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*Crl.M.P.No.2496 of 2024
in Crl.R.C.No.262 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

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in
Crl.R.C.No.262 of 2024

1.Meerabai @ Meeran
S/o.Sahul Hameed

2.Balu @ Jayabal
S/o.Arucchami

3.Radhakrishnan
S/o.Ramasamy

4.Jayaraman
S/o.Muthusamy

5.Kannan @ Rajendran
S/o.Saami

6.Kumar
S/o.Saami

... Petitioner/Accused
Nos.2, 3, 5, 6, 8 & 9

Vs.

The State by
The Forest Ranger,
Pollachi,
O.R.No.3/2005

... Respondent



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PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) of Cr.P.C to suspend the sentence of the petitioners imposed in judgment dated 19.07.2023 made in Crl.A.No.274 of 2017 on the file of IV Additional District and Sessions Judge, Coimbatore confirming the judgment dated 31.08.2017 made in C.C.No.303 of 2008 on the file of Judicial Magistrate No.1, Pollachi, pending disposal of the above Criminal Revision.

For Petitioners : Mr.S.Doraiswamy

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioners, seeking to suspend the sentence of imprisonment imposed on them in C.C.No.303 of 2008 by a judgment dated 31.08.2017 passed by the learned Judicial Magistrate No.1, Pollachi and confirmed by the learned IV Additional District and Sessions Judge, Coimbatore made in Crl.A.No.274 of 2017 dated 19.07.2023 and enlarge the petitioners on bail pending disposal of the above revision.

2.The petitioners, who are accused Nos.2, 3, 5, 6, 8 & 9 in C.C.No.303 of 2008, along with A1 and A7 were convicted by the trial Court by



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judgment dated 31.08.2017. The first petitioner/A2 was convicted for offence under Sections 9, 27, 29, 30, 31, 32 and 39(3) of Wildlife Protection Act. The second petitioner/A3 was convicted for offence under Sections 9, 27(1), 29, 30 and 39(3) of Wildlife Protection Act. The third petitioner/A5 was convicted for offence under Sections 9, 27(1), 29 and 39(3) of Wildlife Protection Act. The fourth petitioner/A6 was convicted for offence under Sections 9, 27(1), 29 and 39(3) of Wildlife Protection Act. The fifth petitioner/A8 was convicted for offence under Sections 39(3), 40(2), 40(2A) and 44(a) of Wildlife Protection Act and the sixth petitioner/A9 was convicted for offence under Sections 40(2), 40(2A) and 44(a) of Wildlife Protection Act and all the accused were committed offence punishable under Section 51 of Wildlife Protection Act, 1972 and sentenced to undergo two years rigorous imprisonment to each accused and to pay a fine of Rs.10,000/- each. Aggrieved over the same, The petitioners/accused Nos.2, 3, 5, 6, 8 & 9 preferred an appeal in Crl.A.No.274 of 2027 and A1 and A7 preferred an appeal in Crl.A.No.106 of 2018 before the learned IV Additional District and Sessions Judge, Coimbatore. The learned Sessions Judge, by judgment dated 19.07.2023, dismissed the appeal preferred by A1 to A9 confirming the conviction and sentence passed by the trial Court, against which, the



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petitioners/accused Nos.2, 3, 5, 6, 8 & 9 have preferred a revision in Crl.R.C.No.262 of 2024 before this Court along with suspension of sentence petition.

3.The case against the petitioners is that on 10.06.2005 in the reserve forest area of Thammampatti, the third accused trespassed into the reserve forest and he was caught and enquired by the forest officials. During the course of enquiry, he revealed that under the leadership of A1, the other accused persons indulged in killing of male elephant 5 months prior to January, 2005 and cut the tusks and handed over to A8 and A9, who belong to the State of Kerala. On their arrest and confession of the accused, ivory tusks were seized by the Kerala Forest Department and Crime Report No.9 of 2005 filed. Based on the above facts a case was registered by the respondent Forest Range officer in W.L.O.R.No.3 of 2005 and he took up the case for investigation. During the course of investigation, the accused persons were arrested on 10.06.2005, 11.06.2005, 29.06.2005, 30.06.2005 and 11.07.2005. On their confession, Country Gun, Kodari, Aruval, Explosives, Leadbullet, Tirupuli and other articles were seized. The accused and seized articles were produced before the Magistrate and later complaint was filed.



