any wild life in such sanctuary. Section 32 is a penal provision. It has to be construed strictly and narrowly and not widely or with the object of advancing the object and intention of the legislature (*Virtual Soft Systems Ltd., V. CIT (2007) 9 SCC 665*). Section 32 can be invoked only if an injurious substance has been used in a sanctuary. The expression 'in' is of utmost significance. Section 32 cannot be invoked based on the impact on the wild life. The charging element is use of the offending material in the sanctuary. The offending act if committed outside the sanctuary will not attract Section 32 of the Act. During the relevant time, Manjulai estate was not a sanctuary. This factual position was admitted before me by the respondent. Therefore, even if an injurious substance had been used by the employees of Manjulai estate, notwithstanding its fatal impact on the wild animal, the offence is not attracted.

8. Let me see if the offence under Section 9 of the Act is made out. Section 9 is as follows:-

9. Prohibition of hunting.-No person shall hunt any wild animal specified in Schedules I, II, III and IV except as provided under section 11 and section 12.

'Hunting' has been defined in Section 2 (16) as follows:-

(16) "hunting", with its grammatical variations and cognate expressions, includes,-

[(a) killing or poisoning of any wild animal or captive animal and every attempt to do so;



(b) capturing, coursing, snaring, trapping, driving or baiting any wild or captive animal and every attempt to do so;

(c) injuring or destroying or taking any part of the body of any such animal or, in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles, or disturbing the eggs or nests of such birds or reptiles;

If the petitioners had personally hunted the animal by whatever mode, then the offence is prima facie attracted. But even according to the prosecution, the petitioners did not hunt the animal. The animal was found dead within the estate premises. Only the company officials informed the forest ranger about the death of the animal. Therefore, even if the case of the prosecution is accepted and taken to be true at its face value, still no offence is made out against the petitioners herein.

9. The respondent wants to sustain the impugned prosecution by invoking Section 58 of the Act. Section 58 of the Act is as follows:-

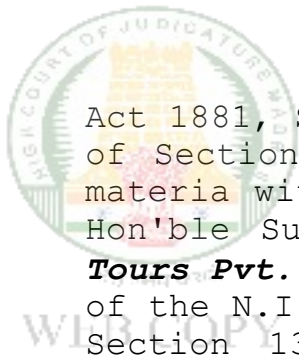
58. Offences by Companies.-(1) Where an offence against this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence against this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.-For the purposes of this section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

The learned Additional Public Prosecutor relies on the decision reported in **1982 Cr1.L.J. 41 (Babu Lal V. State of Delhi)** and contended that in a case arising under The Wild Life (Protection) Act, 1972 the person who had committed the offences alone can be prosecuted and it is not necessary to array the company also as a party. I am however unable to follow the aforesaid decision because of the march of law. In a number of statutes, there are provisions dealing with offences by companies. In The Negotiable Instruments



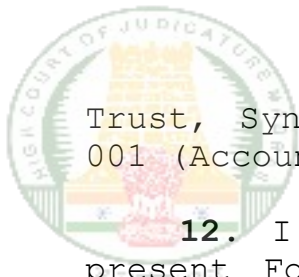
Act 1881, Section 141 deals with offences by companies. The language of Section 141 of the Negotiable Instruments Act, 1881 is in pari materia with Section 58 of The Wild Life (Protection) Act 1972. The Hon'ble Supreme Court in **Aneeta Hada V. M/s.Godfather Travels & Tours Pvt. Ltd. (2012-2-L.W. (Crl.) 73** while interpreting Section 141 of the N.I. Act held that if the person committing the offence under Section 138 is a company, for maintaining a prosecution under Section 141 of the Act, arraigning of the company as an accused is imperative. In other words, the officials of the company alone cannot be independently prosecuted without the company being an accused. This is because the company officials become liable only in a vicarious capacity. In view of the similarity of language and in view of the pronouncement in Aneeta Hada, the decision of the Hon'ble Delhi High Court rendered in Babu Lal can no longer be considered as good law. In this case, the prosecution has not arraigned the company as an accused. Therefore, the prosecution against the petitioners alone in their individual capacity is impermissible.

10. The Hon'ble Supreme Court in State of Haryana and Others V. Bhajanlal (1992 AIR SC 604) laid down seven illustrative categories of cases wherein the inherent powers under Section 482 of Cr.P.C. can be exercised by the High Court. Category 1 and category 6 set out in the said decision are as follows:-

1.Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings. ..
The aforesaid parameters are clearly applicable to the case on hand. The petitioners are now aged about 60 and 80 respectively. They are no longer in the service of the company. When the company is not before the criminal Court, continuance of the impugned prosecution against its erstwhile employees alone would clearly amount to an abuse of legal process. Quashing the same alone would meet the ends of justice.

11. During the last hearing, I indicated that Bombay Burmah Trading Corporation Limited, even though not a party to this proceedings, can still consider making some contribution for the cause of wild life. In response to the suggestion made by the Court, Mr.Srinath Sridevan, learned counsel entered appearance for the company today and submitted that the company would shortly make a contribution of a sum of Rs.50,000/- (Rupees Fifty Thousand only) to the credit of Annamalai Tiger Conservation Foundation, Tamilnadu



Trust, Syndicate Bank, Pollachi Branch, Coimbatore District - 642 001 (Account No.61272200089472, IFSC Code: SYNB0006127).

12. I must also place on record that Shri.K.Karthikeyan, the present Forest Ranger, Ambasamudram, spiritedly took part in the proceedings and also enlighten me on various aspects.

13. The impugned proceedings stand quashed and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

MGA / PMU

Note:..In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Judicial Magistrate, Ambasamudram,
Tirunelveli District.
- 2.The Forest Ranger,Project Tiger,
Ambasamudram, Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to

The Annamalai Tiger Conservation Foundation,
Tamilnadu Trust, Syndicate Bank,
Pollachi Branch, Coimbatore District - 642 001

+3 CC to M/s.S.PALANI VELAYUTHAM, Advocate (SR-38162[F] dated 10/12/2021)

CrI.O.P.(MD)No.16122 of 2021

and

CrI.M.P.(MD)Nos.8658 & 8659 of 2021

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