



Crl.RC.No.570 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

Crl.RC.No.570 of 2021
and
Crl.MP.SR.No.37603 of 2021

V.S.Gunaseelan

...Petitioner

Vs.

The State represented by the,
Forest Range Officer,
Pollachi Forest Range,
Pollachi.
...Respondent

Petition filed under Section 397 r/w 401 of Cr.P.C., to call for the records relating to the order dated 05.10.2018 in C.M.P.No.4045 of 2018 on the file of the learned Judicial Magistrate No.II, Pollachi and set aside the same and consequently direct the respondent to return the articles seized from the petitioner in W.L.O.R.No.3 of 2014 on the file of the respondent police.

For Petitioner : M/s.AL.Ganthimathi

For Respondent : Mr.A.Gopinath, GA (Crl. Side)



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ORDER

This Criminal Revision case has been filed seeking quashment of the order dated 05.10.2018 passed in C.M.P.No.4045 of 2018 by the learned Judicial Magistrate No.II, Pollachi and to consequently direct the respondent to return the articles seized from the petitioner in W.L.O.R.No.3 of 2014 on the file of the respondent police.

2. The case of the petitioner is that, on 01.07.2014, the officials of the Forest Department conducted search in the petitioner's residence and seized various animal articles and trophies like elephant tusks and other antique and significant articles and registered a case in W.L.O.R.No.3 of 2014 against the petitioner and he was arrested and remanded to judicial custody and subsequently, he was released on bail. While so, the petitioner filed a petition in CMP.No.4889 of 2014 before the learned Judicial Magistrate, Pollachi, seeking to return of the above said articles, however, the same came to be dismissed on 06.11.2014. Challenging the same, the petitioner filed C.R.P.No.85 of 2014 before the IV Additional District and Sessions Judge, Coimbatore and, vide order dated 31.08.2016, the learned Sessions



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Judge allowed the petition and directed the respondent to return the seized articles to the Court so as to preserve it and liberty was also given to the learned Judicial Magistrate No.II, Pollachi to take assistance of the petitioner to preserve the returned articles. Subsequently, the petitioner filed Crl.O.P.No.5118 of 2015 seeking quashment of W.L.O.R.No.3 of 2014 and W.P.No.18831 of 2017 seeking to conduct thorough investigation in respect of seizure of property and this Court, vide order dated 05.12.2016 directed the respondent to conduct a thorough investigation and further stated that if it is found that the petitioner had a valid certificate of possession, he is entitled to such possession by inheritance and in the light of the above said order, this Court, vide order dated 25.07.2017 disposed of the above said Writ petition with a direction to conclude the investigation as expeditiously as possible. However, as the investigation was completed, the petitioner filed a petition u/s. 451 of Cr.P.C. in CMP.No.4045 of 2018 before the learned Judicial Magistrate No.II, Pollachi seeking interim custody of cases properties in W.L.O.R.No.3 of 2014, which was dismissed by the trial court, vide impugned order dated 05.10.2018. Challenging the same, the petitioner has come up with this Revision.



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3. Learned counsel for the petitioner submitted that, the petitioner belongs to a respectable family and his family owned 1000 acres of Virgin forest lands and were engaged in Timber business since 1940 and for smooth transportation of timber, they had elephants, which have died due to old age and pursuant to which, the ivories and other articles were protected by the petitioner's ancestors, in the memory of the said elephants. Learned counsel further submitted that, the petitioner obtained possession certificate dated 20.10.1982 from the Wildlife Warden in respect of twenty three (23) articles, as mandated under Section 40 and 42 of the Wildlife (Protection) Act, 1972 which came into force on 09.09.1972, despite which, the said articles were seized by the official. Further, since there is no proper space in the Court premises to preserve the articles and if the same were retained by the respondent police, the articles would deteriorate and, therefore, the petitioner filed interim custody petition u/s.451 of Cr.P.C. However, without considering the same, the trial court had dismissed the said petition, vide impugned order, which is wholly unsustainable. Accordingly, prayed for appropriate orders.



4. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent submitted that, as per Section 40 of the said Act, every person having custody, or possession of any captive animal or any uncured trophy derived from such animal shall, within thirty days from the commencement of this Act, declare to the Chief Wildlife-Warden or the authorised officer the number and description of animal, or article of the foregoing description under his control, custody or possession and the place where such animal or article is kept and has to obtain appropriate possession certificate. In the present case, the possession certificate produced by the petitioner is not issued by the person authorized under the Act. Further, pursuant to the declaration made by the Government only 52 persons have obtained possession certificate, in which the petitioner's name is not found. If at all the petitioner has any grievance, he has to file appropriate application for keeping the said articles in his possession and without the same, the articles cannot be given to the petitioner and it could be given only after disposal of the criminal case. Accordingly, he prayed for dismissal of this petition.



5. In response, the learned counsel for the petitioner submitted that, only for the persons who have not obtained possession certificate prior to 2010, time was granted for obtaining possession certificate, in which, the above said 52 persons have obtained possession certificate and it does not mean that the earlier possession certificate obtained by the petitioner is not a valid one.

6. Heard learned counsel on either side and perused the material documents placed on record.

7. A perusal of the materials available on record particularly the possession certificate reveals that, there is some discrepancy in the possession certificate obtained by the petitioner and the genuineness of the said possession certificate obtained by the petitioner is questioned by the respondent, which could be established only at the time of trial. At this point of time, this Court cannot answer the issue one way or the other and, therefore, no order can be passed by this Court in the present revision. Therefore, this Court does not find any perversity or infirmity in the order



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passed by the learned Magistrate and thereby, this Court is not inclined to interfere with the same. However, the petitioner is at liberty to make appropriate application, seeking return of the materials after disposal of the pending criminal case. Further, the respondent is directed to preserve the articles, which have been recovered from the premises of the petitioner so that the said articles does not stand deteriorated in any manner.

8. For the reasons aforesaid, this Criminal Revision Case stands dismissed and in view of the above order being passed in this Criminal revision, the connected miscellaneous petition is closed at SR Stage itself.

02.08.2024

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

To

1. The Forest Range Officer,
Pollachi Forest Range, Pollachi.
2. The Judicial Magistrate No.II, Pollachi.
3. The Public Prosecutor, High Court of Madras.

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M.DHANDAPANI, J.

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