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Crl.OP.No.16263 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.16263 of 2023

and

Crl.M.P.Nos.10304 &10305 of 2023

N.Sulaiman,
S/o.Noor Mohammed

... Petitioner

Vs.

The State rep. by
The Forest Range Officer,
Kundha Forest Range,
Kaikatti, Nilgiri District,
(W.L.O.R.No.4 of 2020)

... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the entire records pertaining to the case in C.C.No.54 of 2020 on the file of the learned Judicial Magistrate, Udhagaimandalam, Nilgiris District and quash the same as against the petitioner.

For Petitioner : Mr.R.Anand

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



ORDER

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This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.54 of 2020 on the file of the Judicial Magistrate, Udhagamandalam, Nilgiris District.

2. When the matter came up for hearing on 26.07.2023, this Court passed the following order:

"A.Damodaran, Learned Additional Public Prosecutor, takes notice on behalf of the respondent.

2. The main ground that has been urged by the learned counsel for the petitioner is that pursuant to the complaint registered in WLOP No.4/2020, the final report has been taken cognizance by the Court below and whereas Section 55 of the Wild Life (Protection) Act, 1972 mandates that no Court shall take cognizance of any offence under the Act except on the complaint of the officers mentioned under Section 55. The learned counsel for the petitioner submitted that the term "complaint" as mentioned u/s 55 of the Act is a complaint as defined u/s 2(b) of the Code of Criminal Procedure.

3. The learned Government Advocate seeks for time to clarify this issue.

4. Post this case under the caption "for orders" on 16.8.2023. In the meantime, the Court below shall keep the proceedings in abeyance."

3. The matter, thereafter, came up for hearing on 11.09.2023 and



this Court passed the following order:

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"Pursuant to the earlier order passed by this Court on 26.07.2023, the matter was posted for hearing today with a direction to the learned Additional Public Prosecutor to clarify the preliminary issue that has been raised by the learned counsel for the petitioner.

2.The learned Additional Public Prosecutor submitted that the respondent had filed Wild Life Officer's report before the Court below in Form A and the Court below had treated it as a complaint and taken cognizance u/s. 190(1) (a) of Cr.PC. The learned Additional Public Prosecutor clarified that the report that was filed in the prescribed format cannot be construed to be a final report akin to Section 173 (2) Cr.PC.

3.The learned Additional Public Prosecutor submitted that the petitioner has questioned the admissibility of the confession statement. The learned Additional Public Prosecutor relied upon the judgments of this Court in **E.C.Richard v. Forest Range Officer, Mettupalayam** reported in **1957 MWN (Crl) 129** and **State by the Public Prosecutor v. Asariah and Others** reported in **1976 LW (Crl) 176** and contended that the statement that is recorded by the Forest Officer is not akin to the confession made before the Police u/s. 25 of the Indian Evidence Act, 1872.

4.The learned Additional Public Prosecutor further pointed out that Malabar Giant squarrel comes under Schedule II Part 2 and barking deer comes under Schedule III of Forest Act and hence, the petitioner has to necessarily face the prosecution u/s 51 of the Wild Life (Protection) Act, 1973.

5.The learned counsel for the petitioner seeks for sometime to clarify the above submissions made by the learned Additional Public Prosecutor.

6.Post this case under the same caption on 25.09.2023. The interim order already granted by this Court is extended till then."

4. The grounds raised by learned counsel for petitioner are all



factual in nature and it requires appreciation of evidence and this Court cannot decide the same in exercise of its jurisdiction under Section 482 of Criminal Procedure Code. It is left open to the petitioner to raise all the grounds before the Court below and the same shall be considered on its own merits and in accordance with law. This Court is not inclined to interfere with the proceedings pending before the Court below.

5. Learned counsel for petitioner requested this Court to dispense with the presence of the petitioner. Taking into consideration, the facts and circumstances of the case, the presence of the petitioner is dispensed with and he shall be represented by a counsel, who shall cross examine the witnesses on the same day, they are examined in Chief. The petitioner shall be present before the Court below at the time of questioning under Section 313 Cr.P.C and at the time of passing of the final judgment.

6. Accordingly, this Criminal Original Petition is disposed of with a direction to the Court below to complete the proceedings in C.C.No.54 of 2020 within a period of three (3) months from the date of receipt of a copy of this order. The interim orders passed by this Court by extracting the submissions made on either side shall not have any bearing on the



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grounds that have been raised by the petitioner and it is left open to the petitioner to raise all the grounds, which will be considered on its own merits and in accordance with law. Consequently, connected miscellaneous petitions are also closed.

The trial shall be conducted on a day to day basis in accordance with the guidelines given by Hon'ble Supreme Court reported in ***Vinod Kumar Vs State of Punjab [2015 (1) MLJ (Crl) 288 SC]***. If the petitioner adopts any dilatory tactics, it is open to the trial Court to insist upon the presence of the petitioner and remand him to custody as per the judgment of the Hon'ble Supreme Court in ***State of Uttar Pradesh v. Shambhu Nath Singh (JT 2001 (4) SC 3191)***.

25.09.2023

Speaking Order/Non-speaking Order

Index :Yes/No

Neutral citation: Yes/No

gm

N.ANAND VENKATESH, J.



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gm

To

1.The Judicial Magistrate,
Udhagaimandalam, Nilgiris District.

2.The Forest Range Officer,
Kundha Forest Range,
Kaikatti, Nilgiri District,
(W.L.O.R.No.4 of 2020

3.The Public Prosecutor,
Madras High Court,
Chennai.

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