

29/7/14
08/05/14

Ms. SHAIL JAIN
Spl. Judge-NDPS-2 (Central)
Room No. 221, Second Floor
The Hazari Courts, Delhi

IN THE COURT OF MS. SHAIL JAIN
ADDITIONAL SESSIONS JUDGE/SPECIAL JUDGE NDPS 02
(CENTRAL) DELHI

Cr. A NO. 57/13

Wildlife
Through
S. R. V Murthy, Deputy Director
Wildlife Crime Control Bureau (NR)
Ministry of Environment and Forests

.....APPELLANT

versus

Mohd Hasin
s/o S. H. Yaseen
R/o Mohalla Munir Ganj
PO & PAS Najibabad
Distt. Bijnor
Uttar Pradesh.

.....RESPONDENT

DATE OF INSTITUTION :05.06.2013
DATE OF JUDGMENT :.02.05 .2014

See B.K. Khatri v. N.R.
Pl. keep it in the
concerned file.
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JUDGMENT

1. The present criminal appeal u/s 378 Cr.P.C has been filed by the present appellant for setting aside the judgment dated 21.03.2013 passed by Shri Devender Kumar Sharma , Id

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Additional Chief Metropolitan Magistrate Central (Special Acts), Delhi whereby the respondent was acquitted.

2. Brief facts leading to the present appeal are that on 16.07.2000 at around 4.20 p.m at Platform No. C ISBT, Anand Vihar, Delhi, accused was found in possession of one tiger skin. The tiger (*Panthera Tigris*) is protected species specified in Schedule 1 of the Wild Life (Protection) Act, 1972 (herein after referred as Wildlife Act). Since, the accused failed to produce any legal source of procurement of the above skin and a license or authority to possess or keep the same, therefore, recovered skin was seized. FIR No. 219/2000 was registered and accused was arrested. Thereafter the complaint was filed by the complainant against the accused for violation of section 40(2), 49, 49 B (1) read with section 39 and 65 of the said Act which is punishable u/s 51 of the Act. Accused was summoned. In order to prove the case against the accused, prosecution has examined five witnesses. Vide order dated 21.03.2013, accused was acquitted by Ld Trial Court.
3. It is stated by the appellant that order of Ld Trial court is liable to be set aside on following grounds:
 - a) That the impugned order passed by Ld Trial Court is contrary to the facts of the case.
 - b) That Ld Trial Court failed to appreciate that accused has not

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been able to give explanation as to how he has come into possession of tiger skin and therefore, there is a presumption against him u/s 57 Wild Life Act.

c) That Ld Trial Court failed to appreciate the evidence led by the complainant.

d) That Ld Trial Court failed to appreciate that the contention of the respondent that nothing was recovered from him was baseless and devoid of any merit in view of the statements of prosecution witnesses which clearly proved that tiger skin was recovered from possession of the respondent.

with these and similar grounds appellant has prayed for setting aside the impugned order.

4. I have heard arguments from Sh. Atul Bhardwaj, Ld. counsel for appellant and Shri Ld counsel for respondent.

5. Present appeal has been filed by Wildlife department against the impugned order dated 21.03.2013 passed by Ld Trial Court whereby the respondent was acquitted by Ld Trial Court. After careful perusal of the grounds of appeal mentioned in the appeal as well as the order of acquittal passed by Ld Trial Court, it is clear that Ld Trial Court has acquitted the respondent/accused on the ground that no public witness was examined and that the case property was not produced before the court immediately after the seizure.

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6. Considering the evidence led by the complainant department and the cross examination of complainant witnesses conducted by the defence, I am of the opinion that Ld Trial Court has committed grave error in appreciating the evidence. In the present case, 5 witness were examined by the prosecution/complainant. The allegations against the accused is that he was found in possession of tiger skin which was being carried by him in jute bag. Ld Trial Court while appreciating the evidence has stated that though the case property was produced before trial court but the bag in which tiger skin was found and the sutli with which that bag was tied, is not produced, hence Ld Trial Court has considered it non compliance with the provisions of law and hence acquitted the accused.
7. After considering the evidence led by the department/complainant and the order passed by Ld Trial Court, I am of the opinion that the fact that raiding party was constituted on 16.06.2000 by SI Shalinder Tomar , PS Anand Vihar on receipt of secret information, is proved. It is also proved that PW-1 Shri Kailash Nath Singh who was Assistant Deputy Assistant, Wildlife Preservation at that time, PW-3 Ashok Kumar & PW-4 K N Thakur who was Deputy Director of wildlife, had joined the raiding party. In the pre charge evidence as well as in post charge evidence when these witnesses were

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examined & cross examined , the defence has not been able to prove that no tiger skin was recovered from the possession of accused/respondent Mohd Hasin. In the cross examination of PW-1 K N Singh examined in post charge evidence, it is specifically stated by PW-1 that SI Shalinder Tomar /IO of the case and PW-4 K N Thakur the then Deputy Director of Wildlife had put their signatures on the back of the skin. He has also stated that signatures of SI Shalinder Tomar/IO and PW-4 K N Thakur were seen on the skin at the time of cross examination of the witnesses. No suggestion has been given to witness PW-1 that no such skin was recovered from the possession of accused Mohd Hasin or that there was no signature of above two persons present on the skin. The suggestion was given to PW-1 that he is not a competent person to identify the tiger skin which was denied by PW-1 and he has stated that he has got sufficient experience in this field because of his qualifications and experience.

