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W.P.No.2728 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.11.2023

PRONOUNCED ON : 22.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.2728 of 2016
and W.M.P.Nos.2280, 2281 & 28432 of 2016

B.Selvakumar

...Petitioner

-Vs-

1. The Conservator of Forests,
Biligirirangan temple Tiger Reserve,
Chamraj Nagar,
Chamraj Nagar District,
Karnataka.
2. The Assistant Conservator of Forests,
Biligirirangan temple Tiger Reserve,
Chamraj Nagar,
Chamraj Nagar District,
Karnataka.
3. The Range Forest Officer,
Wildlife Wing, Punanjur,
Biligirirangan temple Tiger Reserve,
Chamraj Nagar,
Chamraj Nagar District,
Karnataka.
4. The Deputy Director,
Sathyamangalam Tiger Reserve,
Sathyamangalam Division,
Erode District.



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5. The Forest Range Officer,
Thalamalai Range,
Sathyamangalam Tiger Reserve,
Sathyamangalam Division,
Erode District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent herein culminating in FOC No.2/15-16 on the file of the third respondent herein dated 01.10.2015 and to quash the same and consequently direct the respondents 1 to 3 herein to transfer FOC No.2/15-16 on the file of the third respondent herein to the file of the fifth respondent herein.

For Petitioner : Mr.T.Mohan, Senior Counsel
M/s. Genicon & Associates

For Respondents

For R1 to R3 : No appearance

For R4 & R5 : Mr.L.Baskaran
Government Advocate (Crl. Side)

ORDER

This writ petition has been filed challenging the complaint filed by the third respondent in FOC No.2/15-16 dated 01.10.2015, thereby taken cognizance for the offences under Sections 9,39 & 51 of the Wildlife Protection Act, 1972.



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2. According to the petitioner, he is an agricultural labour and he used to assist the people who work for conservation of forest and wildlife by gathering information about the poachers and traders of wild animal parts in and around Sathyamangalam tiger reserve area. During the last week of September 2015, he gathered information that one Sekar and Palanisamy, belonging to Mavanatham Village of Sathyamangalam Taluk, were in possession of tiger bones and claws and they were trying to sell the same. Therefore, the petitioner passed information to one Jayachandran, who has helped the forest department. He passed information to the Tamil Nadu forest officers. The said forest area is adjacent to the Karnataka forest area and as such the said Jayachandran also contacted the forest officers of Karnataka and informed the same.

3. As per the plan, the poachers were asked to bring the bones and claws of tiger at about 6 p.m., on 01.10.2015. After seeing the forest officials, the poachers fled the scene of crime by abandoning the material brought by them. Thereafter, the present false case has been foisted as against the petitioner, who only acted as informer to the forest officials, as if he possessed the bones and claws of tiger by the third respondent.



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The petitioner was arrested and remanded to judicial custody. Later he was released on bail. In fact in the bail order, it was categorically stated that he was only informant and not culprit.

4. In pursuant to the very same occurrence, Tamil Nadu forest officials viz., the respondents 4 & 5 also registered a case in FOC.No.1 of 2015 and arrested the poachers viz., Sekar and Palanisamy and recovered the remaining tiger bones and claws from their possession. Therefore, the petitioner is no way connected to the said crime and he has been falsely implicated as an accused.

5. The learned Senior Counsel appearing for the petitioner submitted that though this writ petition has been filed challenging the complaint in F.O.C.No.2/2015-16, the petitioner restricted his prayer only to transfer of investigation in F.O.C.No.2/2015-16 from the file of the third respondent to the file of the fourth respondent. Since the fourth respondent rightly registered a case as against the originally poachers viz., Sekar and Palanisamy in F.O.C.No.1/2015. After registration of case, the fourth respondent also arrested the accused persons.



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5.1. The learned Senior Counsel further pointed out that the confession statement of the original poachers revealed that the petitioner is only informant and he never committed any offence. In fact, the alleged bones and claws were recovered only within the jurisdiction of the fourth respondent. Therefore, the third respondent has no jurisdiction to register any case. In fact, the fourth respondent sent a communication dated 17.11.2015 to the third respondent seeking transfer of case registered by them in FOC.No.2/15 to their file. However, on receipt of the said communication, the respondents 1 to 3 did not take any action. Therefore, it is just and necessary to transfer the investigation in FOC.No.2/2015-16 from the file of the third respondent to the file of the fourth respondent.

