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Crl.R.C.No.1035 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	28.09.2022
Pronounced on	:	09.02.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Revision Case.1035 of 2021

1.Soundarajan

2.Lakshmanan

... Petitioners

Vs.

The State represented by
The Forest Range Officer,
Kotagiri Forest Range,
Kotagiri, The Nilgiris.
(O.R.No.1 of 2006)

... Respondent

Prayer: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, praying to set aside the Judgment dated 26.04.2021 passed by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Udthagamandalam, The Nilgiris in C.A.No.20 of 2016 confirming the conviction and sentenced of 3 years Rigorous Imprisonment and fine of Rs.10,000/- in default 3 months Simple Imprisonment in respect of the 1st petitioner for offence under Section 39(3) read with Section 51 of Wildlife (Protection) Act, 1974 and 3 years Rigorous Imprisonment and fine of Rs.10,000/- in default 3 months simple imprisonment in respect of the 2nd petitioner for offence under Section 9 read with Section 52 read with Section 51 of wild life (protection)Act 1974 passed by the learned Judicial



Magistrate Judge, Kotagiri, The Nilgiris by Judgment dated 18.10.2016 in C.C.No.62 of 2008.

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For Petitioners : Mr.L.Mouli
For Respondent : Mr.S.Sugendran
Additional Public Prosecutor

ORDER

This Criminal Revision case has been filed to set aside the Judgment dated 26.04.2021 passed by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Udthagamandalam, The Nilgiris in C.A.No.20 of 2016 confirming the conviction and sentenced of 3 years Rigorous Imprisonment and fine of Rs.10,000/- in default to undergo 3 months Simple Imprisonment in respect of the 1st petitioner for offence under Section 39(3) read with Section 51 of Wildlife (Protection) Act, 1974 and 3 years Rigorous Imprisonment and fine of Rs.10,000/- in default to undergo 3 months simple imprisonment in respect of the 2nd petitioner for offence under Section 9 read with Section 52 read with Section 51 of wild life (protection)Act 1974 passed by the learned Judicial Magistrate Judge, Kotagiri, The Nilgiris by Judgment dated 18.10.2016 in C.C.No.62 of 2008.



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2. The respondent herein filed a case in O.R.No.1 of 2006 for the offences under Section 49-B1(a) of Wild Life Protection Amendment Act, 2002 before learned Judicial Magistrate, Kotagiri. The learned Magistrate, Kotagiri taken the case on the file in CC.No.62 of 2008. After trial, the trial Court found guilt of the 1st petitioner for the offences under section 39(3) punishable under Section 51 of Wild Life Protection Act and convicted and sentenced to undergo three years of rigorous imprisonment and pay fine of Rs.10,000/- in default to undergo three months simple imprisonment and 2nd petitioner for the offences under Section 9 r/w 52 punishable under Section 51 of Wild Life Protection Act and convicted and sentenced to undergo three years of rigorous imprisonment and pay fine of Rs.10,000/- in default to undergo three months simple imprisonment.

3. Aggrieved over the same, the petitioners herein filed an appeal in Crl.A.Nos.20 of 2016 before the learned Sessions Judge, Magalir Neethimandram, (Fast Track Mahila Court), Udthagamandalam at Nilgiris against the Judgment passed on 18.10.2016 in C.C.No.62 of 2008. After hearing the appeal along with other appeal filed by other accused, the



learned Sessions Judge dismissed the appeal and confirmed the Judgment of conviction and sentence passed by the learned Magistrate.

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

5. The learned counsel for the petitioners would submit that the Forest Range officer has no *locus standi* to register the case and investigate the matter. Complainant and investigating officer cannot be the same person. He further submitted that in this case investigating officer has no authority to file the complaint. The confession statement has not been recorded in the manner known to law and same has not been proved in the manner known to law. Further, he would submit that, the alleged confession statement recorded from the petitioners Ex.P2 to P20 do not bear the signature of any independent witnesses and the same is not admissible in evidence. Even the alleged independent witnesses have not supported the case of the prosecution. 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, the recovery and



confession statement alleged to have been made before the forest officials are not admissible in evidence and it is not proved in the manner known to law.