8. The factum of putting signatures by SI Shalinder Tomar and PW-4 K N Thakur has been corroborated by the testimony of SI Shalinder examined as PW-2, PW-3 Ashok Kumar and PW-4 K. N. Thakur have identified the case property produced in the court correctly. They have also identified the signatures put by SI Shalinder Tomar and PW-4 K N Thakur on the skin. All the four

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witnesses have proved that this is the skin which was recovered from the possession of the accused. In cross examination of these witnesses, testimonies of witnesses have remained firm and could not be shaken by detailed cross examination. All the witnesses have categorically proved the date, time and the factum of recovery of tiger skin from the possession of respondent/accused Mohd Hasin. They have also identified the case property shown to them, to have been the 'recovered skin', recovered from possession of Mohd Hasin, hence the testimonies of PW-1 to PW-4 categorically prove the recovery of the tiger skin against respondent/accused.

9. As regards the observations of Ld Trial Court in respect to the examination of public witnesses, I am of the opinion that though it is always appreciated that public witnesses are joined in the investigation in order to prove the truthfulness of the investigation but it does not mean that in any case where there are no public witness joined, the case will always be a false case. Even the judgments relied upon by Ld Trial Court does not say that in the absence of any independent witness, the evidence of official witness is to be disbelieved completely. It has also been held by Hon'ble Supreme Court in **Ajmer Singh Vs State of Haryana, 2010 (2) RCR, CrI. 132** that non joining of independent witness is not fatal to the prosecution case particularly when

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efforts were made by the investigating party to join public witness but none was willing. It was held that accused cannot be acquitted merely because no independent witness was produced.

10. Even otherwise in the present case PW-1 K N Singh, PW-3 Ashok Kumar who is a Wild Life expert and PW-4 K N Thakur are independent witnesses. There is no allegations of the defence about there being any animosity or reason for falsely implicating accused herein by these witnesses or even by the police. Ld Trial Court has also given too much stress on the point that PW-1 had stated that "there are artificial skin of tiger available in the market". Mere fact that artificial skin of tiger may be available in the market does not prove that skin recovered from the possession of accused in the present case was artificial skin. In the detailed cross examination testimonies of prosecution witnesses have not been controverted or shaken by the defence counsel. No suggestion was given to the witnesses of complainant that the skin produced in court is an artificial skin. The only suggestion given is that it is a planted case on accused. Thus the genuineness of skin was not doubted even by the accused. Correctness of recovered skin and its exhibition in court is also proved by prosecution witnesses, as discussed earlier. Hence, I am of the opinion that the Ld Trial

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Court had based his order of acquittal on incorrect appreciation of evidence.

11. The defence witnesses examined by the accused in support of the case of accused have also not been able to prove the innocence of the accused. DW-1 and DW-2 have stated that accused is known to them since childhood as they are residents of the same kasba, despite that when allegedly on 15.07.2000 the accused was taken away by some official in van, as per the case of the defence, they did not lodge any complaint to the police nor to any higher authority to inform that the accused has been wrongly apprehended neither they informed the family members of the accused. Hence their deposition appears to have been made at the instance of accused and cannot be believed to be correct.
12. In view of my above discussion, I am of the opinion that Ld Trial Court has not rightly appreciated the evidence. The testimonies of the witnesses, who are senior officer in the wildlife department and have no reason of having any grudge against the accused to implicate him falsely in the case are reliable. In the present case witnesses have clearly identified the tiger skin to have been recovered from the possession of the accused. The signatures appearing on the skin have also been identified by both the witnesses, mere fact that skin was not

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sealed has also been explained by the PW-1 wherein it is stated that skin was semi cured and therefore same was not sealed.

13. It is also the contention of Ld Trial Court while acquitting the accused that case property was not produced before the court immediately after the seizure and was only produced on 04.08.2000 that too was incomplete case property. After carefully perusing the trial court record, it is clear that on "17.07.2000", the very next day of seizure, the case property was produced before the then Ld Trial Court Shri J. P. S. Malik and it was ordered by Ld Trial Court that "**property be kept in PS Malkhana in safe custody**". Therefore, it is clear that requirement of section 50 (4) Wildlife (P) Act has been fulfilled by the police officials.

14. Even otherwise it is settled preposition of law that on mere technical grounds accused is not to be acquitted unless it has specific bearing or affect the root of the case. In the case **Chittranjan Das vs State of West Bengal, 1963 SCR 237-** it was held:

"that undue emphasis on mere technicalities in respect of matters which are not vital or of important significance in a criminal trial, may sometime frustrate the ends of justice. Any irregularity or even illegality during

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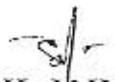
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investigation should not be treated as a ground to reject the prosecution and that corroboration of evidence with mathematical niceties cannot be expected in criminal cases.

