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Crl.O.P.(MD) No.14082 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.10.2022

PRONOUNCED ON : 25.11.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P (MD) No.14082 of 2022

and

Crl.M.P.(MD) No.9054 of 2022

R.Haresh Babu

...Petitioner

vs

The Forest Range Officer,
Usilampatty Forest Office,
Usilampatty,
Madurai – 625 527.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records of the impugned Charge Sheet in C.C.No.224 of 2022 on the file of the learned Judicial Magistrate, Thirumangalam, Madurai District and quash the same, insofar as the Petitioner is concerned.

For Petitioner : Mr.Srirangan for
Mr.G.Ethirajulu

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor



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ORDER

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This Criminal Original Petition has been filed to quash the Charge Sheet in C.C.No.224 of 2022 on the file of the learned Judicial Magistrate, Thirumangalam, Madurai District.

2.The Petitioner is arrayed as accused in the case filed by the Forest Department. The charge, as per the Respondent, is that the Petitioner, who is the first accused in the case, was found within the jurisdiction of Usilampatti Forest Division within Thirumangalam Municipality Limit on Kamaraj Street in the compound of Arulmighu Patrakali Mariamman Thirukovil temple festival. The first accused, who is the owner of the domesticated female Elephant by name, Lakshmi, aged about 46, along with the accused 2 and 3 brought the Elephant for temple festival without obtaining prior permission of the Forest Officials under Section 48-A of the Wildlife (Protection) Act, 1972, thereby the accused 1 to 3 have committed the offence under Section 48-A of the Wildlife (Protection) Act, 1972 r/w Rule 2-4(5) and 9(1) of Tamil Nadu Captive Elephants (Management and Maintenance) Rules, 2011 and the Annexure-1 don/s S.No.2, 4, 7 and 30.



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3.The learned Judicial Magistrate, Thirumangalam, Madurai District had taken the case on file in C.C.No.224 of 2022. The Petitioner had been granted certificate of ownership by the Principal Chief Conservator of Forests and Chief Wildlife Warden, Tamil Nadu. The Petitioner is owning the Elephant for the past 20 years. In 2013, there was a ban by the Central Government not to take the captive Elephants to festivals, film shooting and commercial purposes. Against this ban, a batch of Writ Petitions were filed before the Madurai Bench of Madras High Court. All the cases were transferred to the Principal Seat at Madras. The Principal Bench of Madras High Court had disposed of all the Writ Petitions by a common order dated 19.01.2022. In that order, it had been stated as follows:-

“6.....However, in the year 2015, the ban was lifted and as per the instructions given by the Central Government, the State Wild Life Authorities, can consider such application to be made by the owners of the Elephant to transport the Elephant for a limited period for attending a particular temple or religious function and accordingly, not only to the petitioners, to several such owners of various Elephants, such kind of permissions are being given from 2015 onwards. Therefore, if at all the petitioners have got any grievance with regard to this and if they makes any application to that effect in accordance with the said rules, certainly that application would also be considered and in accordance with the procedure



contemplated under the Rule, such kind of permission also would be given to the petitioners, he contended.

7.I have considered the said submissions made by the learned counsel appearing for both sides, especially the submission made by the learned Additional Government Pleader appearing for the respondents.

8.In view of the said submission made by the learned Additional Government Pleader appearing for the respondents, who on instructions, submitted that, in view of the ban having been lifted from 2015 onwards, now such kind of permissions are being given to the owners of the Elephant for transporting the Elephant for the purpose of attending the temple festival or marriage or religious festivals, therefore, the petitioners may not have any grievance as of now.

9.In view of the aforesaid, this Court feel that, by recording the said stand taken by the respondents, these writ petitions can be disposed of, as it is open to the petitioners to make necessary application in format, by paying the necessary fee for getting such permission for transporting the Elephant for attending permissible events, this Court feel that these writ petitions can be disposed of.”

4. Therefore, the Petitioner was taking the Elephant to the temple festival. The Petitioner applied for Forest Department to take Elephant for film shooting, which was rejected. The Petitioner's domesticated Elephant, Lakshmi had been issued with Fitness Certificate by the Indian Veterinary



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Council. A batch of Writ Petitions were pending against the circular in proceedings No.WL1/43315/2021 dated 08.02.2022. Based on the same, the learned single Judge of this Court had issued the following directions in W.M.P.Nos.5347 and 5354 of 2022 in W.P.Nos.5254 and 5256 of 2022 on 09.03.2022:-

“According to the petitioners, by the impugned order dated 08.02.2022, the 2nd respondent has framed guidelines with regard to the transportation of elephants, wherein, the guidelines Nos.2, 5, 6, 7, 8 and 13 are contrary to the provisions of the Guidelines for Care and Management of Captive Elephants and Tamil Nadu Captive Elephants (Maintenance and Management) Rules, 2011.”

