



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	06.01.2023
Pronounced on	:	09.02.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGANCriminal Revision Case.1210 of 2020

Thambhu @ Thambattan

... Petitioner

Vs.

The Forest Range Officer,
Coonoor Forest Range,
Nilgiris.
(O.R.No.2 of 2000)

... Respondent

Prayer: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, praying to call for the records in Criminal Appeal No.4 of 2015 on the file of the learned Court of Sessions Judge of Magalialar Neethimandram, (FTMC), Udthagamandalam at Nilgiris and set aside the order dated 10.11.2020 confirming the conviction and the sentence passed by the Judicial Magistrate Court, Coonoor in C.C.No.86 of 2000 by a Judgment dated 12.12.2014 by allowing this revision.

For Petitioner : Mr.K.Balasubramaniam

For Respondent : Mr.R.Murthi
Government Advocate (Criminal side)

**ORDER**

This Criminal Revision case has been filed to set aside the Judgment dated 10.11.2020 passed by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Udhagamandalam, The Nilgiris in Criminal Appeal No.4 of 2015 confirming the conviction and sentenced passed by the Judicial Magistrate Court, Coonoor by Judgment dated 12.12.2014 in C.C.No.86 of 2000.

2. The respondent herein filed a case in O.R.No.2 of 2000 for the offences under Section 39(1)(a), (1)(b), 3(a), Section 49 and 51 of Wild Life Protection Act, 1972 and Sections 21(d) and 21(f) of Tamil Nadu Forest Act, 1882 before learned Judicial Magistrate, Coonoor. The learned Judicial Magistrate, Coonoor taken the case on the file in CC.No.86 of 2000 and framed charges against the petitioner. After trial, the trial Court found guilt of the petitioner for the offences under sections 39(3)(a) and 49 punishable under Section 51 of Wild Life Protection Act, 1972 and convicted and sentenced to undergo three years of simple imprisonment and pay fine of Rs.10,000/- in default to undergo six months simple imprisonment and trial



Court found not guilty of the petitioner for the offences under Sections 21(d) and 21(f) of Tamil Nadu Forest Act, 1882 and acquitted under Section 248(2) of Cr.P.C.

3. Aggrieved over the same, the petitioners herein filed an appeal in Crl.A.Nos.4 of 2015 before the learned Sessions Judge, Magalir Neethimandram, (Fast Track Mahila Court), Udthagamandalam at Nilgiris against the Judgment passed on 12.12.2014 in C.C.No.86 of 2000. 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, on 17.07.2000 at about 5.30 am, when the Q branch Inspector along with his team were on patrol duty, the petitioner was found in possession of 2 ivories about 24 cms length and 10 cm circumference and each weighing 0.5 kg with a value of Rs.3,000/-.



When they conducted an enquiry, he made an confession statement and based on that, a case was registered and ivories were recovered. After investigation, charge sheet was laid for the offences under Section 39(1)(a), (1)(b), 3(a), Section 49 and 51 of Wild Life Protection Act, 1972 and Sections 21(d) and 21(f) of Tamil Nadu Forest Act, 1882. In order to substantiate the charges, on the side of the prosecution totally 10 witnesses were examined and 3 documents were marked. Despite, one material object was exhibited. Based on the oral and documentary evidence, the learned Judicial Magistrate convicted the petitioner for the above said charges. When the petitioner filed an appeal before the Sessions Court, the same was dismissed and therefore, this Revision.

6. The learned counsel for the petitioners would submit that, as per the seizure mahazar the place of recovery is the short cut footpath from Pudhukadu to Mettupalayam main Road. As per Form 'A', the respondent before the trial Court and the covering letter sent along with Form 'A' the alleged recovery was from the residence of the accused. PW3 did not support the prosecution case. PW1 claims that he had arrested the accused/petitioner in the presence of independent witness PW3. Seizure



Mahazar was also allegedly prepared in the presence of the PW3. The trial Court has acquitted the accused at his place of residence is Pudhukadu, Burliar which is in the forest area. PW1 in his statement stated that recovery was not made in his presence and statement was also not recorded in his presence. Seizure of bags which was said to have been carrying the ivories was not recovered and marked. Further the evidence of PW7 states that it was a cloth bag which is contrary to the evidence of PW1 which deposed it was a plastic bag. Therefore, there is a contrary between the evidence of PW1 and PW7. As per the evidence of PW5 and PW1 has recorded the confession statement from the accused and the same was signed by him, the said confession statement was not marked before the Court. Even PW5 in his cross examination has deposed that the alleged confession statement from the accused was recorded at Forest Range Office, Coonoor, which is contradictory to the statement of PW1 who has deposed that the alleged confession statement was recorded at the place of the arrest of the accused. PW9 in his chief examination, deposed that they have gone to the raid on information that, accused was in possession of arms which he is intended to sell in the grey market. Whereas, PW9 in his cross examination has deposed that they have seized the alleged ivories half a kilometer from the place the



accused was arrested. Therefore, the evidence of PW5 and PW1 is contradictory. Admittedly, the petitioner is residing in the forest area. The prosecution has not proved the recovery and confession statement in the manner known to law. Further, the independent witness PW3 turned hostile and not supported the case of the prosecution. Therefore, the prosecution has failed to prove its case of the petitioner that the petitioner was in possession of the ivories without having any licence or permission. Further, the counsel for the petitioner would submit that the confession statement was not marked and the respondent is not a competent authority to register the case and investigate the matter. Since, the trial Court convicted the petitioner for the offence under Sections 21(d) and 21(f) of Tamil Nadu Forest Act, 1882, for the reason that the petitioner is residing in the village which is situated in the forest area, however, both the Courts failed to appreciate the evidence and materials and convicted and sentenced the petitioner for the offences under Sections 39(3)(a) and 49 punishable under Section 51 of Wild Life Protection Act, 1972. Therefore, this revision petition is liable to be allowed and the petitioner has to be acquitted.

