

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 14TH DAY OF JULY 2023 / 23RD ASHADHA, 1945

CRL.REV.PET NO. 96 OF 2016

CRIME NO.8/2006 OF Alathur Forest Range Office, Palakkad

AGAINST THE ORDER/JUDGMENT IN CC 250/2006 OF JUDICIAL MAGISTRATE OF

FIRST CLASS, ALATHUR

CRA 463/2011 OF III ADDITIONAL DISTRICT COURT, PALAKKAD/II ADDITIONAL

MACT, PALAKKAD

REVISION PETITIONER/APPELLANT/ACCUSED:

NARAYANAN

AGED 39 YEARS

S/O.KUNHIRAMAN, AALINKAL PARAMBU,

KARINGAYAM, KIZHAKKENCHERRY,

ALATHUR, PALAKKAD.

BY ADV SRI.V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA

REPRESENTED BY PUBLIC PROSECUTOR,

HIGH COURT OF KERALA, ERNAKULAM 682 031.

SRI.VIPIN NARAYAN A., SR.PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
14.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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ORDER

Dated this the 14th day of July, 2023

This revision petition has been filed under Sections 397 and 401 of Code of Criminal Procedure (hereinafter referred to as Cr.P.C. for convenience), challenging conviction and sentence imposed by the Judicial First Class Magistrate Court, Alathur in C.C.No.250/2006 dated 16.08.2011 and also in CrI.A.No. 463/2011 dated 07.01.2016 on the files of the Additional District and Sessions Judge-III, Palakkad.

2. The revision petitioner is the accused in the above case. The respondent herein is the State of Kerala.

3. Heard the learned counsel for the revision petitioner and also the learned Public Prosecutor.

4. The brief facts of the case are as under:

On the basis of information received by the Sub Inspector of Police, Mangalam Dam police station on 05.05.2006, meat of a barking deer was found from house No.7/19 of

Kizhakkencherry Panchayat and subsequently, the remnants of the barking deer also was recovered from the premises of the house. Alleging that the accused herein killed the barking deer and used its meat, crime was registered alleging commission of offence punishable under Sections 27(i)(e) of the Kerala Forest (Amendment Act), 1993 and Sections 9, 2 to 16, 50 and 51 of the Wild Life (Protection) Act, 1972.

5. The trial court took cognizance of the matter and proceeded with the trial. During trial, PWs 1 to 4 were examined, Exts.P1 to P9 and Mos 1 to 3 were marked. On completion of evidence, after hearing both sides, the trial court found that the accused is guilty for the offence punishable under Section 50 of the Wild Life (Protection) Act, 1972 and he was convicted and sentenced as under:

“the accused is sentenced to R.I. for six months and fine of Rs.2,000/-. In default of payment of fine SI for one month. He is entitled to set off for the period if any, he has undergone imprisonment during the investigation and trial.”

6. The accused filed appeal before the Sessions Court. The Sessions Court confirmed the conviction and sentence. Now the revision petitioner assails concurrent verdicts of conviction and sentence.

7. It is argued by the learned counsel for the revision petitioner that the trial court as well as the appellate court convicted and sentenced the accused/revision petitioner without support of any material and Ext.P9 confession statement alleged to have been given by the accused was made as the sole basis of conviction even though no supporting evidence to prove that the accused/revision petitioner was the person who killed and used the meat of barking deer was available. It is also pointed out that even though the meat and remnants of the barking deer were recovered allegedly from the house of the accused, no evidence was adduced to show that the house belonged to the accused or the accused is a person who had been residing in the said house during the relevant time of occurrence. Therefore, the learned counsel for the petitioner would submit that the conviction and sentence are unsustainable and

therefore, the same would require interference at the hands of this Court by exercising the power of revision.

8. The learned Public Prosecutor would submit that taking exception apart from cases under IPC, cases involving forest offences, confession statement is admissible since the availability of direct evidence to prove the allegation is remote in Forest areas. Therefore, the confession statement can be the sole basis of conviction. The learned Public Prosecutor also argued that apart from the confession statement, in the present case, PW1 recovered the remnants of the barking deer and meat from the premises of the house, supporting the confession. Therefore, the conviction and sentence are perfectly justified and in such view of the matter, the conviction and sentence need not be interfered with.

