

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Revision No. 2583 of 2017

Date of Decision: 08.11.2017

Dass

... Petitioner(s)

Versus

State of Haryana

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

Present: Ms. Tanu Bedi, Advocate
for the petitioner(s).

Mr. Satish Saini, Deputy Advocate
General, Haryana

Shekher Dhawan, J.

Present revision against the judgment dated 6.4.2017, passed by learned Additional Sessions Judge, Kurukshetra, whereby appeal, filed against the judgment of conviction dated 9.12.2015 and order of sentence dated 2.9.2016, passed by the learned Presiding Officer, Special Environment Court, Kurukshetra, was dismissed.

Facts relevant for the purpose of decision of the present revision petition that criminal complaint was filed by the Inspector, Wild Life, Pinjore under Sections 9 and 39 of the Wild Life (Protection) Act, 1972 (hereinafter referred to as “the Act”) on the allegations that a dead golden cat and two iron traps (*karkies*) were found in conscious possession of the accused person in a plastic sack on 3.12.2011. The accused was apprehended on the spot and was produced before the Court within 24 hours. As per

prosecution version, PW.1 Rakesh Kumar, Wild Life Guard, PW.2 Ramkesh, Wild Life Guard and PW.3 Diwan Chand, Forest Guard were on a checking duty on Mubarakpur *kachha* road near Mattawala. At that time, petitioner was apprehended and a plastic sack was recovered from him, which was containing one dead golden cat and two iron traps. The postmortem of golden cat was got done from PW.4 Dr. Satinder Singh, Veterinary Surgeon, Government Veterinary Hospital, Panchkula and thereafter was cremated in the presence of said Veterinary Surgeon and complaint was filed.

During the process of trial, the learned trial Judge completed various proceedings of trial including recording of statements of prosecution witnesses, statement of accused under Section 313 Cr.P.C. and after considering the prosecution as well as defence versions, held the present petitioner guilty and convicted for the offences punishable under Section 51 of the Act and was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/- and in default whereof to further undergo rigorous imprisonment for a period of one month.

Revisionist preferred an appeal before the learned Additional Sessions, Kurukshetra, which was dismissed vide judgment dated 6.4.2017 and as such present revision petition before this Court.

Learned counsel for the petitioner contended that both the Courts below have not considered the real controversy and failed to appreciate the facts that the evidence produced and story put forwarded by the prosecution is highly unreliable and unbelievable. Both the Courts below have not considered the discrepancies in the statements of the witnesses and completely ignored the fact that even weapon used for killing the animal was

neither recovered nor produced before the trial Court. Even the case property of the case was not produced before the Court and the prosecution was unable to connect the same with the alleged recovery from the present petitioner.

Learned counsel for the petitioner mainly contended that golden cat is not available in this part of the country. Rather the same is available only in north-east region. There is no expert report to show that animal allegedly recovered from the possession of the petitioner was golden cat. No expert from Dehradun Wild Life Institute was called to determine the breed of the animal. All these material infirmities resulted into conviction of the present petitioner, which is liable to be set aside by way of present revision petition.

While arguing on this point, learned counsel for the respondent-State contended that undisputedly recovery of golden cat was effected from the possession of the accused. Even the confessional statement was recorded on 3.12.2011 in presence of the witnesses and the same was duly thumb marked by the present petitioner. The petitioner had also admitted that he had killed gold cat in the forest of *Dabkori*. All the three prosecution witnesses, before whom the alleged recovery was effected, were examined before the learned trial Judge and they were duly cross-examined by the defence counsel. But their testimony is unshaken and unimpeachable on the material points.

As regard to the availability of the golden cat in this region, there is statement of PW.4 Dr. Satinder Singh, who is expert in his official capacity as Veterinary Surgeon and had conducted postmortem examination,

gave an opinion that the animal recovered was golden cat. In view of the specific evidence and material being available on the file, the Court cannot decide on the basis of presumption that animals such as golden cats are not available in this part of the country. To the contrary, defence version is plea of denial which has been rightly discarded by both the Courts below. Both the Courts below have already scrutinize the prosecution evidence and there is no reason to set aside the impugned judgments and present petition deserves dismissal.

Having considered the submissions made by learned counsel for the parties and appraisal of the record of the case file, this Court is of the considered view that the prosecution has been able to prove the guilt of the accused on the basis of statements of all the three prosecution witnesses before whom the alleged recovery of golden cat was effected. The testimony of all these three witnesses have been minutely scrutinized by both the Courts below and the same has been rightly relied upon by the Courts below so as to convict the present petitioner and sentence him accordingly.

Law on the point is settled that minor contradictions in the statements of the witnesses cannot over weigh to reject the prosecution version as such. More so, petitioner has committed such an offence for which he does not deserve any sympathy. Keeping in view the fact that breed of golden cat is a rare breed, the Court does not dispute the plea taken by learned counsel for the petitioner that golden cats are rarely available in this part of the country and normally those are available in north-east region.

But this plea cannot rule out the possibility that there cannot be a golden cat

in the forest area where the alleged recovery was effected. The case property was produced before the learned trial Court and was duly identified by the witnesses during the trial. The weapon used for commission of offence was *karki*; the golden cat was caught in the *karki* and died on the spot; the same has been recovered from the possession of the accused and produced during the trial.

To the contrary, such a matter was before the Hon'ble Apex Court in ***State of Bihar v. Murad Ali Khan 1989 AIR (SC)1***, wherein it was observed as under:-

“The policy and object of the Wild Life laws have a long history and are the result of an increasing awareness of the compelling need to restore the serious ecological imbalances introduced by the depredations inflicted on nature by man. The state to which the ecological imbalances and the consequent environmental damage have reached is so alarming that unless immediate, determined and effective steps were taken, the damage might become irreversible. The preservation of the fauna and flora, some species of which are getting extinct at an alarming rate, has been a great and urgent necessity for the survival of humanity and these laws reflect a last-ditch battle for the restoration, in part at least, a grave situation emerging from a long history of callous insensitiveness to the enormity of the risks to mankind that go with the deterioration of environment. The tragedy of the predicament of the civilised man is that “Every source from which man has increased his power on

earth has been used to diminish the prospects of his successors.

All his progress is being made at the expense of damage to the environment which he can not repair and cannot foresee."

PW.4 Dr. Satinder Singh had conducted the postmortem examination and made statement that animal recovered was golden cat, who was aged about four years. At that time, no cross-examination was conducted upon the witness that the animal, so recovered, was not a golden cat. Meaning thereby, petitioner himself admitted that it was a case of recovery of golden cat only and now simply taking the plea that golden cats are normally not available in this part of the country cannot absolve the criminal liability of the present petitioner, which is otherwise established on the basis of positive evidence on the file. Both the Courts below have already scrutinized the entire evidence and there is no illegality in the impugned judgments calling for acceptance of the present revision petition.

In view of above discussions, present revision petition stands dismissed.

(Shekher Dhawan)
Judge

November 08, 2017

"DK"

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No