5.Once again, the Petitioner sought permission to take the Elephant to Telangana State for film shooting and festival, which was rejected, against which the Petitioner along with one R.Rengan had filed W.P.Nos.5689 and 5693 of 2022 before this Court. This Court, vide order dated 14.03.2022, had disposed of the said writ petitions as follows:-

“4.Learned counsel for petitioners submits that earlier there was a ban for transportation of Elephants i.e., captive Elephants for commercial purpose but the ban has been lifted and this has been captured in a common order dated 19.01.2022 made by this Court in five writ petitions namely, W.P.Nos.34258, 34259, 34973, 34974 and



35043 of 2013.

5.Be that as it may, there are ever so many determinants qua deciding applications of the above nature. Therefore, this Court deems it appropriate to dispose of the captioned two writ petitions with a directive to the first respondent to dispose of the aforementioned two applications both dated 03.03.2022 on its own merits, in accordance with law taking into account the obtaining legal position/orders governing the field as expeditiously as his official business would permit and in any event by 17.03.2022 as this Court is informed that the movie shooting/function for which the elephants are proposed to be transported is scheduled to begin on 19.03.2022 at Hyderabad.

6.The decision qua aforementioned 03.03.2022 applications shall be communicated by the first respondent to the respective writ petitioners under due acknowledgment on the same day i.e., 17.03.2022. Though obvious it is made clear that this Court has not expressed any view or opinion on the merits of the matter.

7.Captioned two main Writ Petitions are disposed of in the aforesaid manner. Consequently, captioned writ miscellaneous petitions thereat are disposed of as closed. There shall be no order as to costs. ”

6.In the light of the aforesaid order, the Respondent/Forest Official granted permission only for Gaja Pooja. Subsequently, the Petitioner moved W.P.Nos.7141 and 7144 of 2022 seeking to quash the impugned order in



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Ref.Nos.WL1/2454/2022-1 and WL1/2046/2022-1 dated 17.03.2022 by the first Respondent therein, which was ordered on 25.04.2022.

7.Once again the Petitioner went to Andhra Pradesh and Telangana and returned. There was festival from 04.06.2022 to 17.06.2022 to be conducted in Thirumangalam Mariamman Kovil. The temple function is on 04.06.2022. The Petitioner already gave a petition to the Respondent on 27.05.2022. The Respondent had also acknowledged the same. On 06.06.2022, the Respondent seized the Elephant and Mahout. The Petitioner was summoned, arrested, called over phone, detained and remanded. The Respondent had not followed the principles and guidelines issued by the Hon'ble Supreme Court in the case of *Arnesh Kumar Vs. State of Bihar and another [2014 (8) SCC 273]*.

8.Section 48-A of the Wildlife (Protection) Act, 1972 is as under:-

“48-A.Restriction on transportation of wild life.—No person shall accept any wild animal (other than vermin), or any animal article, or any specified plant or part or derivative thereof, for transportation except after exercising due care to ascertain that permission from the Chief Wild Life Warden or any other officer



authorised by the State Government in this behalf has been obtained for such transportation.”

9. Section 51 of the Wildlife (Protection) Act, 1972 is as follows:-

“51. Penalties.—

(1) Any person who contravenes any provision of this Act or any rule or order made thereunder or who commits a breach of any of the conditions of any licence or permit granted under this Act, shall be guilty of an offence against this Act, and shall, on conviction, be punishable with imprisonment for a term which may extend to three years or with fine which may extend to twenty-five thousand rupees or with both:

Provided that where the offence committed is in relation to any animal specified in Schedule I or Part II of Schedule II or meat of any such animal or animal article, trophy or uncured trophy derived from such animal or where the offence relates to hunting in a sanctuary or a National Park or altering the boundaries of a sanctuary or a National Park, such offence shall be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years and also with fine which shall not be less than ten thousand rupees:

Provided further that in the case of a second or subsequent offence of the nature mentioned in this sub-section, the term of imprisonment shall not be less than three years but may extend to seven years and also with fine which shall not be less than twenty-five thousand rupees.



