



**THE GAUHATI HIGH COURT AT GUWAHATI**  
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

**PRINCIPAL SEAT**

**Criminal Appeal No. 416/2023.**

Md. Zanab Khan,  
S/o Md. Siraj Ahmed,  
R/o Sangalyumpham Chereapur Makha,  
P.S. – Leikai,  
District – Thoubal, Manipur,  
Pin Code - 795148.

**.....Appellant.**

VS.

The State of Assam,  
Represented by Public Prosecutor of Assam.

**.....Respondent.**

***with***

**Criminal Appeal No. 417/2023.**

Md. Habibur Rahman,  
S/o Md. Nur Jaman,  
R/o Sangalyumpham Chereapur Makha,  
P.S. – Leikai,  
District – Thoubal, Manipur,  
Pin Code - 795148.

**.....Appellant.**

VS.

The State of Assam,  
Represented by Public Prosecutor of Assam.

**.....Respondent.**

**BEFORE**  
**HON'BLE MR. JUSTICE ROBIN PHUKAN**

**Appearance:-**

|                    |                                             |
|--------------------|---------------------------------------------|
| For the Appellants | :- Mr. F. Khan.                             |
| For the respondent | :- Mr. D. Gogoi, Special Public Prosecutor. |
| Date of Hearing    | :- 15.02.2024.                              |
| Date of Judgment   | :- <b>13.05.2024.</b>                       |

**JUDGMENT & ORDER (CAV)**

Heard Mr. F. Khan, learned counsel for the accused/appellants and Mr. D. Gogoi, learned Special Public Prosecutor for the respondent State of Assam.

**2.** By this common judgment and order it is proposed to dispose of two criminal appeals, being Criminal Appeal No. 416/2023 and Criminal Appeal No. 417/2023 arising out of the same judgment and order dated 26.09.2023 and 27.09.2023, passed by the learned Special Judge (Wildlife), Karbi Anglong, Diphu in Special (Wildlife) Case No. 11/2022.

**3.** It to be noted here that vide impugned judgment and order dated 26.09.2023 and 27.09.2023, learned court below has convicted the accused/appellants namely, Md. Zanab Khan and Md. Habibur Rahman under Section 51(1) of the Wild Life (Protection) Act, 1972 and sentenced them to undergo rigorous imprisonment for 7 years

and to pay a fine of Rs. 50,000/- and in default of payment, to undergo further simple imprisonment for 6 months.

**4.** The background fact leading to filing of this appeal is adumbrated herein below:-

“On 12.04.2022, during routine Naka checking, taken up by ASI Jiten Gogoi of Dillai Police Station (P.S.), intercepted one Maruti Suzuki Ecco vehicle, bearing registration No. MN-01-AG-5829 and found two persons namely, Zanab Khan and Habibur Rahman with one gibbon species and four primate species under the family Cercopithecidae. Thereafter, he reported the matter to the Forester, Mongal Singh Enghi, In-Charge of Lahorijan Account Beat, under the Central Range Manja, Karbi Anglong East Division, who arrived at Dillai P.S. and thereafter, taken up the investigation. During the course of the investigation, he had examined with the witnesses and seized the aforesaid species along with the vehicle by preparing seizure list and arrested the accused/appellants and recorded the statement of the accused/appellants. Then on the next day he had forwarded them to the court and on 13.04.2022, the seized species were sent to the Assam State Zoo, Guwahati for their rehabilitation as per order of the Chief Judicial Magistrate, Karbi Anglong, Diphu. Thereafter, on 18.04.2022, he had received a report from the Divisional Forest Officer of Assam State Zoo, in respect of death of one primate species, due to ailments. And thereafter, he had lodged the final complaint, upon which, the learned Special Judge (Wild Life), Karbi Anglong, Diphu registered a case, being

Special (Wildlife) Case No. 11/2022, under Section 51(1) of the Wild Life (Protection) Act, 1972 arising out of C.R. Case of 14/2022. Thereafter, complying with the provision of Section 207 of the Cr.P.C. and after hearing learned Advocates of both side, the learned trial court had framed following charge against both the accused/appellants, under Section 51(1) of the Wild Life (Protection) Act, 1972:-

- (i)** Whether on 12.04.2022 at around 7.00 pm at Dillai Police Station, the accused were found in possession of one Gibbon species animal, under the family Hylobatidae and four numbers of Primate species animal under the family Cercopithecidae ? If so whether the accused were involved in illegal transportation and sale/purchase of such wild animals?

