
(1993) 10 SC CK 0059

In the Supreme Court Of India

Case No : Criminal Appeal No. 653 of 1993 (arising out of S.L.P. (Cri.) No. 2311 of 1992)

Sh. Gunnaseelam

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 11-10-1993

Acts Referred:

Citation : AIR 1994 SC 1816 : (1994) CriLJ 3835

Hon'ble Judges : S. Ratnavel Pandian, J; R. M. Sahai, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted.

2. This appeal is preferred against the order of the High Court of Madras dated 12-4-1991 made in Cr. M.P. No. 2994 of 1991 whereby the High Court dismissed the petition filed by the petitioner praying to set aside the Order passed by the Judicial Magistrate No. 1, Attur, Salem District who by his order dated 8-2-1991 rejected the application of the appellant seeking an order that the cow elephant seized from his possession be returned to his custody.

3. Heard the learned Counsel for both the parties. Admittedly, the Chief Wild-life Warden, Tamil Nadu, Coimbatore had issued a Certificate of Ownership (Form No. 13) in the first week of January, 1990 (i.e. 3-1-1990) certifying that Thiru S. Gunaseelam (appellant herein) has under his control/ custody or possession of a cow elephant named 'Easwari'.

4. Dr. Gauri Shankar, the learned Senior Counsel appearing for the appellant drew our attention to two affidavits, one filed by the appellant stating that he has no objection for handing over the possession and custody of the said elephant 'Easwari' to Sri Kanchi Kamakoti Peetam, Kancheepuram for the purpose of using it during the festivals in the Mutt as well as in the temples associated with the mutt, and another affidavit filed by Mr. T.N. Krishnamoorthy, Sri Karyam and

agent and the partaker of Sri Kanchi Kamakoti Peetam, Kancheepuram, Tamil Nadu expressing his willingness to take custody and possession of the elephant 'Easwari'.

5. While it is so, one Shri R. Soundarajan working as Forest Range Officer has filed a counter-affidavit praying for dismissal of this appeal stating that the appellant was not in possession of a valid licence on the date of seizure of the elephant, viz. 14-9-1989, and therefore the Forest Range Officer, Attur seized the animal and registered a case against the appellant. It is further averred in the counter-affidavit that the appellant has not produced any records to show regarding his applying to the Wild-life Warden on the date of seizure as regards the purchase of the elephant.

6. The appellant under ground No. 5 of the appeal grounds has made a specific statement that he produced the sale deed and, represented that he had applied for a licence under the Wildlife (Protection) Act, 1972 (Central Act, 53 of 1972) that he has obtained a certificate issued by the Chief Warden, Coimbatore, certifying the front and the rear side photographs of the animal and that the Forest Range Officer in spite of these verifications, has seized the animal. It is the case of the appellant that he had applied for the licence even on 28-8-1986.

7. As we have indicated even at the threshold of this order, the Chief Wildlife Warden has issued a certificate of ownership in January, 1990 which goes in support of the case of the appellant. The appellant has also enclosed a copy of the said certificate as Annexure 1 to the appeal records. The very fact of the issue of the certificate would warrant that what the appellant has stated in the memo of grounds of his appeal has to be accepted.

8. Dr. Gauri Shankar made a submission that though this appeal relates to the rejection of the request of the appellant to return the elephant to his custody, inasmuch as the facts of the case disclose that the appellant has not committed any offence to take his trial, this Court be pleased to quash the criminal proceedings pending against him besides directing the custody of the animal to the Mutt on the basis of the affidavit filed by the appellant.

9. We see much force in the above submission. Hence, having regard to the facts and circumstances of the case and to the admitted fact that a certificate is issued in favour of the appellant, we quash the criminal proceeding pending in WLRO No. 4 of 1989 on the file of the Judicial Magistrate, Attur.

10. Coming to the custody of the elephant, we direct the appellant to hand over the possession of the elephant to the Mutt as he has agreed upon in his affidavit. Further, we direct the respondent either to transfer or issue a fresh licence of ownership in favour of Sri Kanchi Kamakoti Peetam represented by Mr. T. N. Krishnamoorthy, Sri Karyam and Agent of the said Mutt so that the Mutt could take the custody and possession of the elephant 'Easwari'. The respondent has to issue the licence as indicated above within a period of 10 days from the date of receipt of this Order.

11. Accordingly, we allow the appeal and quash the criminal proceedings pending against the appellant in terms of the above order.