

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO. 1 OF 2015

State
(Through Range Forest Officer
Netrawal - Goa) .. Petitioner

Versus

Francis Masrenhas, (Major)
s/o Philip Masrenhas,
major in age, service,
r/o. H. No.44, Neturlem,
Sanguem Goa. .. Respondent

Mr. S. R. Rivankar, Public Prosecutor for the Petitioner.

Mr. A. V. Pavitran, Advocate for the respondent.

CORAM :- C. V. BHADANG, J.

Reserved on : 19th June, 2015.

Pronounced on : 22nd June, 2015.

JUDGMENT :

Admit. The learned Counsel for the respondent waives notice.

2. Heard finally, with consent.

3. By this Revision Application, the State is challenging

the judgment and order dated 01/09/2014 passed by the learned Sessions Judge in Criminal Revision Application No.36/2014. By the impugned judgment, the learned Sessions Judge has set aside the order dated 27/03/2014 passed by the learned Judicial Magistrate, First Class at Sanguem in Criminal Case No.14/AOA/2013, by which the learned Magistrate had held that the confessional statement of the respondent, recorded by a Deputy Range Forest Officer is admissible in evidence.

4. The brief facts are that the respondent is the original accused no.1. On 14/11/2010, the respondent was intercepted and detained while driving a Tata Indica Vehicle bearing No. GA-02-S-0788 while he was proceeding from Netravali to Verlem. During the search of the said vehicle, two plastic bags containing meat of a wild boar were recovered. During the course of investigation, it was revealed that the wild boar was hunted by the third accused. A gun used in hunting the wild boar, with three cartridges was recovered from the house of the third accused, during a search on 15/11/2010. In such circumstances, the respondent and two others were put on trial for the offences punishable under Sections 39(1)(d) and 39(3)(a) of the Wild Life (Protection) Act 1972 (Act of 1972, for short) read with Section 27, Sections 52 and 51 of the Act of 1972.

5. It appears that during the course of the recording of the examination of PW2- Prabhudessai, an objection was raised on behalf of the respondent that the confessional statement recorded by the Deputy Range Forest Officer would not be admissible in evidence. The learned Magistrate, by order dated 27/03/2014, had overruled the objection, holding that the confessional statement was admissible. The learned Magistrate had placed reliance on the decision in the case of **Forest Range Officer Vs. Aboobacker and another**, reported in 1989 Cri.L.J. SC 2038 and **E. C. Richard Vs. Forest Range Officer**, reported in (1957)2 Mh.L.J. 624.

6. Feeling aggrieved, the respondent challenged the same before the learned Sessions Judge. The Revision Application came to be allowed, holding that the statement would not be admissible in view of the provisions of Section 50(8) of the Act of 1972. That is how, the State is before this Court.

7. It is submitted by Shri Rivankar, the learned Public Prosecutor that the Deputy Range Forest Officer is not a police officer and as such, the confession recorded by the said Officer would not be hit by Section 25 of the Evidence Act. He, therefore,

submitted that independently the confessional statement recorded by a Deputy Range Forest Officer cannot be excluded as being inadmissible. Reliance is placed on the decision of the Kerala High Court in the case of **Aboobacker** (supra) and a Constitution Bench of the Hon'ble Apex Court in the case of **Ramesh Chandra Mehta Vs. State of West Bengal**, reported in 1970 CRLJ 863. It is submitted that although under Section 50(8) of the Act of 1972, the Deputy Range Forest Officer was not authorised or competent to record the confession, there is no prohibition in relying upon the said confession, particularly when the said Officer is not a Police Officer.

8. On the contrary, it is submitted by Shri Pavitran, the learned Counsel for the respondent that the Act of 1972 being a special enactment, would override the general provision for admissibility of the confession as contained in Section 25 of the Evidence Act. The learned Counsel has placed reliance on the decision of the Allahabad High Court in **Harbans Singh and others Vs. The State**, AIR 1952 All 179 in order to submit that the provisions of the Special enactment would prevail over the general. It is submitted that the learned Sessions Judge, after considering the provisions of Section 50(8) of the Act of 1972, has rightly come to the conclusion that the confessional statement was

not admissible. He submitted that the impugned judgment, thus, does not call for any interference.

9. I have considered the rival circumstances and the submissions made. It is not in dispute that the confessional statement in question has been recorded by a Deputy Range Forest Officer, who was the Investigating Officer in the case. It is also not disputed that under Section 50(8) of the Act of 1972, the confessional statement can only be recorded by an Officer not below the rank of Assistant Director of Wild Life Preservation or an Officer not below the rank of Assistant Conservator of Forest, authorised by the State government in this behalf. The question is, whether in the face of such provision, the State can fall back upon Section 25 of the Evidence Act, in order to contend that in as much as the Forest Officers are not Police Officers, the confessional statement would be admissible.

10. In the Constitution Bench decision of the Hon'ble Supreme Court in the case of **Ramesh Chandra Mehta** (supra), it has been held that the Customs Officers are not the Police Officers. In the case of **Aboobacker** (supra), it was held by the Hon'ble Kerala High Court that the confessional statement made to the Forest Range Officer is not open to doubt since the embargo

contained in Section 25 of the Evidence Act is not applicable to it. It would be significant to note that the said decision is rendered on 14/03/1989. The Act of 1972 came to be amended by Act No.44 of 1991, by which subsection (8) of Section 50 has been introduced in the said Act with effect from 02/10/1991. Thus, In my considered opinion, the case of **Aboobacker** (supra) would not be of any assistance to the State.

11. In the case of **Harbans Singh**, (supra) the issue was whether the trial of the offence under the U. P. Private Forest Protection Act by a First Class Magistrate was *ultra virus* as the Act provided for trial of offence only by Second Class Magistrates. It is, *inter alia*, held that in view of the fact that Section 15(1) of the U. P. Private Forest Protection Act is a creation of a Special Act, the First Class Magistrate would not be competent to try the offence.

12. In **Motilal Vs. Central Bureau of Investigation**, reported in (2002)4 SCC 713, the question before the Hon'ble Supreme Court was whether the offences punishable under the Act of 1972 can be investigated by the C.B.I. on being empowered by the Central Government. It was held that although Section 50 of the Act of 1972 does not exclude Police Officers from

investigating the offence under the Act, the special procedure provided under the Act is contrary to the provisions contained in the Code of Criminal Procedure and as such, the same would prevail in view of Section 4(2) of the Code of Criminal Procedure. However, that would not exclude the rest of the provisions of the Act of 1972.

13. It can, thus, be seen that to the extent the Act of 1972 makes provision for a particular aspect as a special Statute, the same would override and prevail over the general provisions. It is trite that what cannot be achieved directly, cannot be allowed to be achieved indirectly. In the present case, there is a specific procedure laid down in the Act of 1972 for recording of evidence/ confession by an Officer not below the rank of Assistant Director of Wild Life Preservation or an Officer not below the rank of Assistant Conservator of Forest, authorised by the State government in this behalf. Thus, the said provision cannot be allowed to be circumvented on the ground that the Forest Officers not being Police Officers could record the confession, as it would not be hit by Section 25 of the Evidence Act. Such a confession, if not hit by Section 25 of the Evidence Act, would certainly be against the letter and spirit of Section 50(8) of the Act of 1972, which is a special enactment and which would prevail in the

matter. In such circumstances, I do not find any reason to interfere with the impugned judgment passed by the learned Sessions Judge.

14. In the result, the Revision Application is hereby dismissed.

C. V. BHADANG, J.

SMA