Thereafter, on being read and explained over the charges to the accused/appellants, they pleaded not guilty and claimed to be tried. Thereafter, the prosecution side had examined as many as 7 (seven) witnesses and also exhibited six documents in support of the charge. After closing the prosecution evidence, the learned trial court had examined the accused/appellants under Section 313 of the Cr.P.C. The accused/appellants had declined to adduce evidence in their defence. Thereafter, hearing arguments of both the parties the learned trial court had found that the charge under Section 51(1) of the Wild Life (Protection) Act, 1972 well established and thereafter, convicted the accused/appellants under the said Section of law and sentenced them as aforesaid."

**5.** Being aggrieved, the accused/appellants have approached this Court by filing the present appeal for setting aside the impugned judgments and orders dated 26.09.2023 and 27.09.2023, on the following grounds:-

- (i) That, the prosecution side has failed to conclusively prove the charge against the accused/appellants;
- (ii) That, the species, which were recovered from the possession of the accused/appellants does not come under the purview of the Wild Life (Protection) Act, 1972;
- (iii) That, the primate species, which were allegedly recovered from the possession of the accused/appellants were not listed in either of the Schedules of the Wild Life (Protection) Act, 1972 and as such, no offence under Section 51(1) of the Wild Life (Protection) Act, 1972 appears to be made out against the accused/appellants;
- (iv) That, the learned trial court has failed to ascertain as to whether the species, so recovered from the possession of the accused/appellants falls under the definition of 'captive animal' or 'wild animal', as defined under Section 2 of the Wild Life (Protection) Act, 1972 and also failed to verify that the recovered species were not listed in the Schedule I, II, III or IV of the Wild Life (Protection) Act, 1972;
- (v) That, the officials of the Assam State Zoo, who took the custody of the species were not examined as prosecution witnesses;

- (vi) That, the two material witnesses, who have received information at the Central Range, Manja have not examined as prosecution witnesses; and
- (vii) That, the evidence of the prosecution witnesses are not trustworthy and the same suffers from material contradictions and the learned trial court has failed to appreciate the same and as such, the conviction of the accused/appellants under Section 51(1) of the Wild Life (Protection) Act, 1972 is not sustainable.

**6.** Mr. Khan, learned counsel for the accused/appellants has reiterated the grounds mentioned herein above and stressed upon the fact that the 5 species which were allegedly recovered from the possession of the accused/appellants are not scheduled species and as such, they are neither 'captive animal' nor 'wild animal' as defined under Section 2 of the Wild Life (Protection) Act, 1972. Mr. Khan further submits that the witnesses, so examined by the prosecution, have not supported the case and that out of enmity the case has been lodged and therefore, it is contended to allow the petition. Mr. Khan, to strengthen his submission, has referred the following case law:-

**Titty @ George Kurian vs. Deputy Range Forest Officer,**  
reported in **(2021) 1 SCC 812.**

**7.** On the other hand, Mr. Gogoi, learned Special Public Prosecutor submits that though the seized species were not scheduled species, yet, they are 'wild life' as per definition of the Wild Life (Protection) Act, transportation of which is prohibited in view of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), to which India is a signatory. Mr. Gogoi, further submits that

the learned trial court, after considering all the aspects, had arrived at a just finding and the same requires no interference of this Court. Therefore, Mr. Gogoi has contended not to allow the petition. Mr. Gogoi has also referred the following case laws to strengthen his submission:-

- (i) Balram Kumawat vs. The Union of India and Ors.,** reported in **(2003) 7 SCC 628;**
- (ii) Indian Handicrafts Emporium and Ors. vs. The Union of India and Ors.,** reported in **(2003) 7 SCC 589;**
- (iv) Navnath Tukaram Dhaigude vs. The Union of India & Nannath Tukaram Dhaigude vs. The State of Assam,** reported in **(2021) SCC OnLineGau 1962; and**
- (v) Bail Application No. 1008/2022 of Gauhati High Court.**

**8.** In view of the submissions, so advanced by learned Advocates of both the parties, the issue, to be decided by this court is – ‘Whether the animal species, so recovered and seized from the possession of the accused/appellants, were ‘captive animal’ or ‘wild animal’ as defined in section 2 of the Wild Life (Protection) Act, hunting, possession, transportation of which, without approval from appropriate authority, is prohibited under sections 9, 39, 40(2), 40(2A), 48, 48(A), 49, 49(B), 50 of the Wild Life (Protection) Act.