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4.During trial, on the side of the prosecution, PW1 to PW5 examined and marked Exs.P1 to P12 and marked M.O.1 to M.O.8. On the side of the defence, no witnesses examined and marked Ex.D1. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, had convicted the petitioner as stated above, which was confirmed by the Appellate Court.

5.The contention of the learned counsel for petitioner is that in this case the prime accused is A1, along with him the petitioners said to have participated in killing elephants. The case itself originate from the confession and arrest of A8 and A9, who hail from Kerala and said to have purchased M.O.1/tusks from the other accused. The case proceeds six months prior to seizure of the tusks. The tusker was killed by the petitioners/Accused Nos.1, 2, 3, 5, 6 and 7 and thereafter sold the tusk to A8 and A9. In this case PW5 is the Doctor, who conducted post-mortem on the carcass of the male elephant. He further submitted that there has been two elephants in the spot. Whether the other elephant is male or female, whether tusk is available, no report given. Further, no superimposition test on the skull of the carcass elephant



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conducted to confirm the tusk belong to the carcass. He further submitted that the gun said to have been seized from the accused were not sent to the Forensic Lab. Whether it was in working condition or not is not confirmed. The Bullets seized were also not sent for Forensic examination. In this case, there are lot of infirmity, which the trial Court as well as Appellate Court failed to consider.

5.1. Learned counsel further submitted that the petitioners have surrendered before the learned Judicial Magistrate No.I, Pollachi on 23.02.2024 and now they are confined in Central Prison, Coimbatore. The proof of surrender and order copy for acceptance of surrender by the learned Judicial Magistrate produced. Further submitted that the petitioners have arguable points and fair chance of success in this revision. Hence, he prays for granting suspension of sentence to the petitioner.

6.The learned Government Advocate (Crl. Side) on the other hand filed his counter and submitted that the case of the prosecution is that on 10.06.2005 in the reserve forest of Thammampathi, the 3rd accused/Balu @Jayabal, who trespassed into the reserve forest, had been caught and enquired. During the course of enquiry he revealed that under the leadership



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of Tamilarasan/A1 and other accused namely Meerabai/A2, Subash @ Muthukrishnan/A4, Radhakrishnan/A5, Jayaraman/A6 and Anandh @ Anandhan/A7 had indulged in killing of a male elephant 5 months before January, 2005 and cut the tusks and handed over to Kannan @Rajendran/A8 and Kumar/A9, who belongs to the place at Kannimariin, Kerala State. In respect of the same the tuskers were seized and Kerala Forest Department, Kollakadu Forest Office laid the Crime Report in 9 of 2005. Based on the above facts, a case was registered in Pollachi Forest Range in WLOR No.3 of 2005, under Sections 9, 27(1), 29, 30, 31, 32, 36, 39(3), 40(2), 40(2A), 44(a), 49b r/w 51 A of Wildlife Protection Act against the accused persons A1 to A9 on 10.06.2005 by Tr.P.Veluchami, then then Forest Range Officer and he took up the case for investigation.

