



CRL.MC NO. 2808 OF 2017

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**C.R.**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 4<sup>TH</sup> DAY OF SEPTEMBER 2024 / 13TH BHADRA,

1946

CRL.MC NO. 2808 OF 2017

CRIME NO.8/2014 OF Olavakkode Forest Range Office,

Palakkad

PETITIONERS/ACCUSED 1 TO 15:

- 1 SHASTRA SHARMAN NAMBOOTHIRIPAD  
(PRESIDENT, ELEPHANT OWNERS FEDERATION,  
PALAKKAD DISTRICTCOMMITTEE) MADAPPILAPALLI MANA,  
KOUSADU P.O, PALAKKAD.
- 2 K. PARUKUTTY  
SHREEKRISHNA NILAYAM,  
SREE KRISHNAPURAM P.O, PALAKKAD.
- 3 PRAKASHAN K  
MANAGALAM HOUSE, THIRUVAZHIYODU P.O,  
OTTAPPALAM, PALAKKAD.
- 4 M.A PARAMESWARAN  
MANGALAMKUNNU ANGADI, KATTUKULAM P.O, PALAKKAD.
- 5 P.D GEETHA  
MANGALAMKUNNU ANGADI, KATTUKULAM P.O, PALAKKAD.
- 6 V. HARIDAS  
VADAKKOOTT HOUSE, MANISHERY P.O,  
OTTAPPALAM, PALAKKAD.
- 7 C.P. SUDHEER  
PALOTTIL HOUSE, PALODU P.O,  
MANNARKKAD, PALAKKAD.



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- 8 MURALI PRAKASH  
KUNIYAMKOTTIL HOUSE, CHETTALLOOR P.O,  
MANNARAKKAD, PALAKKAD.
- 9 P.S. RAVEENDRANATH  
USHASHREE HOUSE, ETTUMANOOR P.O, KOTTAYAM.
- 0 NAZAR  
KOLAKKADAN, CHEMBRATHODIKA HOUSE, KIZHUPARAMBA  
P.O, AREEKKODU, MALAPPURAM.
- 11 EXECUTIVE OFFICER  
SHREE EMOOR BHAGAVATHI DEVASWOM,  
KALLEKULANGARA, PALAKKAD
- 12 V. GAYATHRI  
VADAKKOOTT HOUSE, MANISHERRY, OTTAPPALAM,  
PALAKKAD.
- 13 M.P. NODHIN  
MATHRAM ROTTU HOUSE, IRINGAPPURAM,  
GURUVAYOOR, THRISSUR.
- 14 SHAJI V  
(M/S. SHOBARI SWITESH GEAR, ASHARAMAM  
GARDENS, ASHRAMAM P.O, KOLLAM) 'KAVERI,  
PUTHANKULAM, KOLLAM.
- 15 K.V. BALAKRISHNA SHENOY  
SOPANAM', AMMANKOVIL ROAD, ERNAKULAM, KOCHI -  
35.  
BY ADV SRI.N.MAHESH

COUNTER PETITIONER/RESPONDENT :

STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.  
BY ADV SRI.SANDESH RAJA.K., SPL. G.P. (FOREST)  
SRI.SANGEETHARAJ.N.R, PP

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
04.09.2024, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:



**C.R.**

**P.V.KUNHIKRISHNAN, J.**

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**Cri.M.C. No.2808 of 2017**  
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**Dated this the 04<sup>th</sup> day of September, 2024**

**ORDER**

Petitioners are accused in O.R.No.8/2014 of Olavakode Forest Range. Annexure-A1 is the charge sheet in Form-II submitted by the Range Forest Officer, Olavakode against the petitioners. The offences alleged in Annexure-A1 are under "A(17)" of the Kerala Captive Elephants (Management and Maintenance) Rules, 2012 (for short, 'the Rules 2012') and under Sections 51 and 52 of the Wildlife Protection Act, 1972 (for short, the Act 1972).

2. The allegation against the petitioners is that, they have conducted 'Gaja Sangamom' by engaging several elephants without obtaining sanction from the



authorities. According to the petitioners, even if the entire allegations are accepted, no offence is attracted.