**9.** Having heard the submissions of learned Advocates of both sides, I have carefully gone through the memo of appeal and the ground mentioned therein and also gone through the record of the learned trial court and also the case laws, referred by learned Advocates of both sides.

**10.** As in the case in hand, contravention of the provision of Section 9, 39, 40(2), 40(2A), 48, 48(A), 49, 49(B), 50 of the Wild Life (Protection) Act, are being alleged by the prosecution side, which is punishable under section 51 of the said Act, it would be in the interest of justice to understand the provision of Section 2, 9, 39, 40(2), 40(2A), 43, 48, 48(A), 49, 49(B) and 50 of the Wild Life (Protection) Act which are relevant to dispose of the present appeals.

**11.** Section 2 of the Act deals with definitions.

**11.1.** Sub-section 2(1) deals with 'animal', which includes mammals, birds, reptiles, amphibians, fish other chordates and invertebrates and their young, and also includes, in the cases of birds and reptiles, their eggs;

**11.2.** Section 2(5) defines "captive animal", means any animal, specified in Schedule I, Schedule II, Schedule III or Schedule IV, which is captured or kept or bred in captivity."

**11.3.** Section 2(16) defines "hunting", which with its grammatical variations and cognate expressions, includes:-

(a) killing or poisoning of any wild animal or captive animal and every attempt to do so;

(b) capturing, coursing, snaring, trapping, driving or baiting any wild or captive animal and every attempt to do so;]

(c) injuring or destroying or taking any part of the body of any such animal or, in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles, or disturbing the eggs or nests of such birds or reptiles;

**11.4.** Section 2(36) defines “wild animal”, as it included any animal specified in Schedules I to Schedule IV and found wild in nature.

**11.5.** And section 2(37) of the Wild Life (Protection) Act defines ‘wild life’ as it includes any animal, aquatic or land vegetation which forms part of any habitat.

**11.6.** Section 9 of the Act deals with prohibition of hunting, and it provides that:- ‘No person shall hunt any wild animal specified in Schedules I, Schedule II, Schedule III and Schedule IV except as provided under section 11 and section 12.

**11.7.** Section 39(1) of the Wild Life (Protection) Act provides that every (a) wild animal, other than vermin, which is hunted under section 11 or sub-section (1) of section 29 or sub-section (6) of section 35 or kept or bred in captivity or hunted in contravention of any provision of this Act or any rule or order made there under or found dead, or killed by [\* \* \*] mistake; and (b) animal article, trophy or uncured trophy or meat derived from any wild animal referred to in clause (a), in respect of which any offence against this Act or any Rule or order made there under has been committed; (c) ivory imported into India and an article made from such ivory in respect of which any offence against this Act or any Rules made there under has been committed (d) vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act, shall be the property of the State Government. Sub-section -2 provides that any person who obtains, by any means, the possession of Government property, shall, within forty-eight hours from obtaining such possession, make a report as to the obtaining of

such possession to the nearest police station or the authorised officer Sub-section (3) provides that:- No person shall, without the previous permission in writing of the Chief Wild Life Warden or the authorised officer-(a) acquire or keep in his possession, custody or control, or (b) transfer to any person, whether by way of gift, sale or otherwise, or (c) destroy or damage, such Government property.

**11.8.** Section 40 deals with declarations and sub-section (1) provides that (1) Every person having at the commencement of this Act the control, custody or possession of any captive animal specified in Schedule I [\*\*\*\*], or animal article, trophy or uncured trophy derived from such animal or salted or dried skins of such animal or the musk of a musk deer or the horn of a rhinoceros, shall, within thirty days from the commencement of this Act, declare to the Chief Wild Life Warden or the authorised officer the number and description of the animal, or article of the foregoing description under his control, custody or possession and the place where such animal or article is kept. Sub-section (2) provides that "no person shall, after the commencement of this Act, acquire, receive, keep in his control, custody or possession, sell, offer for sale or otherwise transfer or transport any animal specified in Schedule I or any uncured trophy or meat derived from such animal, or the salted or dried skins of such animal or the musk of a musk deer or the horn of a rhinoceros, except with the previous permission in writing of the Chief Wild Life Warden or the authorised officer. Sub-section (2-A) provides that – "no person other than a person having a certificate of ownership, shall, after the commencement of the Wild Life (Protection) Amendment Act, 2002 acquire, receive, keep in his control, custody or possession any captive

animal, animal article, trophy or uncured trophy specified in Schedule I of Part II of Schedule II except by way of inheritance.