7. The learned Government Advocate (Criminal side) submitted that



when the Q branch Inspector along with his team went on a patrol duty to monitor territories of Burliar Village, the petitioner was said to have come by walk in the road to Pudhukadu forest to the Mettupalayam main road.

Seeing the police, the petitioner tried to escape and therefore, the police got hold of the petitioner. Upon enquiry, it was found that the petitioner was in possession of 2 ivories each 24 cm length and 10 cm circumference. Each weighing about 0.5 kg with a value of Rs.3,000/-. The petitioner gave a confession statement and the respondent police recovered the ivories and registered a case against the petitioner. In order to substantiate the charges, on the side of the prosecution totally 10 witnesses were examined as PW1 to PW10 and 3 documents were marked as Ex.P1 to Ex.P3. Despite, one material object was exhibited as MO1. Ex.PW3 the eye witness had deposed categorically that the petitioner was the one who was in possession of the said ivories. Further, the possession is seized and the recovery is proved, therefore it is for the petitioner to prove that, he was not in possession of the said ivories. In this case, when the prosecution has proved that the petitioner was in possession of the ivories MO1 without any licence and permission which is illegal possession, then it is for the petitioner to rebut the presumption that, he is not in possession of the ivories. In this case, the



petitioner has not rebutted the presumption. Since prosecution has proved its case beyond reasonable doubt, the petitioner is not entitled to relief of acquitting from the said charges. Therefore, there is no merit in the case and this revision is liable to be dismissed.

8. Heard the learned counsel for the parties and perused the material placed on record.

9. Admittedly, in this case, on 17.07.2000 at about 5.30 am, when the Q branch Inspector along with his team were on patrol duty, the petitioner was found in possession of 2 ivories about 24 cms length and 10 cm circumference and each weighing 0.5 kg with a value of Rs.3,000/-. When they conducted an enquiry, it was found that the petitioner was in possession of 2 ivories without any licence. Thereafter, the petitioner made a confession statement and based on that, a case was registered and ivories were recovered. In order to substantiate the charges, on the side of the prosecution totally 10 witnesses were examined and 3 documents were marked. Despite, one material object was exhibited. In this case, PW1 has deposed regarding the incident and also about the arrest of the petitioner. PW5 and PW9 also corroborated the same. However, the fact remains that



the petitioner belongs to Pudhukadu Village, which is situated in the boundary of forest area. Though prosecution has stated that the seizure was made in the presence of the independent witnesses and recovery and confession statement was also recorded in the presence of independent witnesses, however the independent witnesses have not supported the case of the prosecution by stating that recovery and confession statements were not made in the presence of the independent witnesses. Admittedly, in this case, PW3 turned hostile not supporting the case of the prosecution and alleged confession statement was also not marked in this case.

10. 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], any confession statement made before the police officials or like any other investigating officer are not admissible in evidence. 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. As already stated, any confession statement made before the police officials or any other investigating officer are not admissible in evidence. Based on the confession statement alone, the accused cannot be convicted. The prosecution has to 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 is available to convict the petitioners in this case. If any case based on the confession statement and recovery, then the prosecution has to prove the same in the manner known to law. Further, trial Court also acquitted the petitioner from the offences under Sections 21(d) and 21(f) of Tamil Nadu Forest Act, 1882. It is evident that the residence of the petitioner is in that forest area and therefore, he was found in that area on the date of the incident. When the respondent stated that, in the presence of PW3 independent witness, the recovery was made and confession statement was recorded, however PW3 turned hostile not supporting the case of the prosecution. The same creates a doubt in the mind of this Court. Further, there is no explanation as to why the prosecution has not marked the confession statement alleged to have been recorded from the petitioner.



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11. 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 12.12.2014 in C.C.No.86 of 2000 on the file of the Judicial Magistrate Court, Coonoor is set aside. Further, the appellate Court also failed to reappraise and consider the same and confirmed the Judgment of the trial Court and the same is liable to be set aside. Accordingly, the Judgment dated 10.11.2020 in Criminal Appeal.No.4 of 2015 on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Udhagamandalam, Nilgiris is set aside.

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

09.02.2023

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To

1.The Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court),
Udhagamandalam, Nilgiris.

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2.The Judicial Magistrate Court,
Coonoor.

3.The Forest Range Officer,
Kotagiri Forest Range,
Kotagiri, The Nilgiris.

P.VELMURUGAN,J.
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Pre-Delivery order in
Criminal Revision Case.1210 of 2020

09.02.2023