3. Heard the learned counsel for the petitioners and the learned Public Prosecutor.

4. While taking cognizance based on a complaint or charge sheet, the Court has to apply its mind. It is not a mechanical process. What is stated in the final report or complaint cannot be blindly accepted by the Court. While taking cognizance, the offences alleged are to be verified by the Court and whether taking cognizance for the offences alleged as per law is permissible is also to be decided at that stage.

5. In this case, in Annexure-A1, the offences alleged are under "A(17)" of the Rules 2012 and under Sections 51 and 52 of the Act 1972. This Court perused the entire Rules 2012 to find out the provision "A(17)" in it. There is no such provision in the Rules 2012. The learned Magistrate who took cognizance based on Annexure-A1 also recorded that the case is taken on file for the offences under "A(17)" of



the Rules 2012 and Sections 52 and 51 of the Act 1972.

6. The order taking cognizance by the learned Magistrate would show that the learned Magistrate mechanically recorded the provisions contained in Annexure-A1 even without verifying the Rules 2012. Such a mechanical process from a court of law is to be deprecated. A court of law has to proceed in accordance with the law even if wrong Sections are noted in the final report, complaint, etc. Taking cognizance based on a final report or complaint is solemn function because a person is directed to be summoned to a court of law. The mechanical process of adopting the final report will lead to serious consequences. This is a best example in which the learned Magistrate took cognizance of the offence in a mechanical manner under "A(17)" of the Rules 2012 when there is no such provision in the Rules 2012. For that simple reason itself, the order taking cognizance is to be set aside. The court taking cognizance is not a rubber stamp of the investigating agency or the complainant. While taking



cognizance the court should apply its mind and find out whether facts constitute the offence. A court of law replicating the provisions mentioned in the final report, complaint etc while taking cognizance will lead to serious consequences. Therefore the Registrar (District Judiciary) shall forward a copy of this order to all Principal District Judges in the state who will circulate this to all courts concerned.

7. Coming back to the facts of this case, the other offences alleged in Annexure A1 are under Sections 51 and 52 of the Act 1972. Sections 51 and 52 are the Sections quoted in Annexure-A1 and in the order taking cognizance. Section 51 says about the penalties for the violation of the Act, Rules, licence, or permit granted as per the Act 1972. Section 52 of Act 1972 says about the attempts and abetment. It is stated that whoever attempts to contravene, or abets the contravention of, any of the provisions of this Act or of any rule or order made



thereunder shall be deemed to have contravened that provision or rule or order, as the case may be. Therefore, Sections 51 and 52 are only enabling provisions to impose sentence for the alleged violation of the Rules, provisions of the Act, etc. Therefore, in effect, there is no offence alleged in Annexure-A1 to proceed with the case.

8. The Public Prosecutor submitted that it is a mistake committed by the officer concerned while quoting the provision in Annexure-A1 and the provision intended is Rule 10(4) of the Rules 2012. Rule 10 is extracted hereunder:

“10. Constitution of District Committee.

(1) A District Committee shall be constituted by the District Collector to deal with cases of cruelty meted out to captive elephants. The Committee shall have the following members:

1	The District Collector	Chairman
2	The Divisional Forest Officer	Convener



3	The Superintendent of Police/Commissioner of Police	Member
4	The District Veterinary Officer	Member
5	The Representative of Fire Force	Member
6	A Representative of the Organisation of Elephant Owners nominated by the District Collector	Member
7	Two Representatives of the Employees Engaged for the Management and Maintenance of Captive Elephants nominated by District Collector	Members
8	A member of the Society for Prevention of Cruelty to Animals (SPCA)	Member
9	The Representative of Kerala Festival Co-ordination Committee nominated by the District Collector	Member

(2) The District Committee shall meet before the festival season, preferably in the month of October and take necessary measures to ensure welfare of elephants and public safety.

(3) The District Committee shall take steps to discourage the growing tendency of increasing the number of elephants in existing traditional festivals and introducing elephants in new festivals.