15. In view of above observations, I am of the opinion that Ld Trial Court has not appreciated the evidence properly and impugned order dated 21.03.2013 is set aside. Appellant/accused is convicted under section 40(2), 49, 49 B (1) read with section 39 and 65 of the Wildlife (P) Act, 1972 which is punishable u/s 51 Wildlife (P) Act, 1972.

ANNOUNCED IN THE OPEN COURT
ON 2nd , May , 2014.


(SHAIL JAIN)
ADDL. SESSIONS JUDGE (CENTRAL)
DELHI

Dtd. 21/05/14 (Central)
Room No. 221, Second Floor
The High Court, Delhi

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IN THE COURT OF MS SHAIL JAIN: SPECIAL JUDGE:
NDPS: 02: CENTRAL DISTRICT: TIS HAZARI : DELHI

Crl. A NO. 57/13

Wildlife
Through
S. R. V Murthy, Deputy Director
Wildlife Crime Control Bureau (NR)
Ministry of Environment and Forests

.....APPELLANT

versus

Mohd Hasin
s/o S. H. Yaseen
R/o Mohalla Munir Ganj
PO & PAS Najibabad
Distt. Bijnor
Uttar Pradesh.

.....RESPONDENT

ORDER ON SENTENCE.

06/05/2014

Present: Shri Subhash Chauhan, Addl.PP for the State.
Convict in person with counsel Shri Baldev Raj.
Shri Atul Bhardwaj along with Wildlife Inspector
B. S. Khati.
I have heard submissions on the point of sentence.



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It is submitted by Ld Addl. P.P that convict was found in possession of tiger skin and requests for maximum punishment as prescribed in the Act.

On the other hand Ld defence counsel had argued that convict is senior citizen ie 61 years old. He is watchman by profession. He is getting treatment from Consultant Psychiatrist since February, 2013. He has five children and out of that two daughters are of marriageable age. There is no previous conviction and he is not involved in any case. Lenient view is prayed by Ld defence counsel.

I have considered the arguments advanced by Ld counsel for the parties and the trial court record.

The convict was found in possession of tiger skin. Considering the family circumstances and previous antecedents, convict is sentenced to undergo SI for two years for the offence u/s 40(2), 49, 49 B(1) read with section 39 and 65 of Wild Life (P) Act which is punishable u/s 51 of Wild Life (Protection) Act and to pay a fine of Rs.15,000/-, in default SI for six months. Benefit of section 428 Cr.P.C be given to

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convict.

Copy of the judgment and copy of order on the point of sentence be given to the convict free of cost.

File be consigned to record room.

ANNOUNCED IN THE OPEN COURT
ON 06.05.2014.



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(SHAIL JAIN)
SPECIAL JUDGE
NDPS: 02: (CENTRAL)
DELHI

Spl. Judge-NDPS-2 (Central)
Room No. 221, Second Floor
The Hazari Courts, Delhi

§-A-8

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 381/2014

MOHD.HASIN

..... Petitioner

Through Mr.S.H.Ansari, Advocate.

versus

STATE (WILDLIFE) NCT OF DELHI Respondent

Through Ms.Kusum Dhalla, APP.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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14.07.2014

CRL.REV.P. No.381/2014

Learned counsel for the petitioner has placed on record a copy of an order passed by Special Judge dated 06.5.2014 wherein on the application of the convict under Section 389 of the Cr.P.C. the petitioner had been granted bail. It was not a conditional order as is the mandate contained in Section 389(3) of the Cr.P.C. which is a complete code in itself. Let explanation of the Special Judge shall be filed before this Court within two weeks from today.

Record shows that the present petitioner has been convicted under Sections 40(2), 49 and 49B(1) read with Sections 39 and 65 of Wild Life (Protection) Act which is punishable under Section 51 of the Wild Life (Protection) Act; he had been sentenced to undergo SI for 2 years and to pay a fine of Rs.15,000/- in default of payment of fine to undergo SI for 6 months.

This appeal had reversed the order passed by the Magistrate

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14/7/14
Court Master
High Court of Delhi
New Delhi

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dated 21.3.2013 vide which the petitioner had been acquitted.

The impugned judgment as noted supra was passed on 06.5.2014. The impugned judgment had also noted that the petitioner was on bail all along during trial.

There is no application for bail pending. It is stated that the requisite application has been filed in the Registry. The petitioner be taken into custody. As and when the application is taken up for hearing the same shall be answered.

Admit.

List as per Roster.

For explanation of the Sessions Judge as noted supra be furnished within two weeks.

List for directions on 05.8.2014.

Order dasti under signatures of the Court Master.

Cr.L.M.A.No.10217/2014 (for exemption)

This application has already been disposed of. Registry is directed not to show it in the list.

- *sd/-* -
INDERMEET KAUR, J

JULY 14, 2014

ndn

[Signature] 14/7/14
Court Master
High Court of Delhi
New Delhi