

Crl.R.C.(MD)No.952 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.04.2025

Pronounced on : 04.08.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.952 of 2024

Vijay Anand

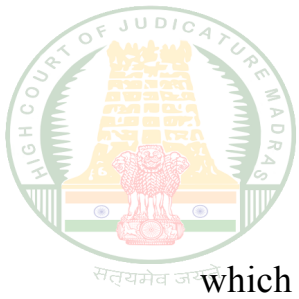
...Petitioner/
Petitioner/
Accused No.1

Vs.

The State rep. by
The Inspector of Police,
Forest Range Police Station,
Ramanathapuram District.
(WLOR No.11 of 2023)

... Respondent/
Respondent/
Complainant

Prayer : This Criminal Revision Case filed under Section 438 r/w 442 B.N.S.S., to call for the records pertaining to the order dated 27.08.2024 made in Crl.M.P.No.4286 of 2024 on the file of the learned Judicial Magistrate Court No.I, Ramanathapuram and set aside the order and direct the respondent police herein to release the Shark Fins to the petitioner



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which was seized by the respondent police in connection with
W.L.O.R.No.11 of 2023.

For Petitioner : Mr.K.Althaf Sheriff
for M/s.Ajmal Associates

For Respondent : Mrs.M.Aasha
Government Advocate (Crl. Side)

ORDER

The Criminal Revision is directed against the order passed in
Crl.M.P.No.2881 of 2024 dated 27.08.2024 on the file of the Court of the
Judicial Magistrate No.1, Ramanathapuram, dismissing the petition filed
under Section 451 of the Code of Criminal Procedure.

2. The case of the prosecution is that on 09.05.2023, the respondent
Forest Range Officer, on receiving secret information that prohibited shark
fins are being smuggled, they mounted surveillance near the
Ramanathapuram Railway Station and found that the petitioner and one
Shahul Hameed were loading 18 gunny bags of prohibited shark fins (210
kgs of Greater Hammer Head, 50 kgs of Smooth Hammer Head and 145
kgs of Glaucosteus spp) into their vehicle and that the respondent seized
the shark fins and registered a case in W.L.O.R.No.11 of 2023 for the



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offences punishable under Chapter I Section 2(11), 2(14), Chapter V 39(1) (a)(b)(d), Section 47, Chapter V-B, Section 49 D(m)(n), Section 49 (H-1), Section 49(I-1), Chapter VI 50 r/w Section 51(1) of Wild Life Protection Act, 1972 (2022 Amendment). The respondent, after seizing the shark fins, produced the same before the jurisdictional Magistrate Court and the same came to be received and remanded in P.R.No.81 of 2023.

3. The petitioner, claiming ownership over the seized properties moved a petition under Section 451 Cr.P.C. in Crl.M.P.No.2881 of 2024 on the file of the Judicial Magistrate No.1, Ramanathapuram. The respondent filed a counter statement raising objections. The learned Magistrate, after enquiry, has passed the impugned order dated 27.08.2024 dismissing the petition. Challenging the order of dismissal, the present revision came to be filed.

4. The learned counsel appearing for the petitioner would submit that the petitioner is the proprietor of VAF Trading Company doing distribution of dry fishes in and around the State of Tamil Nadu, that the petitioner and one Shahul Hameed, who were arrayed as accused 1 and 2

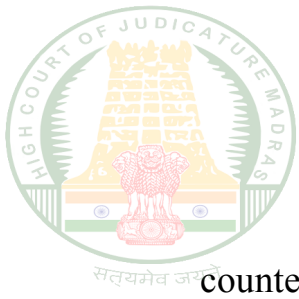


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in the case registered in W.L.O.R.No.11 of 2023 on the file of the respondent, came to be arrested on 10.05.2023 and on production before the learned Judicial Magistrate, considering the materials produced stating that there was no material to show that the seized shark fins are prohibited or not, rejected the permission, that the respondent has thereafter sent the seized shark fins to the Advanced Institute of Wildlife Conservation Laboratory, Vandalur for DNA test and received a lab report on 06.02.2024, that the lab report revealed that Item No.2 has not come under the Schedule of the Act and Item Nos.1 and 3 are also not prohibited shark species under the Schedule II of the Wildlife Protection Act, 1972 (hereinafter referred as 'the Act') but comes under the Schedule IV of the Act, that Schedule IV of the Act prohibits only the export/import of the said species to the foreign countries without prior permission but does not prohibit possession or trade of scheduled species within the Indian territory, that the learned Magistrate, without considering the lab report, has proceeded to dismiss the said petition and that therefore, the said order is liable to be interfered with.

5. The respondent has filed a counter affidavit and also an additional

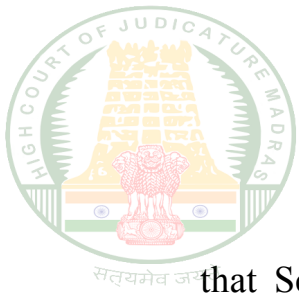


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counter affidavit. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that investigation is pending, that any specimen of the species included in Appendix II of Schedule IV of the Act shall require valid certification and permit for the international trade as per Section 49-H and 49-I of the Act, that the properties were recovered from the petitioner as well as the other accused Shahul Hameed but return of property was filed only by the petitioner, that the petitioner has not produced any documents to show that they were trading only inside the State, that releasing of the prohibited shark fins at initial stage would result in tampering of witnesses and that the learned Magistrate has rightly dismissed the petition.