**11.9.** Section 43 of the Act provides for regulation of transfer of animal, etc. and Sub-section (1) provides that "No person having in his possession captive animal, animal article, trophy or uncured trophy in respect of which he has a certificate of ownership shall transfer by way of sale or offer for sale or by any other mode of consideration of commercial nature, such animal or article or trophy or uncured trophy." (2) .....

**11.10.** Section 48 deals with purchase of animals, etc., by licensee. It provides that –"No licensee under this Chapter shall- (a) keep in his control, custody or possession,- (i) any animal, animal article, trophy or uncured trophy in respect of which a declaration under the provisions of sub-section (2) of section 44 has to be made but has not been made; (ii) any animal or animal article, trophy, uncured trophy or meat which has not been lawfully acquired under the provisions of this Act or any rule or order made thereunder; (b) (i) capture any wild animal, or (ii) acquire, receive keep in his control, custody or possession, or sell, offer for sale or transport, any captive animal specified in Schedule I or Part II of Schedule II or any animal article trophy, uncured trophy or meat derived there from or serve such meat, or put under a process of taxidermy or make animal article containing part or whole of such animal, except in accordance with such rules as may be made under this Act; Provided that where the acquisition or, possession, control or custody of such animal or animal article, trophy or uncured trophy entails the transfer or transport from

one State to another, no such transfer or transport shall be effected except with the previous permission in writing of the Director or any other officer authorised by him in this behalf. ....

**11.11.** Section 48-A deals with restriction on transportation of 'wild life'. It provides that –“No person shall accept any wild animal (other than vermin), or any animal article, or any specified plant or part or derivative thereof, for transportation except after exercising due care to ascertain that permission from the Chief Wild Life Warden or any other officer authorised by the State Government in this behalf has been obtained for such transportation.”

**11.12.** Section 49 deals with purchase of captive animal, etc., by a person other than a licensee. And it provides that –“No person shall purchase, receive or acquire any captive animal, wild animal, other than vermin, or any animal article, trophy, uncured trophy or meat derived there from otherwise than from a dealer or from a person authorised to sell or otherwise transfer the same under this Act.....

**11.13.** Section 49-B deals with prohibition of dealings in trophies, animal articles, etc., derived from scheduled animals. Sub-section-(1) provides that- “Subject to the other provisions of this Section, on and after the specified date, no person shall— (a) commence or carry on the business as— (i) a manufacturer of, or dealer in, scheduled animal articles; or (ia) a dealer in ivory imported into India or articles made there from or a manufacturer of such articles; or (ii) a taxidermist with respect to any scheduled animals or any parts of such animals; or (iii) a dealer in trophy or uncured trophy derived from any scheduled animal; or (iv) a dealer in any captive animals being scheduled

animals; or (v) a dealer in meat derived from any scheduled animal; or (b) cook or serve meat derived from any scheduled animal in any eating-house. ....

**12.** Section 50 of the Act deals with power of entry, search, arrest and detention. Sub-section (1) provides that- notwithstanding anything contained in any other law for the time being in force, the Director or any other officer authorised by him in this behalf or the Chief Wild Life Warden or the authorised officer or any forest officer or any police officer not below the rank of a Sub-Inspector, may, if he has reasonable grounds for believing that any person has committed an offence against this Act,— (a) require any such person to produce for inspection any captive animal, wild animal, animal article, meat, trophy, uncured trophy, specified plant or part or derivative thereof in his control, custody or possession, or any licence, permit or other document granted to him or required to be kept by him under the provisions of this Act; (b) .....

**13.** Thus, a bare perusal of the aforementioned provisions indicates that in order to establish contravention of said provisions i.e. Section 9, 39, 40(2), 40(2A), 48, 48(A), 49, 49(B) and 50 of the Wild Life (Protection) Act, by the appellants, so as to attract the penal provision of section 51 of the said Act, the prosecution side has to establish that the animals, which were found in their possession are either “Captive Animal” means any animal specified in Schedule-I, Schedule-II, Schedule-III or Schedule-IV, which is captured or kept or bred in captivity, or “Wild Animal” which means any animal specified in

Schedule-I, Schedule-II, Schedule-III or Schedule-IV and found wild in nature.