(1A) Any person who contravenes any provisions of Chapter VA, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and also with fine which shall not be less than ten thousand rupees.

(1B) Any person who contravenes the provisions of section 38J shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that in the case of a second or subsequent offence the term of imprisonment may extend to one year, or with fine which may extend to five thousand rupees.

(1C) Any person, who commits an offence in relation to the core area of a tiger reserve or where the offence relate to hunting in the tiger reserve or altering the boundaries of the tiger reserve, such offence shall be punishable on first conviction with imprisonment for a term which shall not be less than three years but may extend to seven years, and also with fine which shall not be less than fifty thousand rupees but may extend to two lakh rupees; and in the event of a second or subsequent conviction with imprisonment for a term of not less than seven years and also with fine which shall not be less than five lakh rupees but may extend to fifty lakh rupees.

(1D) Whoever abets any offence punishable under sub-section (1C) shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided for that offence.

(2) When any person is convicted of an offence against this Act, the court trying the offence may order that any captive animal, wild



animal, animal article, trophy, [uncured trophy, meat, ivory imported into India or an article made from such ivory, any specified plant, or part or derivative thereof] in respect of which the offence has been committed, and any trap, tool, vehicle, vessel or weapon, used in the commission of the said offence be forfeited to the State Government and that any licence or permit, held by such person under the provisions of this Act, be cancelled.

(3) Such cancellation of licence or permit or such forfeiture shall be in addition to any other punishment that may be awarded for such offence.

(4) Where any person is convicted of an offence against this Act, the court may direct that the licence, if any, granted to such person under the Arms Act, 1959 (54 of 1954), for possession of any arm with which an offence against this Act has been committed, shall be cancelled and that such person shall not be eligible for a licence under the Arms Act, 1959 (54 of 1959), for a period of five years from the date of conviction.

(5) Nothing contained in section 360 of the Code of Criminal Procedure, 1973 (2 of 1974) or in the Probation of Offenders Act, 1958 (20 of 1958) shall apply to a person convicted of an offence with respect to hunting in a sanctuary or a National Park or of an offence against any provision of Chapter VA unless such person is under eighteen years of age.”

10.It is the contention of the learned Counsel for the Petitioner that the Respondent had acted with malice and with an ulterior motive as the



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Petitioner had filed several writ petitions and sought relief against the Respondent. The Respondent acted with vengeance without any basis. He remanded the Petitioner as though he had violated the Wildlife (Protection) Act, 1972 regarding domesticated Elephants and the Rules regarding transport of domesticated Elephants.

11.The learned Counsel for the Petitioner invited the attention of this Court to the application filed by the Petitioner, wherein his address is shown as Madurai. Within the District, there is no necessity for any permission. Thirumangalam is within Madurai City. While so, without any law preventing the Petitioner from taking his domesticated Elephant to the temple festival and also in the light of the orders passed in the Writ Petitions by this Court, the Respondent had acted high-handedly by prosecuting him for the offence, which does not at all arise in this case.

12.It is the further contention of the learned Counsel for the Petitioner that the offences alleged are not at all attracted. The Petitioner is not seeking permission to transfer the Elephant. No person in this case are the temple committee members. They should have been proceeded. The Petitioner is



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not an offender. Section 43(1) is not attracted in this case. Section 43 (2) deals with transportation of domesticated Elephants from one State to another and not transportation within the same State. The regulations and guidelines for care and management of Captive Elephants were issued by the Ministry of Environment and Forests are as follows:-

“5. Before the issue of transport permit, CWLW or the authority issuing the permit would obtain no objection from the CWLW of the State wherein it is to be transported about the availability of the adequate housing facility at the place where it is to be kept.

6. It will be mandatory for the owner to inform the CWLW of the State within 30 days where it has been transported.”

13.The learned Counsel for the Petitioner also would submit that there is no circular regarding transportation of domesticated Elephants in Tamil Nadu. For the purpose of guidance, the learned Counsel for the Petitioner referred to a circular of the Principal Chief Conservator of Forests (WL) and Chief Wildlife Warden, Kerala in Circular No.5/2019 dated 28.08.2019, wherein it had been stated as under:-

“1. Whenever elephants are transported outside the registered district, the owners shall inform the concerned Assistant Conservator of Forest (Social Forestry) about the period destination and purpose



of such transport. Owner should take back the elephant to its usual tethering place whenever the period of transportation is completed.