6. On perusal of the counter affidavit filed by the respondents 1 to 3 revealed that the writ petition itself is not maintainable on the ground of lack of territorial jurisdiction. The case in F.O.C.No.2/2015-16 registered by the third respondent within the jurisdiction of State of Karnataka. Therefore, the case registered by the Karnataka forest



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officials cannot be challenged before this Court. According to them, on 01.10.2015, around 6.45 p.m., while on patrol and driving towards Karepalya from Panajanur in the department vehicle, the third respondent and his team noticed a vehicle parked with four persons standing near the parked vehicle. When they approached the said group, two men fled from the scene of crime. After chasing them, the petitioner alone was caught red handedly with bag containing bones and claws of tigers.

6.1. Further, the petitioner involved in the trade of wildlife articles which is punishable under the Wildlife Protection Act. Therefore, he was arrested and remanded to judicial custody and registered a case in FOC.No.2/2015-16 under Sections, 9, 39 and 51 of the Indian Wildlife (Protection) Act, 1972. On receipt of the communication from the fourth respondent, it was replied rightly that the case has been registered for the offence committed by the petitioner within Punjur Range as such, they have got jurisdiction to deal with the complaint. Even according to the fourth respondent, the bones and claws were seized from other two accused persons. Therefore, there is prima facie case made out as against the petitioner and as such, it cannot be quashed on its threshold.



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7. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

8. Though the writ petition filed for challenging the complaint in FOC.No.2/2015-16 on the file of the third respondent, the learned Senior Counsel restricted his prayer for transfer of investigation in FOC.No.2/2015-16 from the file of the third respondent to the fourth respondent. Hence the only point for consideration in this writ petition is that whether this Court has got jurisdiction to transfer the complaint in FOC.No.2/2015-16 from the file of the third respondent to the fourth respondent.

9. Admittedly, the case has been registered by the third respondent within the jurisdiction of the State of Karnataka. The petitioner was arrested and remanded to judicial custody in F.O.C.No.2/2015-16 and the FIR has been sent to the jurisdictional Court and it is pending for investigation. The entire proceedings initiated before the learned Judicial Magistrate, Chanrajnagar, and the said Court



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is not a subordinate Court to this Court. Therefore, as per the provision under Section 406 of Cr.P.C., the investigation cannot be transferred from the State of Karnataka to the State of Tamil Nadu by this Court. The provision under Section 406 of Cr.P.C., is hereby extracted as under :-

“406. Power of Supreme Court to transfer cases and appeals.—

(1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case or appeal be transferred from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court.

(2) The Supreme Court may act under this section only on the application of the AttorneyGeneral of India or of a partly interested, and every such application shall be made by motion, which shall, except when the applicant is the Attorney-General of India or the Advocate-General of the State, be supported by affidavit or affirmation.

(3) Where any application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person



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who has opposed the application such sum not exceeding one thousand rupees as it may consider appropriate in the circumstances of the case.”

Thus it is clear that the Hon'ble Supreme Court of India has got jurisdiction to transfer the case from one State to another.

10. The learned Senior counsel appearing for the petitioner contended that it is only in the stage of FIR and as such no Court has seized the matter for trial. Only after filing the final report it can be taken cognizance. Before taking cognizance, the case registered by the third respondent can be transferred from the file of the third respondent to the fourth respondent by this Court.

11. In this regard, it is relevant to extract the provision under Section 407 of Cr.P.C., as follows:-

“407. Power of High Court to transfer cases and appeals.

(1) Whenever it is made to appear to the High Court—

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate



thereto, or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order—

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence; (ii) that any particular case, or appeal, or class of cases or appeals, be transferred from a criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction; (iii) that any particular case be committed for trial of to a Court of Session; or (iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative: Provided that no application shall lie to the High Court for transferring a case from one criminal Court to another criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.



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(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least-twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case of appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose: Provided that such stay shall not affect the subordinate Court's power of remand under section 309.



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(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197”

Thus it is clear that this Court can transfer the enquiry or trial from any criminal Court subordinate to this Court. The third respondent or its jurisdiction Court is not subordinate to this Court. Therefore, the transfer of investigation from the file of the third respondent to the fourth respondent cannot be ordered by this Court, since this Court has no jurisdiction.



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WEB COPY 12. In view of the above discussions, the writ petition itself devoid of merits and liable to be dismissed. Accordingly, the Writ Petition stands dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to cost.

22.11.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order

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To

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Chamraj Nagar District,
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2. The Assistant Conservator of Forests,
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rts

4. The Deputy Director,
Sathyamangalam Tiger Reserve,
Sathyamangalam Division,
Erode District.
5. The Forest Range Officer,
Thalamalai Range,
Sathyamangalam Tiger Reserve,
Sathyamangalam Division,
Erode District.
6. The Public Prosecutor
Madras High Court,
Chennai.

ORDER IN
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