**14.** Now, let it be seen how far the prosecution side has been able to establish that the five animals recovered and seized from the possession of the accused/appellants were "Captive Animal" or "Wild Animal" as defined in section 2(5) and 2(36) of the Wild Life (Protection) Act, 1972.

**15.** In order to discharge its burden, the prosecution side has examined as many as 7 witnesses herein this case. Out of seven witnesses, so examined by the prosecution side, P.W. 6 is Home Guard Mai Sing Tokbi and P.W.7 is ASI Jiten Gogoi, who were attending Naka Checking duty at the Naka Cheking point at Dillai Tiniali. Their evidence reveals that on 12.04.2022, at about 06.20 pm, they, along with other police personnel found one Maruti Ecco vehicle coming from Manipur side towards Guwahati. They stopped the vehicle and on checking the same they have found five numbers of Chimpanzees in five numbers of plastic boxes and they have also found accused Zanab Khan and Habibur Rahman in the said vehicle. Then P.W.7 seized the five numbers of Chimpanzees in five numbers of plastic boxes, vide seizure list (Exhibit-P6), in presence of witnesses. Thereafter, P.W.7 had informed the matter to the Forest Officials and handed over the Chimpanzees to the Forest Department. Probative value of the evidence of these two witnesses could not be demolished in their cross-examination. It is, however, elicited in cross-examination of P.W.7 that as per verbal instruction of the Officer-in-Charge he had seized the Chimpanzees.

**16.** P.W.5, Shri Suraj Roy is a Pan Shop owner situated near Dillai Gate and he is the witness of seizure of the 5 numbers of monkeys by police. His evidence reveals that at about 05.30/06.00 pm on the day of occurrence he saw recovery of five numbers of monkeys from a Van and Exhibit-P6 is the said seizure list of the said monkeys. It is however elicited in his cross-examination that he had not seen the monkeys inside the Van, but he had seen the same when kept on the ground near the Van. Thus, this witness also supported the evidence of P.W.6 and 7, about recovery of five numbers of monkeys from the Van.

**17.** P.W. 3, Shri Mongal Sing Enghi is a Forester-I, posted at Lahorijan at the relevant point of time. He is the complainant and seizing officer. His evidence reveals that on 12.04.2022, at about 06.45 pm he got information from Dillai Police about recovery of five numbers of monkeys from a vehicle, during Naka Checking. Then he rushed to Dillai P.S. with one Longbir Engti Kathar, Forester-I and Divison Engti, Forest Guard and found five numbers of monkeys in five plastic boxes and then police handed over to him the original seizure list and one Maruti Ecco vehicle and five numbers of monkeys in five plastic boxes and two persons, namely, Md. Zanab Khan and Habibur Rahman. Then returning to his office at Manja, he had seized the original seizure list and one Maruti Ecco vehicle – bearing registration number MN-01-AG-5829, and five numbers of monkeys, in five plastic boxes, vide seizure list-Exhibit-P1. Thereafter, he took photographs of the seized monkeys and of the vehicle and Exhibit-P2 and Exhibit-P3 are the said photographs of the monkeys and vehicle. Thereafter, he had recorded the statements of the accused, namely, Md. Zanab Khan and

Habibur Rahman in presence of witnesses and during interrogation both the accused confessed having brought the monkeys from Manipur to Guwahati. Then on the next day he had produced the accused and the seized monkeys before the court and the court had handed over the monkeys to the officials of State Zoo, Guwahati. Thereafter, he had filed Offence Report- Exhibit-P4, against the two accused namely, Md. Zanab Khan and Habibur Rahman for contravention of the provision of sections 9/39/40(2)/40(2A)/48/48(A)/49/49(B) and 50 of Wild Life (Protection) Act, punishable under section 51 of the said Act. The appellant side cross-examined this witness at length. But, nothing tangible could be elicited so as to demolish the probative value of his evidence.

**18.** P.W.1 Shri Longbir Ingthi Kathar is Forester-I and P.W.-2 - Shri Divison Engthi is Forest Guard who had accompanied P.W.3 to Dillai Police Station. Close on the heel of P.W.3, these two witnesses i.e. P.W.1 and 2 also deposed about recovery of five numbers of monkeys from a Maruti Ecco vehicle - bearing registration number MN-01-AG-5829, on 12.04.2022, at about 06.45 pm during Naka Cheking. Both P.W.1 and 2 are also the witness of seizure of the monkeys and the vehicle by P.W.3; vide seizure list - Exhibit-P1. Both these witness had identified the accused persons, namely, Md. Zanab Khan and Habibur Rahman in the court. Though these two witnesses were cross-examined by the appellant side, yet, nothing tangible could be elicited to discredit their evidence.