2.No elephant shall be transported for more than 15 days at a stretch outside its registered district.

3.Whenever elephants are to be transported for a period of 15 days, owner shall obtain prior permission of the Assistant Conservator of Forest (Social Forestry) concerned and facilities for temporary housing, maintenance and upkeep of elephants shall be ensured as provided in the Kerala Captive Elephants (Management and Maintenance) Rules, 2012.”

14.Therefore, the learned Counsel for the Petitioner seeks to quash the final report, which is taken cognizance by the learned Judicial Magistrate, Thirumangalam in C.C.No.224 of 2022.

15.The learned Additional Public Prosecutor for the Respondent vehemently opposed the line of arguments of the learned Counsel for the Petitioner. As per the Forest Act, any Officer of the Forest can be the Investigation Officer and witness. As per the submission of the learned Additional Public Prosecutor, the guidelines of the Union Government in general is still in force. For using the animal in the temple festival or shooting, prior permission shall be obtained from the Respondent. Here in



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this case, permission was not sought. Mere filing of the petition will not grant permission to the Petitioner.

16.By way of rejoinder, the learned Counsel for the Petitioner would submit that all the witnesses are Forest Officials and not a single ordinary person is cited. It is to be noted that the Elephant and Mahout were seized by the Respondent from the temple precincts, whereas not a single witness from the temple precincts was examined as witness. Therefore, the Charge Sheet itself is a fixed one only to wreak vengeance on the Petitioner for having approached this Court seeking relief against the Respondent. In the light of the above, the learned Counsel for the Petitioner seeks to quash the final report in C.C.No.224 of 2022 pending on the file of the learned Judicial Magistrate, Thirumangalam.

17.Heard the learned Counsel for the Petitioner and the learned Additional Public Prosecutor for the Respondent.

18.In the light of the above orders passed by the learned single Judge of this Court and the submission of the learned Counsel for the Petitioner, it



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is found that in the guidelines of the Principal Chief Conservator of Forests and Chief Wildlife Warden, Chennai-15, it had been stated as under:-

“3.Letter from the temple authority requesting use of the captive elephant for religious purpose has to be submitted along with the application.

.....

10.Captive elephant shall not be permitted to participate in functions within municipal corporation limits.”

19.Further, as stated above, in the order passed by this Court in W.M.P.Nos.5347 and 5354 of 2022 in W.P.Nos.5254 and 5256 of 2022 dated 09.03.2022, it had been stated as under:-

“According to the petitioners, by the impugned order dated 08.02.2022, the 2nd respondent has framed guidelines with regard to the transportation of elephants, wherein, the guidelines Nos.2, 5, 6, 7, 8 and 13 are contrary to the provisions of the Guidelines for Care and Management of Captive Elephants and Tamil Nadu Captive Elephants (Maintenance and Management) Rules, 2011.”

20.Therefore, the submission of the learned Counsel for the Petitioner is found unacceptable. The Petitioner as owner of the Elephant is aware of the guidelines rules in force. The temple authorities may not be in the know



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of such Rules. Therefore, if the temple authorities had sought the services of the Elephants for the temple festival, it is the duty of the owner of the Elephant to advise the temple authorities to file appropriate petition seeking permission from the Forest Officials. The Petitioner having not done so cannot blame the Forest Officials for initiating action against him for violation of the circular in proceedings No.WL1/43315/2021 dated 08.02.2022.

21.In the light of the above discussions, this Criminal Original Petition is dismissed.

**In the result, this Criminal Original Petition is dismissed.
Consequently, connected Miscellaneous Petition is closed.**

The learned Judicial Magistrate, Thirumangalam is directed to proceed with the trial in C.C.No.224 of 2022 and dispose of the same within a reasonable period of two months from the date of receipt of a



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copy of this order. The Petitioner is directed to cooperate with the trial

Court for early disposal of the case in C.C.No.224 of 2022.

Internet :Yes./No
Index :Yes/No
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25.11.2022

To

- 1.The Judicial Magistrate,
Thirumangalam,
Madurai District.
- 2.The Forest Range Officer,
Usilampatty Forest Office,
Usilampatty,
Madurai – 625 527.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

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Order made in
CRL.O.P (MD) No.14082 of 2022

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