

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 664 of 2007**

Madavi Mukka S/o Madavi Bhima, aged about 30 years, R/o village Godiras, police station Godiras, District Dantewada, Chhattisgarh.

---- Applicant**Versus**

State of Chhattisgarh through police station Davabha District Bastar, Chhattisgarh.

---- Respondent

For the Applicant	:	Shri Subhash Yadav, Advocate.
For the Respondent/ State	:	Smt. Sobha Kashyap, Deputy Government Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order on Board****08.03.2017**

1. This revision petition is directed against the order dated 30.11.2007, passed by the Learned Second Additional Sessions Judge, Bastar, at Jagdalpur, Chhattisgarh in Criminal Appeal No. 76 of 2004, whereby and whereunder he dismissed the appeal filed by the applicant and upheld the Judgment dated 22.09.2004 of the Judicial Magistrate First Class, Jagdalpur in Criminal Case No.1129 of 2004, whereby the learned trial Court has convicted the accused/ applicant under Section 51 of the Wild Life Protection Act, 1972 and sentenced him to undergo rigorous imprisonment for a period of six month and to pay fine of Rs.500/-.
2. The case of the prosecution in brief is that on the relevant date i.e. 7.9.2000, Sub-Inspector, Dinesh Joshi (PW-6), who was attached in the office of the Superintendent of Police, received an information from one informant that one person has come to village Darbha for selling the skin of

wild animal. He proceeded alongwith the staff on a vehicle to police station Darbha. After intimating the in-charge of the police station Darbha about the information received, he proceeded towards the place i.e. Hotel Shashi and found that a person was present there who appeared to be suspicious. In presence of witnesses, the suspect was given a notice of search and he was accordingly searched. Two skins of wild Deer was recovered from his possession which were seized vide Ex. P/1. One unnumbered FIR Ex. P/6 was recorded against the applicant and on the basis of the said unnumbered FIR, FIR No. 54 of 2000 was recorded separately on the same date vide Ex. P/3. The seized article i.e. skins of wild animal were examined by N.K. Baghel (PW-4), Forest Ranger who reported that the skins belonged to wild animal Chital vide Ex. P/2. On completion of investigation, the applicant was charge-sheeted under Sections 49B (1) (a) (iii) and 51 (1A) of the Wild Life (Protection) Act, 1972.

3. The learned trial court framed charges against the applicant under Sections 49B (3) and 51(1) of the Wild Life (Protection) Act, 1972. The applicant denied the charges and demanded for trial. The trial court afforded opportunity for adducing evidence to the prosecution and defence, heard the arguments and decided the case vide judgment dated 22.9.2004. The applicant was convicted under Section 51(1) of the Wild Life (Protection) Act, 1972 and sentenced with rigorous imprisonment for six months and to pay fine of Rs.500/- with default stipulation. This judgment was challenged before the Sessions Court in an appeal which has been upheld by the learned Sessions Court vide the impugned order.

4. The grounds of revision are that the judgment of conviction passed by the courts below is based on erroneous grounds. The prosecution has not

proved the case beyond reasonable doubt. Except the Investigating Officer, Dinesh Joshi (PW-6), none of the prosecution witnesses have supported the case. The statement of Dinesh Joshi (PW-6) was not believable as he had no authority to raid and conduct the investigation in this case, being attached to the office of Superintendent of Police at the relevant time. It is prayed that the applicant is entitled for benefit of doubt.

5. It is submitted by counsel for the applicant that witnesses of seizure Kamlu (PW-1) and Sunderlal (PW-3) have stated ignorance about the seizure made from the applicant but even then they have not been declared hostile by the prosecution. Similarly, the witnesses on the spot Tubas (PW-2) and Roop Dhar (PW-7) have also stated ignorance and they also have not been declared hostile by the prosecution. The case of the prosecution was supported only by the statement of Dinesh Joshi (PW-6). He was attached to the office of the Superintendent of Police at Jagdalpur, District Bastar and had no authority to enter into the jurisdiction of police station Darbha to conduct the search and seizure of the applicant and further record FIR against him. This clearly shows his specific interest in implicating the applicant in this case. Hence, for these reasons, the applicant is entitled for benefit of doubt.

6. I have perused the evidence of the prosecution and the materials available on record. On 7.9.2000, Sub-Inspector Dinesh Joshi (PW-6), on receiving the information, immediately proceeded to the spot which fell under the jurisdiction of police station Darbha alongwith staff on a vehicle. After intimating the incharge of police station Darbha about the information, he arrived on the spot and searched the applicant in presence of witnesses. Two skins of wild animal were recovered and seized from the applicant vide

Ex. P/1 and thereafter he recorded an unnumbered FIR on the spot Ex. P/3. In cross-examination, he again admitted that on the relevant date, he was attached to the office of Superintendent of Police and he conducted the proceeding because he was senior to the Station House Officer at Darbha.

7. The Superintendent of Police in a District has authority to order for posting of police officers in respective police stations. The officers posted in a police station have the authority to receive information, search, seize and investigate a case within the jurisdiction of such police station in general.

8. On the basis of admission by Dinesh Joshi (PW-6), it is clear that he was not posted in police station Darbha on the relevant date. Other than in a normal course, if a police officer is specially authorized by the Superintendent of Police to do some investigation within the jurisdiction of District under the control of such Superintendent of Police, then such officer can go and investigate a case in such a place where he is not posted as SHO. It is evident from the statement of Dinesh Joshi (PW-6) that he had no such authority and he did not make any effort to obtain any such order from his superior i.e. Superintendent of Police. Under these circumstances, it appears that Dinesh Joshi (PW-6) acted on his own without any official capacity and conducted the raid procedure. Thus, his interest in this matter cannot be denied. Hence, the arguments submitted in this behalf that Dinesh Joshi (PW-6) is not a reliable witness cannot be brushed aside.

9. Kamlu (PW-1) and Sunderlal (PW-3) have clearly stated that they were not aware of the proceedings of the seizure but they have admitted their signatures on Ex. P/1. These witnesses have not been declared hostile by the prosecution. Tulas (PW-2) and Roop Dhar (PW-7) have also stated ignorance about the search and seizure from the applicant. They have also

not been declared hostile by the prosecution. N.K. Baghel (PW-4), Forest Officer has stated that skin sent for examination were of wild animal Chital and G.N. Singh (PW-5) recorded the numbered FIR Ex. P/3.

10. Considering all the evidence in totality, it is apparent that the conviction of the applicant could not have been based on the evidence of Dinesh Joshi (PW-6) alone who is totally an unreliable and interested witness. Hence, the conviction recorded against the applicant by the trial court and upheld by the appellate court below is totally perverse and against the principles of law.

11. In view of the above discussion, this revision deserves to be and is accordingly allowed. The judgment of conviction and order of sentence passed by the courts below are hereby set aside. The applicant is acquitted of all the charges.

Sd/-

(Rajendra Chandra Singh Samant)
Judge