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Crl.R.C.No.55 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.03.2026

PRONOUNCED ON : 07.04.2026

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.55 of 2022

Zafarulla Gani Mohamed

.... Petitioner

Vs

State of Tamil Nadu,
Smt.Santhi Muthuswami Pillai,
Wildlife Inspector,
Wildlife Crime Control Bureau,
Government of India,
Ministry of Environment Forest and Climate Change,
Rajaji Bhavan, Besant Nagar, Chennai.

.... Respondent

Prayer: Criminal Revision is filed under Section 397 read with 401 of Code of Criminal Procedure, to set aside the conviction imposed in Judgment dated 09.11.2021 made in Crl.A.No.36 of 2018 on the file of the Principal District and Sessions Court of Kancheepuram District at Chengalpattu modifying the conviction order dated 11.08.2018 made in C.C.No.17 of 2016 on the file of the Judicial Magistrate, Alandur by allowing this Criminal Revision Petition.

For petitioners : Mr.A.Swaminathan

For Respondent : Mr.A.R.L.Sundaresan
Additional Solicitor General of India
Assisted by
Mr.K.Subbu Ranga Bharathi



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ORDER

WEB COPY This Criminal Revision Case has been filed as against the Judgment dated 09.11.2021 passed in Crl.A.No.36 of 2018 on the file of the Principal District and Sessions Judge, Kancheepuram District at Chengalpattu, thereby confirming the order of conviction and modifying the sentence imposed by the Judicial Magistrate, Alandur, in C.C.No.17 of 2016 dated 11.08.2018, for the offences punishable under Section 51 read with Section 39 of Wildlife (Protection) Act, 1972 (hereinafter referred to as the “Act”)

2. The case of the prosecution is that on 06.08.2015, the accused was checked while boarding a Srilankan Airlines Flight for his journey to Kuala Lumpur. He carried one brown coloured bag and one black coloured handbag as check-in-baggage. While scanning the baggage, the staff detected certain dense objects in the bags. On suspicion, the accused was directed to open the bags, however, he refused to do so. Thereafter, he opened the bags, turtles were found concealed inside socks, with a larger one wrapped in cello tape. The said turtles were identified as Black Pond Turtles, a species included in Schedule I of the Act. The same were handed over to the Customs Air Intelligence Unit. After recording the confessions statement of the accused, it was revealed that he is a frequent traveler to South East Asian Countries and is engaged in the



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catering business. He admitted that he had agreed to transport the turtles to Malaysia for a sum of Rs.10,000/- without any valid permission to possess, transport or trade the said species. Therefore, he committed offences punishable under Section 51 read with Section 39 and 48A of the Act. Based on the complaint, the Trial Court had taken cognizance on its file.

3. In order to prove the complaint, the respondent had examined P.W.1 to P.W.3 and marked Exs.P1 to P5. On the side of the accused, no witnesses were examined and no documents were marked to disprove the charges.

4. On perusal of the oral and documentary evidence, the Trial Court found the accused guilty of the offence under Section 51 read with 39 of the Act and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for a period of three months. Aggrieved by the same, the accused preferred an appeal and the same was partly allowed by confirming the conviction and modifying the sentence alone from three years to six months. Hence, the present Criminal Revision Case has been filed.



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5. The learned counsel appearing for the petitioner submitted that the respondent did not examine any independent witness to prove the charges.

Further, the respondent failed to examine the mahazar witnesses before the Trial Court to prove the recovery. Therefore, the respondent failed to follow the prescribed procedure while filing the private complaint. He further submitted that even before framing of charges, the Trial Court ought to have examined the witnesses in accordance with law. However, the Trial Court framed charges without examining any witness, which is contrary to the provision of Section 244 of the Code of Criminal Procedure. He also submitted that the respondent was not a duly authorised person under Section 50(8) of the Act to initiate prosecution against the accused. Therefore, there is a procedural lacuna. Despite these infirmities, both the Trial Court as well as the Appellate Court convicted the accused. In fact, the Appellate Court, while noticing the procedural irregularities committed by the Trial Court, erred in merely modifying the sentence alone without acquitting the accused. In support of his contention, he relied upon several judgments.

