

◆ IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-2-2005

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THE HONOURABLE MR. JUSTICE M. CHOCKALINGAM

CRIMINAL REVISION CASE NO. 1322 OF 2004

AND

CRL. M.P. NO.8454 OF 2004

M/s. Transcoastal Cargo &
Shipping Service Pvt. Ltd.,
Rep. by its Director
"Catholic Centre" I Floor
108, Armenian Street
Chennai - 600 001.

....Petitioner

Vs.

The Inspector
(Wild Life Preservation)
Wild Life Regional Office
Govt. of India
Ministry of Environment &
Forest, C-2A, Rajaji Bhavan
Chennai - 600 090

.... Respondent

Criminal Revision Petition under Sections 397 and 401 or Cr.P.C. praying to set aside the order passed in CrI.M.P.No. 4922 of 2003 in CrI.M.P.No.732 of 2003 dated 30-4-2004, on the file of the XVI Metropolitan Magistrate Court, George Town, Chennai.

For Petitioner : Mr. K.F. Manavalan

For Respondent : Mr.P. Wilson, Spl. P.P. (Forest)

ORDER

And order of XVI Metropolitan Magistrate, Madras dismissing an application seeking return of the property, namely, a container, is challenged by the petitioner herein.

2. On 28.2.2002, when the Wild Life Inspector (Wild Life Preservation), Regional Office, Southern Region, Government of India opened and examined the container before the mahazar witnesses found them to contain items 1,2,3 and 4, which are banned and protected wild lives, the container was seized. A case was

registered and also a complaint was lodged before the Court which took cognizance. Pending the same, an application was filed seeking to return of the said container in CrI.M.P.No.4922 of 2003. After hearing both sides, the said Court directed the Department to produce the container before the Court within a week. A memo was filed stating the reasons for not producing the container before the Court and the same was recorded and the main application seeking for return of the property, namely CrI.M.P.No.732 of 2003 was taken up for consideration.

3. What are all contended by the learned counsel for the petitioner before the lower court, equally before this court also is that the container is a property belonged to the Government of India. The petitioner was not having any lease hold rights for the past three years. The subject matter in the prosecution was only the wild life items, which are to be protected and in respect of that, prosecution has also been lodged and not in respect of the container and the lower court should have ordered the return of the container.

4. The learned counsel for the petitioner also relied on a decision of the Apex Court in **SUNDER BHAI AMBALAL DESAI VS. STATE OF GUJARAT** reported in AIR 2003 S.C. 638, wherein the Supreme Court has ordered for disposal of the property pending trial. The Court has to take note of the fact that the powers of the court under Section 451 should be exercised expeditiously and judiciously and the Court has to pass appropriate orders immediately and the articles are not to be kept for a long time at police station, in any case for not more than 15 days to one month.

5. In answer to the said contention, learned counsel for the respondent-Department would submit that the specific case of the prosecution was that the wild life items were actually kept and about to be transported only in that container and in view of the same, the said container was seized and hence, till the culmination of the proceedings no order for return of the property could be passed and apart from that possibility, the confiscation of the power is also vested and in support of his contention, he also relied an unreported decision of the Apex Court in S.L.P. Criminal No.233 of 2000 wherein after hearing both sides, the Supreme Court was of the considered opinion that the order of the lower court in refusing to return the property has got to be sustained. It is true that the four items of wild lives were found which are to be protected was the subject matter of prosecution in the proceedings. But the specific case of the prosecution was that when the container in question was opened and examined on 28.2.2002, it was found to contain the banned and protected marine items etc., and thus the prosecution case is that it was the container, which was used for the purpose of transportation of the same, this Court is of the considered opinion that the decision cited by the learned counsel for the petitioner is applicable to the case in general, but in the instant case while it was found that when the container was seized on the allegations that it was used for committing the offence, the same shall not be returned to a party until the culmination of all the proceedings in respect of such offence including the confiscation proceedings, if any, in the instant case.

6. Apart from that, under Section 2 sub-clause 14 of the Wild Life (Protection) Act, 1972, which defines the "Government Property" means any property referred to in Section 39 also. Therefore, in the instant case, the learned counsel for the respondent would submit that the container falls within the definition of the property defined under Section 2 sub-section 14 of the Act. Under such circumstances, the order of the lower court till the culmination of the proceedings has got to be sustained. Hence, the contention of the learned counsel for the petitioner carries no merit and does not require any interference as there is no illegality or infirmity.

7. Learned counsel for the petitioner would submit that the case has got to be disposed of within a time frame. In answer, the learned counsel for the Department contended that the matter is under investigation by the CBI. Under such circumstances, this Court is of the considered opinion that time frame cannot be stipulated at this stage.

8. With the above observation, the criminal revision case is dismissed.

Sd/-
Asst. Registrar

//True copy//

Sub Asst: Registrar

Kb

To

1. The Inspector
(Wild Life Preservation)
Wild Life Regional Office
Govt. of India
Ministry of Environment &
Forests, C-2A, Rajaji Bhavan
Chennai - 600 090.
2. The XVI Metropolitan Magistrate,
George Town, Chennai
3. Through the Chief Metropolitan Magistrate, Chennai
1 cc to Mr. N. Muralikumaran, Advocate, SR. 9327
1 cc to Mr. K.F. Manavalan, Advocate, SR. 9378

CRL.R.C.No.1322 OF 2004

GG(CO)
kk 8.3.05