

**IN THE COURT OF SH. NARINDER KUMAR**  
**ADDITIONAL SESSIONS JUDGE (CENTRAL): DELHI**

**Crl. Appeal no.66/13 (RBT) (Instituted on 20.04.2013)**

**Crl. Appeal no.102/12 (Old) (Instituted on 17.12.2012)**

**Date of Judgment : 13.08.2013**

**Shakeel Ahmed Bhat,**

S/o Sh. G.N. Bhat,

R/o E-185, Lajpat Nagar,

Phase – I, New Delhi – 24.

**Permanent R/o** Eidgah Road,

Mawal Mohalla, Nai Sarak,

Sri Nagar (J&K).

**.....Appellant**

**Versus**

**Kailash Nath Singh (Wildlife Inspector),**

Wild Life Preservation,

Regional Office (NR)

Ministry of Environment and Forest,

Govt. of India,

(Barrack No.6) Bikaner House,

New Delhi.

**.....Respondent**

## **J U D G M E N T**

Present appeal has been filed challenging judgment dt. 01.11.2012 passed by Learned Additional Chief Metropolitan Magistrate (Special Act), vide which the appellant – accused has been convicted of offences u/s 51 Wildlife (Protection) Act, 1972 (hereinafter referred to as the Act). Vide order on sentence dt.21.11.2012, Learned Trial Magistrate has sentenced the accused – appellant herein to undergo SI for three years and to pay fine of Rs.1,00,000/- or in default of payment of fine to undergo SI for three months. Benefit U/s 428 Cr.P.C. has also been extended.

2. A perusal of Trial Court would reveal that on the complaint filed by Sh. Kailash Nath Singh, Wildlife Inspector, alleging commission of offences U/s 51 & 55 of the Act. Accusation levelled against the accused is that on 23.12.95, during raid conducted at the premises of the accused – appellant herein (at E-185, Lajpat Nagar, New Delhi), 172 shawls made of Shahtoosh shawls derived from Tibetan Antelope (Panthalops Hodgsoni) were recovered. The accused could not produce any document to keep in possession the aforesaid quantity of shawls.

3. Prima facie case having been made out, charge for offences U/s 49, 49(B) and 49(c) read with Sec.51 of the Act was framed against the accused on 27.05.05. Since the accused pleaded not guilty and claimed trial, complainant was called upon to lead evidence.

4. After conclusion of evidence of the complainant, accused was examined U/s 313 Cr.P.C. He denied that any Shahtoosh shawl was recovered.

The plea put forth by the accused is that only PW3 Rajbir Singh accompanied by another came to residence and that no one else was present at the time of raid. However, according to accused, only Mujaffar Ahmed and Fida Hussain were present there, when Pashmina and woolen shawls were recovered from there.

As regards preparation of the seizure memo, the plea of the accused is that the same was prepared at Shahjahan Road. So according to the accused, he has been falsely implicated in this case.

5. In defence, the accused examined DW1 Faruq Ahmed Khan who deposed that in December,1995, during the raid by Wildlife Officials at the residence of the accused, 172 shawls were recovered from there but the same were not sealed in his presence.

6. Learned Trial Magistrate relied on the evidence led by the complainant and the report Ex.CW5/E in respect of samples analyzed by the expert and found that 64 samples matched with the reference slide of Tibetan Antelope (*Pantholops Hodgsoni*). Accordingly, learned Trial Magistrate opined that prosecution had proved its case beyond doubt. Holding the accused guilty of offences U/s 49, 49(B) & 49(c) of the Act, Learned Trial Magistrate convicted the accused of the offences U/s 51 of the Act and sentenced him in the manner indicated above. Hence this appeal.

7. Arguments heard. File perused.

8. PW1 Kailash Nath Singh is Wildlife Inspector. He deposed about raid conducted on 23.12.95 at E-185, Lajpat Nagar, New Delhi, on the basis of information that the accused – appellant was in possession of prohibited articles. According to PW1, Sh. Surender Kumar, Deputy Director; Wildlife Inspector G.L. Purohit and Wildlife Inspector R.B. Singh were also members of party. At the time of raid, accused – appellant was found present there. Faruq Ahmed and Mujaffar Khan, friends of accused – appellant were also there.

Further according to the witness, search of E-185, Lajpat Nagar,

New Delhi, led to recovery of 172 “Shahtoosh” shawls. Some of these shawls were lying in the front room, in open. Some shawls packed in a suitcase were recovered from the room in the rear portion.

Accused could not produce any document or licence to keep in his possession the shahtoosh shawls. According to the witness, these were made of Tibetan Antelope (Panthalops Hodgsoni).

Further according to the witness, all these shawls were seized vide memo Ex.PW1/1. One Fiza Ali also reached the spot and his attestation was also obtained on the seizure memo.

It is in the statement of PW1 that during investigation, “woolen fibre” from all 172 shawls was taken out in three sets; that one set was given to the accused whereas second set was sent to Wildlife Institute, Dehradun for examination by the expert and the third set was with the complainant. All these sets are stated to have been sealed with the seal of Deputy Director, Wildlife. Out of these, 64 shawls revealed presence of Shahtoosh.

PW2 Surinder Kumar, Regional Deputy Director also deposed about the manner in which raid was conducted and about recovery of 172 shawls made of Tibetan Antelope (Panthalops Hodgsoni) from the

premises no.E-185, Lajpat Nagar, New Delhi, in presence of the accused – appellant and in presence of Mujaffar Khan and Faruq, his friends, who were also present there. Further according to the witness, accused Shakeel could not produce any license / certificate of ownership to deal in or keep “shahtoosh shawls”. He also deposed about sealing of the shawls into parcels with the official seal.

