

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

+ **Crl. REV.P. 678/2010**

Date of Decision : 03.05.2011

BISHAN SINGH @ BISHNU

..... Petitioner

Through: Mr. R.K. Gupta, Adv.

Versus

WILDLIFE THR CHIEF WILDLIFE WARDEN

....Respondent

Through:

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

V.K. SHALI, J. (oral)

1. This is a criminal revision filed by the petitioner against the judgment dated 13.10.2010 passed by Shri R.K. Gauba Learned Addl. Sessions Judge Delhi in Criminal Appeal No. 09/2010 titled Bishan Singh @ Bishnu Vs. Wildlife through, Chief Wildlife Warden. By virtue of the impugned judgment, the Learned Sessions Judge has dismissed the appeal of the petitioner and upheld the judgment of conviction and sentence dated 11.03.2010 whereby the petitioner was convicted under Section 44, 49, 49-B (1) read with Section 51 of the Wildlife Protection Act, 1972. The accused was also sentenced to imprisonment of one year and a fine of Rs.

10,000/- and in default of payment of fine to further undergo S.I. of three months.

2. Briefly stated the facts of the case are that the present petitioner along with one Mukesh was found to be in possession of Wildlife skin and articles on 08.03.1997. On secret information being received, the petitioner was arrested and two skins of Desert Cats were recovered which were concealed beneath his shirt. Apart from this, Mukesh the absconder was found to be in possession of one Fishing Cat Glove. After completing the necessary formalities a complaint under Section 55 of the Wildlife Protection Act 1972 was filed by the Wildlife Inspector. The respondent adduced 5 witnesses in support of his case; CW1 S.I. Anil Kumar, CW2 Raju Kumar, CW3 HC Gopi Ram, CW4 Constable Inspector S.S. Negi and CW5 Vivek Menon.
3. The statement of the accused /petitioner was recorded under Section 313 who denied his involvement. After hearing the arguments, the learned Trial Court passed a detailed judgment holding the present petitioner guilty of being in possession of the two Desert Cat skins which is a protected Specie under Schedule I of the Act. The petitioner after hearing was sentenced to a minimum sentence of 1 year and a fine of Rs. 10,000/- and in default of payment of fine further imprisonment of three months.

4. The petitioner feeling aggrieved by the said order preferred an appeal which was dismissed by the learned Sessions Judge on 13.10.2010 holding that there was no infirmity, illegality or incorrect appreciation of facts or improper application of law which called for any interference from the said Court.
5. The petitioner is presently on interim bail after having undergone a sentence of almost 5 months, 8 days as on 28.02.2011.
6. The learned counsel for the petitioner has assailed the judgment of the Learned Sessions Judge primarily on two grounds. Firstly, it has been contended that no public witness was present at the time of the seizure of the Desert Cat skin from the petitioner which was a clear violation of the mandate of Section 100 Sub-clause 4 of the Cr.P.C. In this regard, the learned counsel for the petitioner has further urged that the non-association of any public witness casts a serious doubt on the recovery of the prohibited Wildlife Cat skin from the present petitioner. The second submission which has been made by the learned counsel for the petitioner is that admittedly the case of the respondent was that the wildlife skins which were seized from the present petitioner were kept in a sealed cover. However, when they were produced before the Court they were not sealed and were open and therefore, it could not be said with certainty

that the Wildlife skins which were allegedly seized from the present petitioner were the same which were produced before the Court as exhibit. The third contention made by the learned counsel for the petitioner was that admittedly the seizure in the instant case has been effected in the year 1997 whereas the trial itself has taken place almost after a decade. Thus, it has been urged that a gap of 10 years from the date of commission of offence has already given sufficient punishment to the present petitioner in facing the protracted trial and therefore a lenient view be taken. The learned counsel for the petitioner in this regard has placed reliance on the Single Judge's judgment in the case titled as Jagdish Singh & Others Vs. State of Bihar 1985 CRL.L.J. 1314 to urge that in the said case the conviction had taken place after a gap of 10 years and in the revision petition. The Ranchi Bench of the then Patna High Court had sentenced the petitioner to a fine of only Rs. 50/- in lieu of the punishment of incarceration.

