



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	:	28.09.2022
Orders Pronounced on	:	24.01.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGANCriminal Revision Case.399 of 2021andCriminal Miscellaneous Petition.No.6416 of 2021

1.Chandran

2.Thambi @ Rajkumar

3.Shiabu

... Petitioners

Vs.

The State represented by
The Forest Range Officer,
Gudalur Range.

... Respondent

Prayer: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, praying to set aside the Judgment dated 02.03.2021 in C.A.No.122 of 2017 on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Udhagamandalam, Nilgiris confirming the Judgment dated 24.05.2017 in C.C.No.103 of 2010 on the file of the District Munsif cum Judicial Magistrate Court at Gudalur and acquit the accused in the interests of Justice.



For Petitioners : Mr.Bijesh Thomas
For Respondent : Mr.S.Sugendran
Additional Public Prosecutor

ORDER

This Criminal Revision case has been filed to set aside the Judgment dated 02.03.2021 in Crl.A.No.122 of 2017, on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Udthagamandalam, Nilgiris, confirming the Judgment dated 24.05.2017 in C.C.No.103 of 2010, on the file of the District Munsif cum Judicial Magistrate Court at Gudalur and acquit the accused in the interest of Justice.

2. The respondent herein filed a case in O.R.No.5 of 2009 for the offences under Section 21(f) of Tamil Nadu Forest Act, 1972 and Sections 8, 9, 16, 31, 39(1)(2), 50 read with 51(1) of Wild Life Protection Act, 1972. After completing the investigation, the respondent/Police have filed the charge sheet before learned Judicial Magistrate, Gudalur. The learned Magistrate, Gudalur had taken the charge sheet on file in CC.No.103 of 2010. After trial, the trial Court found the petitioners guilty of the offences under Section 9 read with Section 51(1) of the the Wild Life Protection Act,



1972 and convicted and sentenced the accused to undergo three years of rigorous imprisonment and pay fine of Rs.10,000/-, in default to undergo two months simple imprisonment.

3. Aggrieved by the same, the petitioners herein filed an appeal in Crl.A.No.122 of 2017 before the learned Sessions Judge, Nilgiris and the same was made over to the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Udthagamandalam, Nilgiris against the Judgment passed on 24.05.2017 in M.C.No.22 of 2012. After hearing the appeal, the learned Sessions Judge dismissed the appeal and confirmed the Judgment of conviction and sentence passed by the learned Magistrate.

4. Challenging the same, the present revision has been filed before this Court.

5. The case of the prosecution is that the forest officials went to Cherumulli for raid and upon enquiry, they came to know that a Bison head, skin and hunting gun have been buried at Kurumbar Pettai near a pond at Doctorkadu. The forest officials went to the said place, dug the earth and



recovered the above articles under a recovery mahazer. They obtained confession statement of A1 and A3 and recovered cooked Bison from the house of A3 based on his confession. The material objects were produced before PW5 Veterinary Doctor and subsequently, upon his instructions, the material objects of Bison were buried under the Earth. The gun was remanded before the Court. After investigation, PW4 laid the charge sheet before the learned Judicial Magistrate and the case was taken on file and after conducting the trial, the accused convicted the petitioners.

6. The learned counsel for the petitioners submitted that PW4 is not a competent authority to investigate the matter. The balance of the Bison meat was not clearly accounted by the prosecution witnesses. Neither MO1 country gun, nor the Bison materials, were sent for Forensic lab to get opinion and the condition of the said gun was not established, ie., as to whether it can be used to shoot the animals. Further, it is not proved that the the recovered cooked meat belongs to Bison. Though the prosecution has stated that the recovery was made in the presence of the independent witnesses and confession statement was also recorded in the presence of the independent witnesses, unless recovery and confession statement are alleged



to have been made before the forest officials, the same are not proved, and the same is not admissible in evidence and it is not proved in the manner known to law. Though the prosecution has stated that the head and skin of Indian Bison and along with the country gun were recovered under Ex.P3 by recovery mahazer and the 3rd petitioner was arrested and from his house, cooked Bison was recovered in Ex.P4. The confession statement of A1 and A2 were recorded as Exs. P1 and P2. The confession statement of A3 was recorded in Ex.P6. The veterinary Doctor was examined as PW5 who has also not stated that he conducted test and found that it is the meat belonging to an Indian Bison.