PW3 Sh. Rajbir Singh and PW4 G.L. Purohit, other witness to the raid, recovery and seizure also deposed in line with statements made by PW1 & 2.

PW5 Dr. S.P. Goel is the expert. He proved report Ex.PW5/C prepared on examination of the samples received by him for analysis. It is in his statement that the analysis was carried out by him and that thereafter, Dr. S.K. Mukherjee also submitted his report, which is Ex.PW5/E.

Seizure memo Ex PW1/1 lends corroboration to the version narrated by the members of the raiding party. It finds mention in this document dated 23.12.1995 that raid was conducted on that date at premises no. E-185, Lajpat Nagar-I, New Delhi and that the premises was of Shakeel Ahmed Bhat. Raid was conducted under the

supervision of Sh. Surender, Deputy Director (WLT) Wildlife Regional Office (NR).

It is not case of the accused-appellant that said premises did not belong to him or that he has no concern with the premises. Rather as is available from the evidence on record, he admitted his presence at the said premises on the given date. Defence plea is that shawl recovered from there were of Pashmeena and assorted woolen shawls and not of shatoosh. But accused did not lead any evidence to establish the defence plea.

In the seizure memo Ex PW1/1 all details of the shawls and the container from which the same were recovered find mention. The prosecution witnesses have duly proved execution of this document.

CW5 Dr. P. S. Goel, Scientist, the expert from Wildlife Institute of India has proved his report Ex CW5/E. There is nothing in the statement of CW5 to disbelieve his testimony or doubt his report Ex CW5/E. As per this report, guard hairs from 64 samples matched with the reference slide of Tibetan Antelope (pantholops Hodgsoni). The analysis was carried out on the basis of colour, textual and microscopic examination with respect to cuticular pattern.

Learned counsel for the appellant has submitted that the case property was released on superdari and complete shawls were not sent for analysis, which adversely affects the case of prosecution.

It is true that CW5 stated in his cross examination that he had not seen complete shawls. The witness however volunteered that he had examined the samples sent to Wildlife Institute. Further according to the witness, these samples were received in the office of Director and then assigned to him for examination.

Learned counsel of appellant has not been able to point out any provision of law which requires despatch of complete shawl to the expert. The expert clearly mentioned that the rest of the samples could not be analyzed for want of sufficient sample or lack of sample. There is nothing in the report or evidence of the expert that the contents of 64 samples analyzed at the institute were not sufficient for test.

In the given circumstances, non-despatch of complete shawls to the institute does not adversely affect the case of prosecution. For the same reasons, release of the case property to the accused on superdari vide order dated 06.02.1996 and that too on his own request does not



come to his aid in any way.

9. Learned counsel for appellant has referred to provisions of Section 55(c) of the Act and challenged the maintainability of the complaint by Sh. Kailash Nath Singh, Wildlife Inspector. Learned counsel has further submitted that under the Wildlife (Protection) Rules, 1995, two months notice is required to be given to the Central Government or State Government or any authorized officer, by the concerned person who intends to file complaint under the Act and that herein no such notice having been issued, this complaint deserves to be dismissed being not maintainable.

Section 55 (c) of the Act pertains to filing of the complaint by any person other than the authorities which find mention in clause (a), (b) and (bb). Herein complaint has been instituted by PW1 Kailash Nath Singh, Wildlife Inspector. Provisions of Section 55 (c) regarding issuance of notice do not apply to such like complaints instituted by wildlife inspector.

10. In the course of arguments, it has been submitted that on behalf of the complaint-respondent as per notification dated 28.06.1994, wildlife inspector is authorised to institute such like complaint.

Accused has not brought on record any material to the contrary to suggest that wildlife inspector was not authorised to institute the complaint.

11. Accused has examined DW1 Sh. Ferooz Ahmed Khan, who was present at his house on the given date, time and place of raid/inspection. According to DW1 in the month of December 1995, he received telephonic call from Shakeel, accused-appellant to the effect that some wildlife officials had come to his residence and that he should reach there. Thereupon he reached there i.e. at the house of the accused in Lajpat Nagar. On reaching there, he noticed that wildlife officials had recovered 172 woolen shawls seized vide memo Ex PW1/1. However, witness denied that these shawls were sealed in his presence.

12. A perusal of the file would reveal that examination in chief of this witness was deferred from 29.06.2010 to 25.07.2010 but he did not put in appearance on the next date. Even thereafter, DW1 never stepped into the witness box and learned ACMM had to close the defence evidence by order. Therefore, statement of DW1 recorded only in part is of no help to the accused.

13. On the point of sentence, learned counsel for appellant has submitted that the appellant be released on probation so as to afford him an opportunity to reform himself.

14. As noticed above, accused was found in possession of 172 shawls containing prohibited article, having regard to the commercial quantity of shawls, and the bar put in Sec.50 of the Act, the appellant cannot be released on probation.

15. However, taking into consideration that the offence took place in the year 1995 and the accused – appellant has faced protracted trial upto 01.11.2012, this court deems it a fit case to take a lenient view, on the point of sentence. Accordingly, the appellant is sentenced to RI for two years and to pay fine of Rs.1,00,000/- or in default of payment of fine to undergo SI for 3 months for the offence under Section 51 of the Act.

16. Trial Court Record be returned and appeal file be consigned to Record Room.

Announced in Open Court  
on 13.08.2013

(Narinder Kumar )  
Additional Sessions Judge(Central)  
Delhi.