(4) The District Committee shall take necessary measures, to ensure that the Festival Committee constituted for the smooth conduct of festivals or the persons organizing such functions in which elephants are exposed, shall adhere to the following:-





- (i) There shall be sufficient space between elephants used in processions and parades;
- (ii) No elephants in musth shall be used in connection with festivals;
- (iii) Elephant which is sick, injured, weak or pregnant shall not be used;
- (iv) Chains and hobbles with spikes or barbs shall not be used for tethering elephants;
- (v) Elephants shall not be made to walk on tarred roads during hot sun for a long duration without rest;
- (vi) Making an elephant stand in scorching sun for long durations or bursting crackers near the elephants for ceremonial purpose shall not be permitted;
- (vii) It shall be ensured that sufficient food and water for the elephants are provided;
- (viii) The committee shall ensure that the flambeaus (theevetty) are held away from elephants;
- (ix) There shall be facility to keep elephants under shade during hot sun;
- (x) It shall be ensured that adequate protection to the elephants taking part in celebrations through volunteers provided for the purpose,
- (xi) Services of Veterinary Doctor from the elephant squads shall be ensured in cases where five or more elephants are engaged in the festivals;
- (xii) It shall be informed to the nearest Forest Range Officer/Police Officers about the proposed festival/celebrations at least 72 hours in advance;
- (xiii) During the time of procession the elephants shall have chains (Idachangala and Malachangala) tied to their leg;
- (xiv) It shall be ensured that the mahouts are not intoxicated while handling elephants;
- (xv) The weaned calf below 1.5 m. height shall not



- be engaged for festival purposes;
- (xvi) Sufficient rest has to be given to the elephants which are engaged for "Para procession". Para procession shall be restricted to 6 a.m. to 11 a.m. and 4 p.m. to 8 p.m. only;
  - (xvii) During night time, generators shall be provided to avoid any contingency due to failure of general power supply;
  - (xviii) It shall be ensured that elephants are brought under public liability insurance scheme for an amount of 3.00 Lakhs to each elephant."

9. In the above provision, it is stated that the District Committee shall take necessary measures to ensure that the Festival Committee constituted for the smooth conduct of festivals or the persons organising such functions in which elephants are exposed, shall adhere to sub-clause (i) to (xviii). There is no specific allegation in Annexure-A1 for the alleged violation of the above provision.

10. Moreover, even in Annexure-A1 final report, it is clearly stated that Palakkad South Police registered a crime as Crime No.1708/2014 alleging offences punishable under Sections 143, 147 and 188 read with Section 149 IPC and



also under Rule 26(b) and 23(i) of the Prevention of Cruelty to Animals Act against petitioners 1 to 15 and the same was taken on file as C.C. No.435/2015. The petitioners pleaded guilty in the above case and the same was closed. Thereafter Annexure-A1 report is filed. According to the petitioners, for the same set of facts, Annexure-A1 final report is submitted. I think there is force in the above contention. Moreover, there is no specific allegation in Annexure-A1 about the rule which is violated. The learned Magistrate also took cognizance in a mechanical manner quoting the provision mentioned in Annexure-A1. In such circumstances, I am of the considered opinion that the continuation of Annexure-A1 is not necessary.

11. The upshot of the above discussion is that the continuation of prosecution against the petitioners is not necessary.

Therefore, this criminal miscellaneous case is allowed. All further proceedings in C.C.No.1343/2016 on the file of the Judicial First Class Magistrate Court-III, Palakkad, arising



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from OR No.8/2014 of Olavakkode Forest Range, are quashed. Registrar(District Judiciary) will do the needful as directed by this court in paragraph 6 above.

Sbna/JV

sd/-  
**P.V.KUNHIKRISHNAN**  
**JUDGE**



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APPENDIX OF CRL.MC 2808/2017

PETITIONER ANNEXURES

ANNEXURE A1                    TRUE COPY OF THE FINAL REPORT DATED  
04.10.2016 IN OR NO. 8/2014 OF  
OLAVAKKODU FIRST CLASS MAGISTRATE  
COURT- III, PALAKKAD BY THE RANGE  
OFFICER, OLAVAKKODU.