7. The learned APP for the State has vehemently contested the claim of the petitioner. It has been urged by him that the plea of non-association of public witness is totally incorrect inasmuch a witness from a NGO was associated with the recovery of the articles from the present petitioner. It was also urged that mere non-association of the public witness does not make the recovery a tainted one and in any case

there is a concurrent finding in this regard by the Courts below. So far as the non-production of the case property in a sealed pullanda is concerned the learned APP has drawn the attention of the Court to the order dated 10.03.1997 wherein it has been specifically observed that the case property was directed to be kept open with a view to avoid deterioration and it was because of this reason that when the case property was produced before the Court it was not sealed.

8. With regard to the judgment of Patna High Court in Jagdish Singh's case the learned APP contended that it cannot be treated as a binding precedent and the facts and circumstances of each and every case has to be seen individually before the punishment which is sufficiently in tune with the offence committed by the accused is given.
9. I have carefully considered the respective submissions and have gone through the records. At the outset, I must say that there is a concurrent finding given by the Courts below and the learned counsel for the petitioner has essentially raised the questions of appreciation of evidence which cannot be gone into in revision. The learned counsel for the petitioner has failed to show that there is any illegality, impropriety or incorrectness in the impugned orders of the Learned ASJ or for that matter that of the ACMM. Therefore, prima facie, the revision petition is liable to be dismissed on this score itself.

10. Having said so, in respect of the non-examination of the public witness to prove the recovery of Wildlife Cat skins from the petitioner, the Learned ACMM as well as the Learned Sessions Judge has considered the submission and observed that merely on account of the fact that a public witness has not been associated with the recovery does not make the recovery tainted if it is otherwise established. Even otherwise, it is a common knowledge that public witness very loath to get themselves associated with the seizure of any kind in criminal matters with a view to avoid any inconvenience to them. In any case, admittedly in the instant case a person from the NGO has been associated with the recovery and he could not be said to be a departmental witness and has to be given the status of an independent witness as he has no personal interest in testifying against the petitioner. Therefore, I feel that this is totally untenable on the part of the learned counsel for the petitioner to urge that non-association of a public witness is fatal to the case of the petitioner.
11. So far as the non-production of the Wildlife Cat skins in a sealed condition is concerned, there is an order which has been passed by the Learned Trial Judge during the course of hearing to keep the wildlife skin open so as to prevent its fast decay. The Learned Judge had specifically directed that the party concerned would put his signatures on the said skin

and it has been established in the Courts below beyond reasonable doubt that the skins which were seized were one which were produced during the course of trial and therefore this point also does not have any merit.

12. Last but not the least, is the judgment of the learned Single Judge of the Ranchi Bench of the Patna High Court which has been relied upon by the learned counsel for the petitioner in Jagdish Singh & Ors. Vs. State of Bihar 1985 Cri. L.J. 1314.
13. No doubt, in the said case the Learned Single Judge while hearing the revision has taken note of the fact that the petitioner was convicted of an offence under the Wildlife Act and on account of the trial having been prolonged for a period of 10 years, the sentence of imprisonment of 3 months was converted into a fine and that too to a pittance of Rs. 50/- but it cannot be treated as a binding precedent. From the year 1985 the law has gone sea-change. There has been a rampant poaching of wildlife animals with a view to make profits. Unless and until this compensation commercialization of animal skin is met with a heavy hand it will give an impression that the Courts are showing mis-placed sympathies with the poachers, who are indulging in rampant poaching of prohibited wildlife in order to make profit. I consider that in case the minimum sentence or the fine which has been imposed on the petitioner is not given, then it will

send wrong signals and will give impetus to the persons who are like-minded with that of the petitioner to indulge in rampant poaching and violation of various provisions of the Wildlife Act. For these reasons, I do not agree with the judgment of the Learned Single Judge of the Ranchi Bench of the Patna High Court.

14. For the above mentioned reasons, I feel that there is no illegality, impropriety or incorrectness which will warrant any interference by this Court. Accordingly, the revision petition is dismissed.

V.K. SHALI, J.

MAY 03, 2011
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