6. As already pointed out, it is evident from the records that the respondent seized three types of shark fins (1) Scalloped Hammer Head, (2) Pigeye Shark and (3) Sharpnose Guitarfish and that the Advanced Institute of Wildlife Conservation Laboratory, Vandalur sent a report stating that Item No.2 i.e., Pigeye Shark has not come under any Schedule of the Act and Item Nos.1 and 3 (Scalloped hammer head and Sharpnose guitarfish) have come under the Schedule IV of the Act. It is not in dispute



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that Schedule IV of the Act prohibits the export/import of the species specified therein to the foreign countries without prior permission.

7. The learned counsel appearing for the petitioner would submit that the second accused Shahul Hameed has absolutely no objection to handover the seized properties to the petitioner and that he is ready to file an affidavit. He would further submit that though the respondent has stated no objection for Item No.2, the learned Magistrate, by observing that co-accused was not impleaded and the petitioner has not proved his ownership, dismissed the petition in its entirety.

8. The learned counsel appearing for the petitioner would submit that Item Nos.1 and 3 are not prohibited shark species under Schedule II of the Act but are listed under Schedule IV of the Act, which only requires permission for export or import of the said species to the foreign countries.

9. No doubt, the petitioner has produced the copies of the invoice and also the affidavit of the proposed purchaser Ghori Mohammed, who stated in his affidavit that the petitioner had paid the GST for the said



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purchases and the same has also been reflected in the petitioner's GSTIN portal as well as in his GSTIN portal. The learned Government Advocate (Criminal Side) has produced a letter sent by the officer of the Superintendent of Central Goods and Service Tax & Central Excise, Ramnad Range to the respondent dated 26.02.2025 stating that the tax payer has submitted that he has not received any invoice or any items mentioned in the invoices produced by the petitioner and that the registered premises of the petitioner's company were visited but the premises remain closed. The learned Government Advocate (Criminal Side) has also produced another letter dated 01.04.2025 sent by the same officer of the Superintendent of Central Goods and Service Tax & Central Excise, Ramnad Range to the respondent, wherein, it has been stated that they have verified from the GSTN portal and came to know that the invoices produced by the petitioner were reported by M/s.VAF Trading & Co. in March-2024, GSTR-1 Return which was filed on 18.04.2024 and GSTR-2A for the recipient i.e., M/s.OMEGA 3 MARINE FRESH has also been checked and details of the said invoices are also reflected in the said return.

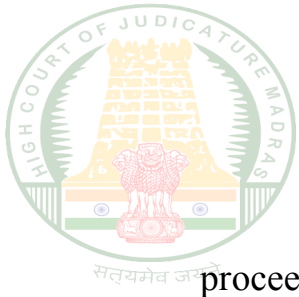


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10. Without going into the above aspects, the fact remains that Item Nos. 1 and 3 of the seized properties are not prohibited species. As already pointed out, those properties cannot be exported to the foreign country without prior permission of the competent authorities and as such, there is no total prohibition for export or import of the said species. In the case on hand, admittedly, the properties came to be seized near Ramanathapuram Railway Station. It is not the case of the prosecution that the said consignment was booked for any foreign country. Though the learned Government Advocate (Criminal Side) would submit that the petitioner has only been attempting to transport the seized properties to Sri Lanka, there is absolutely no materials to substantiate the said stand.

11. Every crime has four stages intention, preparation, attempt and accomplishment and an act or an attempt marks the beginning of criminal liability. Generally, preparation by themselves are not punishable by law but an attempt is punishable. In the case on hand, as already pointed out, it is not the case of the prosecution that the petitioner has been attempting to transport the goods to any foreign country. In the absence of any such material, this Court is at loss to understand as to how the prosecution has



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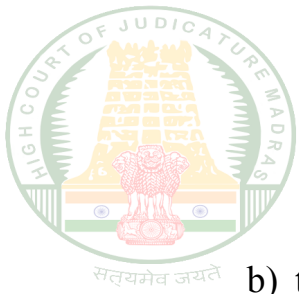
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proceeding with the present case and is objecting the release of the goods.

As rightly contended by the learned counsel appearing for the petitioner, as of now there is absolutely no material to show that the petitioner has committed or attempted to commit the offences alleged. Considering the above, the objections raised by the prosecution are absolutely devoid of merits and the learned Magistrate, without considering the above aspects in proper perspective, has mechanically dismissed the petition. Consequently, this Court concludes that the impugned order is liable to be set aside and the petitioner is entitled to get return of the property.

12. Accordingly, this Criminal Revision Case stands allowed and the impugned order dated 27.08.2024 passed in Crl.M.P.No.2881 of 2024 by the learned Judicial Magistrate No.1, Ramanathapuram, is hereby set aside and the properties in dispute are ordered to be returned to the petitioner on the following conditions:-

- a) the petitioner shall execute a bond for a sum of **Rs.2,00,000/- (Rupees Two Lakhs only)**, with two sureties for a likesum to the satisfaction of the learned Judicial Magistrate No.1, Ramanathapuram;



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- b) the petitioner shall not transport the Item Nos.1 and 3 to any foreign country without the permission of the competent authorities; and
- c) the petitioner shall give an undertaking that he will deposit the value of the properties if required by the Court at any stage.

04.08.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

- 1.The Judicial Magistrate No.I,
Ramanathapuram.
- 2.The Inspector of Police,
Forest Range Police Station,
Ramanathapuram District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
Crl.R.C.(MD)No.952 of 2024

Dated : 04.08.2025