**19.** P.W.4 is Assistant Conservator of Forest, namely, Shri Bikram Singh Rongpi. This witness also testified about recovery of four

numbers of Primate Species and one Gibbon Species by Dillai police, while the same were being carried by the two accused persons in a Maruti Car and handing over of the same to P.W.3 by police. Then P.W.3 had handed over the two accused persons to him and then on 13.04.2022 he had forwarded them to the court along with the four numbers of Primate Species and one Gibbon Species and the Car. Thereafter, the court had handed over the species to Assam State Zoo. Thereafter, the Zoo authority had handed over four species to them so as to release them in Nambor Forest and accordingly, they have released the four species in Nambor Reserve Forest. His evidence also reveals that one of the species suffered demise at Zoo. He confirmed Exhibit-P5, the forwarding letter by which he had forwarded the accused and species to the court. Nothing could be elicited by the appellants in cross-examination of this witness.

**20.** Thus, the evidence of the prosecution witnesses, specially the evidence of P.W.6 and 7, as discussed above, along with the Exhibit-P-1 and P-6 the seizure lists, Exhibit-P-2 and P-3 -the photographs, Exhibit-P4 -the Offence Report goes a long way to establish beyond all reasonable doubt about the factum of recovery of one Gibbon Species and four Primate Species from the possession of the present appellants, while the said Species were being carried by them in a Maruti Ecco vehicle - bearing registration number MN-01-AG-5829, on 12.04.2022, at about 06.45 pm and also establish the identity of the appellants. Thus, having appreciated, analysed and assessed the evidence of the prosecution witnesses by the yardstick of probabilities, its intrinsic value and the animus of the witnesses, I find no ground to disbelieve the same.

**21.** The species, so recovered from the possession of the appellants are shown below.

| <b>Sl. No.</b> | <b>Species</b>                  | <b>Family</b>   |
|----------------|---------------------------------|-----------------|
| 01.            | Gibbon(siamang)                 | Hylobatidae     |
| 02.            | Cresdted black Macaque (Female) | Cercopithecidae |
| 03.            | Cresdted black Macaque (Male)   | Cercopithecidae |
| 04.            | Moor Macaque (Female)           | Cercopithecidae |
| 05.            | Celebes Cresdted Macaque        | Cercopithecidae |

**22.** Admittedly, none of the above species, so recovered and seized from the possession of the appellants are Schedule species. Though, two species, namely, Western Hoolock Gibbon and Eastern Hoolock Gibbon finds mention in the Part-I of Schedule I, yet, it appears that the Gibbon found in the possession of the appellants was a Siamang Gibbon, [as per report of the Divisional Forest Officer, Assam State Zoo Division, Guwahati, which is available on the record] belonging to family Hylobatidae. And the same is not a Schedule species.

**23.** The four primate species also, which were recovered and seized from the possession of the accused, admittedly, are not schedule species. Though the name of Assamese Macaque, Pig-tailed Macaque, Rhesus Macaque and Stump-tailed Macaque finds mention in the Part-I of Schedule-II, yet, the name of four primates, recovered and seized herein this case, are not there in the said Schedule.

**24.** This being the factual position, none of the animal species, which were recovered and seized from the possession of the

accused/appellants were "Captive Animal" or "Wild Animal" as defined in section 2(5) and 2(36) of the Wild Life (Protection) Act 1972.

**25.** Mr. F. Khan, the learned counsel for the appellants has rightly pointed this out during hearing and I find substance in his submission. And the ratio laid down in the case law **Titty @ George Kurian** (supra) also strengthened his submission. It is to be mentioned here that Hon'ble Supreme Court, in the said case, had affirmed the view taken by the High Court of Kerela, that **Indian Flapshell Turtle, which was seized, was not found included in Part II of Schedule I to the Wild Life (Protection) Act, 1972, hence, such possession of the turtle of that species will not invite the offences alleged against the accused.** It is to be noted here that in the said case Kerela High Court had allowed the application and quashed the criminal proceeding.

