



Crl.M.P.No.4461 of 2024 in Crl.R.C.No.462 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.4461 of 2024
in Crl.R.C.No.462 of 2024

C.Somasundaram

... Petitioner

Vs.

The State of Tamil Nadu,
Rep. By the Forest Range Officer,
Vanasaraham,
Mannargudi Forest Range,
Thiruvarur District.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) the Code of Criminal Procedure, to suspend the sentence dated 21.09.2023 imposed in C.A.No.8 of 2021 on the file of the Principal District and Sessions Judge, Thiruvarur, confirming the sentence dated 16.02.2021 imposed in C.C.No.103 of 2017 on the file of the Judicial Magistrate No.II, Mannargudi pending disposal of the criminal revision case.

For Petitioner : Mr.K.Selvaraj

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



ORDER

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The petitioner/A1 and two others in C.C.No.103 of 2017 were convicted by the Trial Court by judgment dated 16.02.2021. The petitioner/A1 was sentenced to undergo two years simple imprisonment and to pay a fine of Rs.7,000/-, in default to undergo one month simple imprisonment for the offence under Section 28A of Tamil Nadu Forest Act and the other accused, namely, A2 and A3 were imposed fine sentence alone. Aggrieved against the same, the petitioner preferred an appeal in C.A.No.8 of 2021. The learned Sessions Judge by judgment dated 21.09.2023 dismissed the appeal confirming the conviction and sentence imposed by the Trial Court. Against which, the present revision is filed along with suspension of sentence.

2.It is submitted that the petitioner now surrendered before the learned Judicial Magistrate No.II, Mannargudi on 25.03.2024 and he is now confined in Central Prison, Trichy.

3.The case of the prosecution is that on 18.09.2014 at about



8.00 p.m., P.W.1/Forester along with a team were inspecting near Bamini river teak garden. In the left bank of Santhaparichan canal, two teak trees were found cut down, one was green wood and the other was dry wood. Enquiry conducted and investigation carried out. At that time, information received that A2/Thayumanavan cut down the two trees, he was enquired and arrested, who confessed that the two trees were cut down on the instructions of the petitioner/A1 by the said Thayumanavan/A2 and one Rajendran/A3. After cutting down, the trees were made into nine pieces, of which, seven were dropped near the Mariamman temple pond and two were dropped in the river bed. Based on the confession, the teak wood logs were seized, prepared seizure mahazar, Form H, Form 95 and produced the same before the jurisdictional Court. The accused/A2 in his confession gave details of offence and involvement of other two accused. A3 is the cutter and A1 for his needs instructed A2 and A3 to cut the teak trees. Further enquiry revealed that A2 would do whatever A1 instructed him. During the trial, PW1 to PW6 examined and Ex.P1 to Ex.P6 marked on the side of the prosecution. On the side of the defence, no witness examined and no documents marked. On conclusion of trial, the Trial Court convicted the petitioner as stated above which was confirmed by the Sessions Court.



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4.The contention the learned counsel for the petitioner is that the entire case revolves around confession of A2 in this case. As per Section 30 of the Indian Evidence Act, mere confession of co-accused cannot be a foundational basis for convicting the accused. The confession of co-accused can be used only for corroborative purpose but in this case no corroboration found. He would submit that admittedly the teak wood logs were recovered in the public place i.e., in the pond and river and nothing was recovered from the petitioner. He would further submit that the evidence of PW1 and PW2 is that the villagers informed A2 would do whatever A1 instructs him, but there is no witness to confirm the same. The Trial Court had gone merely on surmises and conjunctures. Further, in this case no public witness examined. PW1 and PW2 are the Foresters, PW3 is the Jeep Driver of the Forest Department, PW4 and PW5 are the plot watchers. The Trial Court had given a finding that the petitioner had entered the witness box under Section 315 Cr.P.C. and no explanation given which is not proper. The prosecution has to prove its case on its own merits and by way of cross examination the accused can disprove the case of the prosecution. In view of the same, the Trial Court convicting the petitioner is not proper. Further, the Lower



Appellate Court, not considered the case independently on its own merits.

Hence, prayed for suspension of sentence.

5.The learned Additional Public Prosecutor submitted that PW1 along with a team went on a regular patrol and they found that two teak wood trees were cut down. The teak wood comes under Scheduled timber and hence, cutting and possessing of teak wood is a forest offence. A2 carries out the instructions and directions of A1. A3 is the cutter in this case. On the instructions of A1, A2 and A3 cut down the trees and made into nine pieces, of which, seven were dropped in the Mariamman temple tank near the petitioner's house and two were found near the river bed. Thus, the teak wood logs were meant for A1's use. A2 in his confession admitted the offence. His confession statement recorded by the forest official and hence, it is admissible and not hit under Section 25 of the Indian Evidence Act. Based on the confession statement, nine pieces of teak wood logs seized, Form H recorded, teak wood logs were deposited to the forest account and the same was also intimated to the Trial Court by way of Form 95. PW1 to PW6 are the witnesses who clearly narrated the act of each of the accused and Ex.P1 to Ex.P6 confirm the recovery, seizure of teak wood logs based



on the confession of A2. The confession of A2 is corroborated by the recovery which would be sufficient. Committing offence under Forest Act is serious in nature. The Trial Court considering all these aspects had rightly convicted the petitioner. The Lower Appellate Court finding no reasons to interfere with the well reasoned judgment of the Trial Court had dismissed the appeal filed by the petitioner by confirming the judgment of the Trial Court.

6.Considering the submissions made and on perusal of the materials, it is seen that the entire case revolves around the confession of A2 which is marked as Ex.P2. Admittedly in this case, all the witnesses are forest personnels. PW2 recorded the confession statement of A2 in the presence of PW5/plot watcher. The teak wood logs were not seized from the petitioner and it was seized from the Mariamman temple tank and river bed. Though it was stated that A2 used to carry out the instructions of A1, no public witness or any villager examined to prove the same. Convicting a person under the confession of co-accused can be done, provided it is corroborated with other evidence. As per Section 30 of the Indian Evidence Act, the confession of co-accused cannot be the sole basis for conviction, it can be used to lend



credence and acceptance with the other evidence and materials. In this case, such evidence and materials are lacking. Hence, this Court is inclined to grant suspension of sentence.

7. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the revision and he is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like sum to the satisfaction of the trial Court.

8. Further, the petitioner shall appear before the Trial Court on the first working day of once in three month at 10.30 a.m. until the disposal of the criminal revision and if he is not able to appear before the Trial Court on that day, he 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 his absence as directed by the Trial Court.

9. Accordingly, this Miscellaneous Petition is ordered.

28.03.2024



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Index: Yes/No

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Note: Issue order copy on 01.04.2024



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To

- 1.The Judicial Magistrate No.II,
Mannargudi.
- 2.The Principal District and Sessions Judge,
Thiruvarur.
- 3.The Forest Range Officer,
Vanasaraham,
Mannargudi Forest Range,
Thiruvarur District.
- 4.The Superintendent,
Central Prison, Trichy.
- 5.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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