6. Per contra, the learned Additional Solicitor General of India appearing for the respondent submitted that the respondent is duly authorised to prosecute the case. He contended that, in exercise of powers under sub-section



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(1) of Section 5 read with sub-section (2) of Section 38Z of the Act, the Director of Wildlife Preservation, with the previous approval of the Central Government, has delegated the powers vested under Section 55 of the Act to the officers of the rank of Inspector of Wildlife Crime Control Bureau within their respective jurisdictions. Therefore, the respondent has the requisite authority and jurisdiction to initiate prosecution against the accused. He further submitted that the accused was found in possession of Black Pond Turtles, which are listed under Schedule I of the Act and hence, he is liable to be prosecuted for the offence punishable under Section 51 read with Section 39 of the Act. In order to prove the charges, the respondent examined P.W.1 to P.W.3. P.W.1 and P.W.2, being the customs officials, recovered the turtles and prepared the seizure mahazar, which was marked as Ex.P3. In such circumstances, non-examination of independent mahazar witnesses is not fatal to the prosecution case. Therefore, the respondent has categorically proved the charges and the Trial Court has rightly convicted the accused.

7. The learned Additional Solicitor General further submitted that though the minimum sentence to be imposed is three years of imprisonment, the Appellate Court mechanically reduced the sentence from three years to six months. However, the respondent did not prefer any revision for enhancement of the sentence. The provision under Section 460 of Cr.P.C. is very clear that

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whatever the irregularities committed by the Trial Court during the trial, it does not vitiate the entire case of the prosecution. That apart, the accused did not raise any objection during the course of trial with regard to the alleged non-compliance of the procedure as contemplated under Section 244 of Cr.P.C. and such a contention has been raised only at the appellate stage. Therefore, the Trial Court rightly convicted the accused and it cannot be set aside merely on the ground of procedural irregularities. In support of his contentions, reliance was placed on various judgments of the Hon'ble Supreme Court of India.

8. Heard Mr.A.Swaminathan, learned counsel appearing for the petitioner and Mr.AR.L.Sundaresan, learned Additional Solicitor General of India appearing for the respondent. Perused the materials available on record.

9. The accused was prosecuted for the offences punishable under Sections 51 read with Section 39 of the Act for the illegal possession of 138 black pond turtles, which are classified under Schedule I of the Act. In order to prove the charges, the respondent examined P.W.1 to P.W.3. P.W.1, in his evidence, deposed that the accused was checked at the entrance of the screening division and, on suspicion, the screening authority directed the accused to open his bag. Thereafter, he opened the bag and was found to be in possession of 138



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black pond turtles. It was also corroborated by P.W.2 who had spoken about the detection and recovery of 138 live turtles from the possession of the accused.

P.W. 1 and P.W.2 prepared the mahazar in respect of the seizure, which was as Ex.P1. Therefore, the non-examination of independent witness to the mahazar is not fatal to the case of the prosecution.

10. The learned counsel for the accused contended that the Trial Court failed to follow the procedure as contemplated under Section 244 of Cr.P.C. Thus, it is clear that in any warrant case instituted otherwise than on a police report, the Trial Court can proceed with the prosecution case and take all such evidence as may be produced in support of the prosecution. On perusal of the evidence and other supporting documents, the Trial Court may issue summons to the accused.

11. In this regard, the learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India reported in **CDJ 2013 SC 142** in the case of ***Sunil Mehta and another Vs. State of Gujarat and another***, in which, the Hon'ble Supreme Court of India has held that the procedure as contemplated under Sections 244 to 246 which includes the right of the accused to cross examine the witnesses whose evidence is adduced against him. The evidence has to be recorded in the presence of the accused and if a right of cross

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examination was not available to him, he would be no more than a spectator in the entire prosecution. The whole object underlying recording of evidence under Section 244 after the accused has appeared is to ensure that not only does the accused have the opportunity to hear the evidence adduced against him, but also to defend himself by cross examining the witnesses with a view to showing that the witness is either unreliable or that a statement made by him does not have any evidentiary value or that it does not incriminate him. The Trial Court has to frame the charges against the accused on the basis of the evidence offered by the complainant. When the evidence is offered by the complainant, the Trial Court has to consider the same and if he is convinced, the Magistrate can frame the charges as against the accused. Therefore, it is clear that under Section 244 of Cr.P.C, the accused is vested with a right to cross examine the prosecution witnesses.

