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CrI.R.C.No.715 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

CrI.R.C.No.715 of 2020

R.Pongiyannan

... Petitioner

Vs.

State represented by
Forest Range Officer,
Sathyamangalam Range,
Erode.

... Respondent

Prayer:Criminal Revision Case filed under Section 397 and 401 Cr.P.C., to call for the records and set aside the conviction imposed in the judgment dated 16.07.2020 made in C.A.No.34 of 2019 on the file of the III Additional District and Sessions Judge, Gobichettipalayam, confirming the conviction imposed the judgment dated 19.10.2019 made in C.C.No.13 of 2017 on the file of the Judicial Magistrate No.I, Gobichettipalayam.

For Petitioner : No appearance

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



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ORDER

This Criminal Revision Petition has been filed against the judgment dated 16.07.2020 passed in C.A.No.34 of 2019 on the file of the III Additional District and Sessions Judge, Gobichettipalayam, confirming the conviction and sentence imposed by the judgment dated 19.10.2019 passed in C.C.No.13 of 2017 on the file of the Judicial Magistrate No.I, Gobichettipalayam.

2. A compliant was filed against the petitioner in W.L.O.R.No.05 of 2012 for the offence under Sections 9, 39 read with 51 of Wild Life Protection Act 1972 by the respondent and the same was produced before the Judicial Magistrate No.I, Gobichettipalayam. The learned Magistrate has taken the case on file in C.C.No.13 of 2017 and after completing the formalities, framed the charges against the accused/petitioner for the offence under Sections 9, 39(1) read with 51 of Wild Life Protection Act 1972. The trial court found the accused guilty for the offence under Section 9 of Wild Life Protection Act and sentenced him to undergo rigorous imprisonment of one year and to pay fine of Rs.5,000/- in default to undergo one month simple imprisonment. Further he

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was sentenced to undergo one year rigorous imprisonment and to pay fine of Rs.5,000/- in default to undergo one month simple imprisonment for the offence under Section 39(1) read with 51 of Wild Life Protection Act. Challenging the said judgment of conviction and sentence for the abovesaid offences, the petitioner has filed an appeal before the learned District and Sessions Judge, Erode in Crl.A.No.34 of 2019. The learned District and Sessions Judge made over the same to the III Additional District and Sessions Judge, Erode at Gobichettipalayam. The learned III Additional Judge, after hearing the arguments advanced on either side, dismissed the appeal by confirming the judgment of the learned Magistrate. Aggrieved over the same, the petitioner has filed the present Criminal Revision Petition before this Court.

3. Despite giving sufficient opportunity, when the matter is taken up for hearing, there is no representation for the petitioner. Since this Criminal Revision Case is arising out of concurrent judgement of both the Courts below and the case is pending from 2020, this Court is inclined to dispose the revision case by considering the materials available on record.



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4. Contention of the Revision Petitioner as per grounds of Criminal Revision Case are as follows: The prosecution has not proved its case beyond reasonable doubt. The conviction and sentence imposed against the petitioner are not based on any concrete or material evidence. The said case was registered against the petitioner, without any material and without any corroborative evidence. There is no eye witness to the occurrence and none of the independent witnesses were examined to prove the case of the prosecution. There is no corroborative evidence is available to connect the petitioner in this case. The petitioner is not involved in any other case. There is no previous case is pending as against the petitioner. In the absence of any evidence, conviction and sentence passed by the trial court and the appellate court is erroneous. Though defence proved its case through P.W.1 who seized the property and P.W.2 who was present at the time of seizer, there was a cut in the silk wire M.O.5, the trial court wrongly held that the defence has not proved the said factum. The complainant and the Investigating Officer are one and the same in the present case. The complainant cannot be acted as Investigating Officer. Therefore conviction based on the evidence of P.W.1 is



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erroneous. Even in the case of *Rathinam Vs State by Forest Range Officer, Vazhapaid, Salem District reported in 2001(1)Law Weekly (Criminal 143)*, it is held that “*the complainant himself cannot be the Investigating Officer in the case initiated by himself. Such of the acts assumed and adopted by the Investigating Officers, since being opposed to fair and impartial investigation, they are hereby discredited. Hence, at this score also, the prosecution failed to save its head*”. In this case, the complainant and the Investigating Officer are one and the same. Therefore, procedure followed in this case vitiated the case of the prosecution. Hence the revision case would be allowed.

5. Learned Additional Public Prosecutor for the respondent would submit that the petitioner was charged for the offences under Sections 9 and 39(i) read with 51 of Wild Life Protection Act. The prosecution has proved its case beyond reasonable doubt through evidence of P.Ws.1 and 2. On information, P.W.1 went along with P.W.2 to the field of the petitioner, found the carcass of the elephant. Hence, the respondent arrested the accused and recorded the confession statement and also recovered two teeth of the elephant which have been marked as M.O.1 and M.O.2. M.Os.3 to 5 were also



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recovered under the prescribed form. The dead body of the elephant was sent for autopsy. P.W.5 who is the Veterinary Surgeon attached with the Additional Chief Conservator of Forest at Coimbatore conducted autopsy on the dead body of the elephant and issued postmortem certificate which has been marked as Ex.P4. P.W.7 who conducted investigation and laid the charge sheet. The report received from P.W.4 has been marked as Ex.P3. Therefore, there is no violation of any basic principles in this case. The trial court as well as the appellate court rightly appreciated and re-appreciated the evidences and found the petitioner guilty for the charged offences. Hence there is no merit in the revision and the same may be dismissed.

6. Specific case of the prosecution is that the petitioner owned an extent of 3.96 acres of agricultural land in Sathyamangalam Forest Range and he has fenced his lands using electricity, without obtaining permission from the electricity board. On 18.05.2012, a wild elephant crossed the fencing and got electrocuted and died. On receiving information, the forest officials arrived at the place of occurrence and on seeing the elephant found dead, arrested the petitioner. Hence case in W.L.O.R.No.05/2012 on the file of the respondent



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came to be registered against the accused.

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7. On a reading of the evidence of P.W.1, 2, 3 and 7 it is found that there was a electric connection to the field of the petitioner from the house of the petitioner. The land where the dead body of the elephant was found belonged to the petitioner. From the evidence of prosecution, it is found that there is an electric connection has been taken unauthorizedly and due to the same, the elephant which passes through the land got electrocuted and subsequently died. Evidence of P.W.5 clearly shows that death was caused due to electrocution. In this case, recovery was also proved. There is no record is available to show that the complainant is the investigating officer. On receiving information only, the forest officials went to the place of occurrence and found the dead body of the elephant. Therefore, contention raised by the petitioner in the grounds of revision is not acceptable. On a reading of the entire evidence, both oral and documentary, it is found that both the courts below rightly appreciated and re-appreciated the evidence and convicted the petitioner for the charged offences as stated above.



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8. In view of the above facts and circumstances, this Court does not find any perversity or illegality or irregularity in the order passed by the trial Court and there is no merit and the Revision Case and the same is liable to be dismissed. Since the petitioner is on bail, the trial court is directed to secure the accused to undergo the remaining period of sentence, if any. The period of sentence already undergone by the accused shall stand set off under Section 428 Cr.P.C.,

24.01.2023

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Index:yes/No

Internet:yes/No

To

1. The III Additional District and Sessions Judge,
Gobichettipalayam.
2. The Judicial Magistrate No.I, Gobichettipalayam.
3. Forest Range Officer,
Sathyamangalam Range,
Erode.
4. The Public Prosecutor,

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High Court, Madras.

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P.VELMURUGAN, J.

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