The prosecution has not proved the possession of Leopard and Tiger skin and both the Court failed to appreciate the evidence and convicted and sentenced the petitioners.

6. 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 and no other material is available to convict the petitioners.

7. 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], 'No confession made to a police officer shall be proved as against a person accused of any offence'. Based on the confession statement alone, conviction cannot be recorded. Whereas, in this case, even the recovery was not proved in the manner known to law by examining the independent witnesses. Therefore, the Judgment of the trial Court and appellate Court are perverse and liable to be set aside.



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8. The learned Additional Public Prosecutor would submit that when the forest officials headed by PW1 Premkumar conducted a raid on 11.07.2006 at about 6.00 pm near S.Kaikatti at Denadu Village and recovered Leopard skin on the basis of the confession given by A1 namely Soundar Rajan. Based on the confession given by A1, A2 Gnanaraj was arrested and his confessions was separately recorded. Subsequently, other accused were also arrested and properties were recovered from different places. Thereafter, a case was registered and in order substantiate the case of the prosecution, 15 witnesses were examined and 24 documents were marked. Besides, 5 material objects were exhibited. Therefore, the prosecution has proved its case beyond reasonable doubt and there is no merit in this revision and this revision is liable to be dismissed.

9. Heard the learned counsel on either side and perused the materials placed on record.

10. Admittedly, in this case, forest officials based on the alleged confession statement said to have been recorded from A1/1st petitioner herein



proceeded the case further. In a careful perusal of the records, the alleged confession statement is not admissible in evidence and the same is not proved in the manner known to law. 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], 'No confession made to a police officer shall be proved as against a person accused of any offence'. On the basis of the confession statement alone, the accused cannot be convicted and sentenced. Whereas in this Case, the alleged confession statement was not proved by the prosecution in the manner known to law. It is not the case of the prosecution, as if there was no 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. Any confession statement made before the forest range officer during enquiry prior to registering the cases is not admissible in evidence. Based on the confession statement alone, the accused cannot be convicted, unless the prosecution prove that confession statement was recorded in the manner known to law and recovery was also proved in the manner known to law. Except the confession statement, no other independent materials or any evidence available to



convict the petitioners in this case. If any case is registered only based on the confession statement and recovery, then the prosecution has to prove the same in the manner known to law.

11. Admittedly, in this case, confession statement recorded by forest officer and recovery was 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 leading to recover made before the police officer or any investigating agency has to be proved in the manner known to law under Section 27 of Evidence Act. Whereas, in the case on hand, confession statement and recovery has not been proved in the manner known to law.

12. This Court finds that the finding of both the Courts are perverse and therefore, the Judgment of the trial Court is liable to be set aside. Accordingly, the Judgment dated 18.10.2016 in C.C.No.62 of 2008 on the file of the learned Judicial Magistrate Judge, Kotagiri, Nilgiris is set aside. Further, the appellate Court also failed to consider the same and confirmed the Judgment of the trial Court and the same is liable to be set aside.



Accordingly, the Judgment dated 26.04.2021 in C.A.No.20 of 2016 on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Udthagamandalam, Nilgiris is set aside.

13. Considering the facts and circumstances, this Court allows this Criminal Revision case and the petitioners are acquitted from all the charges by the trial Court and the appellate Court and fine amount, if any, paid by the petitioners shall be refunded to the petitioners.

09.02.2023

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P.VELMURUGAN,J.
gd

To

- 1.The Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court),
Udhagamandalam, Nilgiris.
- 2.The Judicial Magistrate Judge, Kotagiri,
Nilgiris.
- 3.The Forest Range Officer,
Kotagiri Forest Range,
Kotagiri, The Nilgiris.

Pre-Delivery order in
Criminal Revision Case.1035 of 2021

09.02.2023