7. The prosecution has stated that in the presence of individual witnesses, the material were recovered and confession statement were recorded. However, the independent witnesses have not been examined in this case. The case is based only on the confession statement.

8. As per the Judgement of Hon'ble Supreme Court of India in the case of *Tofan Singh Vs. State of Tamil Nadu* reported in [2021 4 SCC 1], confession statement made before the Police officials or Forest Range



Officer are not admissible in evidence. Based on the confession statement alone, conviction cannot be recorded. In this case, even the recovery was not proved in the manner known to law by examining the independent witnesses. It is not the case of the prosecution, as if there was any independent witnesses. Admittedly, the recovery and confession statement were recorded before independent witnesses. But, the prosecution has not stated any reason as to why they have not examined the independent witnesses. Further, there is not even an expert opinion obtained, by sending the meat for examination. The recovered materials were also not sent to the Court also. Therefore, the Judgment of the trial Court and appellate Court are perverse and are liable to be set aside.

9. The learned Additional Public Prosecutor appearing for the respondent submitted that when the forest officials, namely PW1 to PW4 went to Cherumulli for raid and upon enquiry, they came to know that a Bison head, skin and hunting gun have been buried at Kurumbar Pettai near a pond at Doctorkadu. The Forest Officials went to the said place, dug the Earth and recovered the above articles under a recovery mahazer. They obtained confession statement of A1 and A3 and recovered cooked Bison



from the house of A3 based on his confession. The material objects were produced before PW5 Veterinary Doctor and subsequently upon his instructions, the material objects of Bison were buried under the Earth. The gun was produced before the Court. Therefore, from the evidence of PW1 to PW5, prosecution has proved its case.

10. Heard the learned counsel for the parties and perused the materials placed on record.

11. Admittedly, in this case, in order to substantiate the charges against the petitioners, 5 witnesses were examined on the side of the prosecution and out of 5 witnesses, 4 witnesses are Forest Range Officials and 5th witness is the Veterinary Doctor. This case is based on the confession statement, and complaint filed. Admittedly, confession statement was recorded in the presence of independent witnesses and the recovery was also effected in the presence of independent witnesses. However, the independent witnesses were not examined by the prosecution before the trial Court and they have not stated any acceptable reason as to why they have not examined the independent witnesses. If there is any case based on the



confession statement and recovery, then the prosecution has to prove the same in the manner known to law.

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12. Admittedly, in this case, confession statement recorded by Forest Officer and recovery effected through recovery magazer in the presence of independent witnesses, were not proved by the prosecution in the manner known to law. The confession statement is said to have been made before the Police Officer or any investigating official, is not admissible in evidence. In the case on hand, confession statement and recovery have not been proved in the manner known to law.

13. This Court finds that the finding of both the Courts are perverse and therefore, the Judgment of the Courts below are liable to be set aside. Accordingly, the Judgment dated 24.05.2017 in C.C.No.103 of 2010 on the file of the District Munsif cum Judicial Magistrate Court at Gudalur is set aside. Further, the appellate Court also failed to consider the above aspects and confirmed the Judgment of the trial Court and the same is also liable to be set aside. Accordingly, the Judgment dated 02.03.2021 in Crl.A.No.122



of 2017 on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Udhagamandalam, Nilgiris is also set aside.

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14. Considering the facts and circumstances, this Court allows this Criminal Revision case and the petitioners are acquitted of all the charges. The Fine amount, if any, paid by the petitioners shall be refunded to them. Consequently, the connected Miscellaneous Petition is closed. The bail bond, if any executed by the petitioners shall stand cancelled.

24.01.2023

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Office to Note: IT on or before 30.03.2023.

To

- 1.The Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Udhagamandalam, Nilgiris.
- 2.The District Munsif cum Judicial Magistrate Court, Gudalur.
- 3.The Forest Range Officer, Gudalur Range.
- 4.The Public Prosecutor, High Court of Madras.

P.VELMURUGAN,J.

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