

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 330 of 2010**Order reserved on 04.02.2021Order pronounced on 26.02.2021

Anna Kumar Markam, son of Shri Ishwarlal Markam, aged about 34 years, resident Karhaiya, P.S. Nagri, District Dhamtari (CG)

---Applicant.**Versus**

State of Chhattisgarh through the Collector, District North Baster, Kanker (CG)

---Respondent.

For Applicant	:	Mr. Rakesh Kumar Manikpuri, Mr. Akash Agrawal on behalf of Mr. Sandeep Shrivastava, Adv.
For State/Respondent	:	Mr. Ishwar Jaiswal, PL.

Hon'ble Smt. Justice Vimla Singh Kapoor**C.A.V. Order**

On 11.09.2009 Sub Inspector Anju Chelak (PW-3) received a secrete information that in the Mansuli Bazar someone was involved in the sale of the hide of a wild animal. Acting thereupon, a team of Constables and Head Constables was constituted and eventually the accused/applicant was found in possession of the hide of barking deer at the place so informed. Panchnama (Ex.P-1) was drawn and under Ex.P-2 the seizure of four pieces of the hide of barking deer, locally known as *Kotri* was made under Ex.P-2 in presence of the witnesses PW-1 and PW-2 on the spot. After getting back to the police station FIR (Ex.P-5) was registered against the accused/applicant for the offences under Sections 51 and 52 of the Wild Life Protection Act, 1972.

2. Learned Magistrate vide judgment dated 13.04.2010 acquitted the accused/applicant of the charge under Section 52 but at the same time found him guilty under Section 51 (1) of the Wild Life Protection Act and imposed the sentence of RI for 2 years with fine of Rs.10,000/-, plus default stipulation. Learned lower appellate Court vide judgment impugned dated 03.07.2010 passed in Criminal Appeal No.07/2010

affirmed the findings recorded by learned Magistrate as a whole. Hence this revision.

3. Counsel for the accused/applicant submits that the witnesses to seizure being PW-1 and PW-2 have not supported the case of the prosecution and the finding of conviction is based on the evidence of the police people being PW-3 and PW-4 which is bad in the eye of law. He submits that no independent witnesses have been examined by the prosecution to establish the guilt of the accused/applicant, and the two examined to support the seizure have also been declared hostile.

4. State counsel however supports the judgment impugned and submits that the defence has not brought anything on record on the basis of which the evidence of PW-3 and PW-4 gets falsified. He submits that there is no legal bar to convict the accused merely on the basis of the police people if there appears to be no infirmity in their testimony.

5. Though PW-1 and PW-2 – the witnesses to seizure of the hide of barking deer have not supported the case of the prosecution yet the testimony of PW-3 is suggestive of the fact that the hide of barking deer kept in possession of the accused/applicant in a white colour bag was seized from him under Ex.P-2. The measurement and weightment proceedings of those pieces of barking deer hide were also made by this witness on the spot. The total worth of the articles seized from the possession of the applicant has been assessed at Rs.60,000/-. Furthermore, the evidence of PW-4 is also indicative of the fact that the four pieces of barking deer hide were produced before him for examination and on that being done it was found that those barking deer were killed by gunshot injuries as the marks of gunshot were very much present on those articles. His examination report is Ex.P-8. The accused/applicant has not disputed the seizure of the barking deer hide

by examining any independent witnesses and therefore, there is no reason for this Court to discard the testimony of PW-3 and PW-4 just because they happened to be the people of police and forest department. This apart, the accused/applicant did not point out any animosity or ill will with PW-3 and PW-4 which might have prompted them to speak the things against him. The unrebutted evidence collected by the prosecution appears to be quite enough for holding the accused guilty under Section 51 of the Wild Life Protection Act, and for that both the Courts below have been fully justified in so doing. No illegality or infirmity in the concurrent findings recorded by both the Courts below strikes the judicial mind of this Court to make any interference with the same particularly as far as conviction of the accused/applicant is concerned. Conviction is therefore, held to be just and proper and maintained as such.

6. As regards sentence, this Court is of the considered opinion that there would be no harm to anyone in reducing the substantive sentence of the accused/applicant to the period already undergone which in this case comes to about 10 months. Accordingly, it is held so. The sentence imposed on the accused/applicant is reduced to the period already undergone. The sentence of fine shall however remain as it is.

7. Revision is thus allowed in part.

Sd/-
(Vimla Singh Kapoor)
Judge