6.1.He further submitted that the then Forest Range Officer went to the scene of occurrence, drew rough sketch prepared observation mahazer and also examined the witnesses and recorded their statements. During the course of investigation, on 10.06.2005, the then Forest Range Officer arrested the accused persons A3, A8 & A9 and obtained their confession statements and also seized tusks - 2 numbers from them under cover of seizure mahazar in the presence of witnesses. Then, they were produced before the Judicial



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Magistrate No.I, Pollachi and remanded to judicial custody. On 11.06.2005, the then Forest Range Officer arrested the accused persons A1 & A4 and obtained their confession statements and then, they were produced before the Judicial Magistrate No.1, Pollachi and remanded to judicial custody. The then Forest Range Officer arrested the accused persons A6, A2 & A7 on 29.06.2005, 30.06.2005 & 11.07.2005 and obtained their confession statements and also seized Country Gun-1, Kodari -1, Aruval-1. Explosives-1, Leadbullet-1 box, Tirupuli-1 and Bag-1 from A2 under cover of seizure mahazar in the presence of witnesses. Then, they were produced before the Judicial Magistrate No.1, Pollachi and remanded to judicial custody. On 01.07.2005, the accused A5 voluntarily surrendered before the Judicial Magistrate No.1. Pollachi and remanded to judicial custody.

6.2.He further submitted that after completion of elaborate and detailed investigation, based on the witnesses statements, material evidence, on 01.08.2005, the then Forest Range Officer filed charge sheet against A1 to A9 before the Judicial Magistrate No.1, Pollachi and the same was taken on file vide C.C.No.303 of 2008. In order to prove the case of the prosecution, the prosecution has examined 5 witnesses and marked 12 exhibits and 8 material objects marked. On the defence side marked 1



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exhibit. On conclusion of trial, the Judicial Magistrate No.1, Pollachi vide judgment dated 31.08.2017 in C.C.No.303 of 2008 convicted the accused persons A1 to A3 & A5 to A9 as stated above. During the trial, the accused Subash/A4 was died, hence, the charges abated against him. Aggrieved over the conviction, the petitioners/accused 2, 3, 5, 6, 8 & 9 have preferred an appeal before the IV Additional District and Sessions Judge, Coimbatore in C.A. No.274/2017. The learned Sessions Judge dismissed the appeal confirming the conviction and sentence passed by the trial Court. Hence, prays for dismissal of the petition.

7.Considering the submissions made and on perusal of the material available on record, it is seen that in this case PW5/Doctor, who conducted post-mortem of the carcass of the elephant, not conducted superimposition test with the skull available to confirm that M.O.1/tusks are that of the carcass elephant, which was found in the forest. Further, there were two carcass elephants in the scene of occurrence, there is no clarity, from which carcass elephant the tusks were cut. Further in this case the gun and bullets used in the said occurrence not sent for Forensic examination. In view of the same, this Court finds that the finding of the Courts below needs to be



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reconsidered. Further considering the fact that the petitioners have surrendered before the learned Judicial Magistrate No.I, Pollachi on 23.02.2024 and now they are confined in Central Prison, Coimbatore, this Court is inclined to suspend the sentence imposed on the petitioners.

8. Accordingly, the relief of suspension of sentence and bail are granted to the petitioners on the following conditions till the disposal of the above Criminal revision:

(a) The petitioners/Accused 2, 3, 5, 6, 8 & 9 are ordered to be enlarged on bail, on condition that they shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each, with two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate No.1, Pollachi.

(b) The petitioners/ Accused 2, 3, 5, 6, 8 & 9 and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioners/Accused 2, 3, 5, 6, 8 & 9



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shall appear before the Trial Court once in three months at 10.30 a.m. on the first working day of the month, until the disposal of the revision and if they are not able to appear before the Trial Court on that day, they shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day in lieu of the date of their absence as directed by the Trial Court.

9. Accordingly, this Criminal Miscellaneous Petition is ordered.

04.03.2024
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Note: Issue order copy on 05.03.2024

To

- 1.The Forest Ranger,
Pollachi.
- 2.The IV Additional District and Sessions Judge,
Coimbatore.
- 3.The Judicial Magistrate No.1, Pollachi.
- 4.The Superintendent,
Central Prison, Coimbatore.
- 5.The Public Prosecutor, High Court, Madras.



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M. NIRMAL KUMAR, J.

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