9. Insofar as the admissibility of confession statement recorded by Officers other than the Assistant Director of Wild Life Preservation and Assistant Conservator of Forests specifically notified under Section 50(8) of the Wild Life (Protection) Act, 1972, this Court considered the legal question

while considering B.A.No.9174/2022 dated 27.01.2023 and held as under:

“6. The learned Public Prosecutor though opposed this contention, she failed to go out of the orbit of Section 50(8) of the Wild Life (Protection) Act, 1972. Section 50 deals with the power of entry, search, arrest and detention of persons involved in offences under the Wild Life (Protection) Act, 1972. SubSections (8) and (9) of Section 50 of the Wild Life (Protection) Act provides as under:

(8) Notwithstanding anything contained in any other law for the time being in force, any officer not below the rank of an Assistant Director of Wild Life Preservation or [an officer not below the rank of Assistant Conservator of Forests authorised by the State Government in this behalf] shall have the powers, for purposes of making investigation into any offence against any provision of this Act—

- (a) to issue a search warrant;
- (b) to enforce the attendance of witnesses;
- (c) to compel the discovery and production of documents and material objects; and
- (d) to receive and record evidence.

(9) Any evidence recorded under clause (d) of sub-section (8) shall be admissible in any subsequent trial before a Magistrate provided that it has been taken in the presence of the accused person.

Even on a cursory reading of the above legal provisions, it is clear that at the time of passing the Wild Life

(Protection) Act, sub-section (8) was not there. However, by way of amendment introduced with effect from Act 16 of 2003, the Assistant Director of Wild Life Preservation was authorised to issue a search warrant; to enforce the attendance of witnesses; to compel the discovery and production of documents and material objects; and to receive and record evidence. Thereafter, by way of amendment introduced by amendment Act 44 of 1991, Assistant Conservator of Forest was authorised by the State Government in this behalf also was given the power to do the said exercise since Section 50(8) authorises an officer not below the rank of Assistant Director of Wild Life Preservation or Assistant Conservator of Forests to receive and record evidence. Any officer not below their rank cannot have the power to do any acts provided as (a) to (d) and if anything done by the officer below the rank is a nullity and has no legal effect. Be it as may, the confession recorded by the Forest Ranger is a nullity and the same has no legal effect. So the legal question is emphatically clear that the competent persons to record confession statement, i.e., to record and receive evidence are (1) Assistant Director, Wild Life Preservation or (2) Assistant Conservator of Forests authorised by the State Government in this behalf and no other officer/officers below their rank. Therefore, the confession statement relied on by the prosecution to array accused Nos.2 to 4

in the crime, only be found as a statement recorded by an incompetent officer and the same has no legal sanctity.”

10. On perusal of available materials, in tune with legal position, it could be gathered that the trial court heavily given emphasis on Ext.P9, holding that the accused had admitted the hunting of barking deer and use of its meat. Since it is found that the confession statement was not recorded by an authorised officer under Section 50(8) of the Wild Life (Protection) Act, the same is inadmissible in evidence, no reliance can be given thereto.

11. Apart from the confession statement, the evidence regarding recovery at the instance of PW1 – the Sub Inspector of Police, Mangalam Dam police station is the only evidence to support the prosecution case. On perusal of evidence of PW2, it could be gathered that even though it is stated that the remnants of the barking deer were recovered from the premises of the house, during cross-examination, PW2 categorically stated that the property belonged to one 'Kunjiraman' - the father of the

accused. But no documents, showing the ownership of the house or atleast to prove that the petitioner was a resident of the house, having access to the house, were also collected or made part of the evidence to conclusively prove that the accused herein is the person who kept the meat and remnants of the barking deer and prepared the meat as alleged by the prosecution. In fact, the prosecution should have adduced evidence in this regard to succeed the prosecution. It is shocking to note that even though the remnants of the barking deer were recovered by PW2-the Sub Inspector of Police, the same is not in conformity with the mandate of Section 27 of the Evidence Act, as per the evidence given by him. If at all reliance is given to the recovery otherwise, for want of evidence showing that the accused was a resident of the house where from the recovery was effected, makes the recovery insufficient to prove that it was the accused who hunted and kept the meat. Therefore, the same also could not be given reliance to justify the prosecution case and consequential conviction as well as the sentence.

12. Since the prosecution is vitiated by the flaws pointed out herein above, which are decisive and detrimental, by exercising power of revision, it has to be held that the conviction and sentence imposed by the courts below against the revision petitioner are unsustainable in law. Therefore, the conviction and sentence imposed by the courts below stand set aside.

In the result, this criminal revision petition is allowed, setting aside the conviction and sentence passed by the courts below. The revision petitioner is acquitted. He is set at his liberty. Consequently, the bail bond executed by the revision petitioner stands discharged.

Sd/-

**A. BADHARUDEEN
JUDGE**

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