12. In the case on hand, it is seen that the Trial Court framed charges against the accused without examining any witnesses. The accused was not given any opportunity before framing of charges against him. Such a course adopted by the Trial Court is in clear violation of procedure contemplated under Section 244 of the Code of Criminal Procedure. Consequently, the entire procedure followed by the Trial Court stands vitiated since an erroneous and impermissible procedure was adopted.



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13. In this regard, the learned Additional Solicitor General of India appearing for the respondent submitted that the provision under Section 465 of Cr.P.C, no order by a Court of competent jurisdiction shall be reversed or altered by a revisional Court on account of any omission in any proceedings held under this Code unless the Court reaches the conclusion that such omission has occasioned a failure of justice. One of the tests to ascertain whether such omission has occasioned failure of justice is incorporated in sub-section (2) of Section 465 of the Code of Criminal Procedure., i.e., whether objection had been taken at any earlier stage regarding such omission. If no such objection has been taken at an earlier stage normally the Court cannot permit that party to raise it at the last stage. However, in the present case, the proceedings arise out of the report submitted by the police, the Trial Court had taken cognizance and failed to follow the procedure as contemplated under Sections 202 and 204 of the Code of Criminal Procedure.

14. Insofar as the power of the respondent to initiate the prosecution against the accused for the offences punishable under Section 51 read with Section 39 of the Act is concerned, the question that arises for consideration is whether the respondent is duly authorised to initiate such prosecution or not ?



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15. In this regard, the learned Additional Solicitor General of India appearing for the respondent submitted that, as per the Extraordinary Gazette Notification issued by the Ministry of Environment and Forests (Wildlife Division), Government of India, the Director of Wildlife Preservation is empowered to delegate the powers vested under Section 55 of the Act to the officers of the rank of Inspector of Wildlife Crime Control Bureau. By virtue of such delegation, the competent officers are authorised to initiate prosecution for offences under the Act.

16. It is also relevant to extract the provision under Section 38Z(2) of the Act, which reads as follows :

38Z(2) The Wild Life Crime Bureau shall exercise -

- (i) such powers as may be delegated to it under sub-section (1) of section 5, sub-sections (1) and (8) of Section 50 and Section 55 of this Act ; and*
- (ii) such other powers as may be prescribed.*

17. Therefore, it is evident that the respondent has been duly vested with the power to initiate prosecution against the accused by virtue of the delegation of authority in accordance with law. A perusal of Section 50(8) of the Act makes it clear that an officer not below the rank of Assistant Conservator of Forests, duly authorised in this behalf, is empowered to



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exercise certain quasi-judicial functions, including the power to issue a search warrant, enforce the attendance of witnesses, compel the discovery and production of documents and material objects and to receive and record evidence. The statements and the evidence collected by the Assistant Conservator of Forests are admissible in evidence before the Trial Court. Thus, it is clear that the respondent is competent to initiate and prosecute the case against the accused, as the power was delegated to the respondent under sub-section (1) of Section 5, sub-sections (1) and (8) of Section 50 and Section 55 of the Act.

18. In the case on hand, except the police report, no oral evidence was recorded by the Trial Court before framing of charges so as to satisfy the mandate under Section 244 of the Code of Criminal Procedure. Therefore, the Trial Court failed to follow the procedure as laid down under Section 244 of Cr.P.C., which vitiates the entire trial. Therefore, the entire conviction and sentence imposed on the accused cannot be sustained and are liable to be set aside.

19. In view of the above, the Judgment dated 09.11.2021 passed in Crl.A.No.36 of 2018 by the Principal District and Sessions Judge,



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Kancheepuram District at Chengalpattu and the order dated 11.08.2018 passed in C.C.No.17 of 2016 by the Judicial Magistrate, Alandur, are hereby set aside.

Accordingly, this Criminal Revision Case stands allowed. The petitioner is directed to be set at liberty forthwith unless his custody is otherwise required in connection with any other case. The fine amount, if any, paid by the petitioner shall be refunded. Bail bond, if any, executed by the petitioner shall stand cancelled.

07.04.2026

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
Neutral Citation : Yes/No
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To

1. The Principal District and Sessions Court,
Kancheepuram District at Chengalpattu

2. The Judicial Magistrate,
Alandur.

3. The Wildlife Inspector,
Wildlife Crime Control Bureau,
Government of India,
Ministry of Environment Forest and Climate Change,
Rajaji Bhavan, Besant Nagar, Chennai.



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G.K.ILANTHIRAIYAN, J.
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delivery order in
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