**26.** In para No.13 of the said decision, Hon'ble Supreme Court has held as under:-

**"13. A perusal of the letter given by the Veterinary Surgeon as extracted above indicates that Veterinary Surgeon has identified the Turtle as 'Indian Flap Shell (Lissemys Punctata)' whereas the Turtle which is included in Part II of Schedule I of the Act, 1972 is "Indian Soft-shelled Turtle (Lissemys punctata punctata)." Lissemys punctata is a species of which Lissemys punctata is infraspecies. Although Lissemys punctata is included in Part II of Schedule I of the Act, however, the Turtle which has been seized is not that which is included in Part II of Schedule I. In the facts of the present case, on the face of it, the Turtle seized is not included in Schedule I Part II and the Turtle having already been freed on the second day of its seizure, the**

**High Court did not commit any error in quashing the criminal proceedings registered for Wild Life offences.”**

**27.** This being the legal and factual position, it cannot be said herein this case that the prosecution side has succeeded in establishing that the animal species, which were recovered and seized from the possession of the accused/appellants were “Captive Animal” or “Wild Animal” as defined in section 2(5) and 2(36) of the Wild Life (Protection) Act, 1972, hunting, possession, transportation of which, without permission of the appropriate authority, contravenes the provision of Sections 9/39/40(2)/40(2A)/48/48(A)/49/49(B) and 50 of the Wild Life (Protection) Act, so as to attract the penalty prescribed under section 51 of the said Act.

**28.** Though Mr. Gogoi, the learned Special P.P. Wild Life, submits that though the seized species were not of Schedule Species under the Wild Life (Protection) Act, yet, they may be treated as wild life in view of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), to which India is a signatory and which prohibits transportation and illegal business of wild life, yet, this court is unable to record concurrence to such submission. As a general rule, this court is inclined to adhere to strict construction of the statute and desist from enlarging by implication or intent of the definition of ‘wild life’, ‘captive animal’ and ‘wild animal’ beyond the fair meaning of the language used in the relevant sections, so as to encompass the offences and individuals other than those clearly described and provided for in their language, and also to decide any ambiguity in favour of the accused.

**29.** A Constitutional Bench of Hon'ble Supreme Court in the case of **Commissioner of Customs (Import), Mumbai v. M/s Dilip Kumar and Company & Ors.**, reported in **(2018) 9 SCC 1**, has held that- *"The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocent might become victims of discretionary decision making."* This means that a criminal statute may not be enlarged by implication or intent beyond the fair meaning of the language used or the meaning that is reasonably justified by its terms. Therefore, criminal statutes will not be held to encompass offences and individuals other than those clearly described and provided for in their language. The strict construction of criminal statutes complements the rule of lenity, which holds that ambiguity in a criminal statute should always be decided in favour of the accused, provided, it is not contrary to legislative intent.

**30.** However, this rule is of not universal application. Penal statute should be construed in a manner which will suppress mischief and advance the object which the Legislature had in view, as held in the case of **Indian Handicrafts Emporium** (supra) and **Balram Kumawat** (supra) which are being referred by Mr. Gogoi and also in the case of **Lalita Jalan v. Bombay Gas Co. Ltd.** reported in **(2003) 6 SCC 107**. In **State of Madhya Pradesh v. Shri Ram Singh, AIR 2000 SC 575**, it has been observed that Prevention of Corruption Act is a social legislation defined to curb illegal activities of public servants and is designed to be liberally construed so as to advance its object. It has also been held that procedural delays and

technicalities of law should not be permitted to defeat the object sought to be achieved by the Act.

**31.** As discussed herein above, neither the name of Siamang Gibbon, nor the four primate species, which were recovered and seized from the possession of the accused/appellants, finds mention in Part-I of Schedule-II, or in any other Schedule, so as to show contravention of the provisions of sections 9/39/40(2)/40(2A)/48/48(A)/49/49(B) and 50 of the Wild Life (Protection) Act.

**32.** In view of the factual and legal position, as discussed herein above, the finding, so recorded by the learned trial court, to the considered opinion of this court, had failed to withstand legal scrutiny and the same warrants interference of this court.

**33.** In the result, I find sufficient merit in this appeal and accordingly, the same stands **allowed**. The impugned judgment and order of conviction of the learned trial court stands set aside. The appellants shall be released from the jail hazot forthwith, if not warranted in any other case.

**34.** Send down the record of the learned court below, with a copy of this judgment and order. The parties have to bear their own cost.

**JUDGE**

**Comparing Assistant**