

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.877 OF 2023

SANJAY S/O TEJRAO MANGATE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Petitioners : Mr. N. S. Salunke a/w
Mr. A. D. Khot

APP for Respondents: Mr. S. P. Sonpawale

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CORAM : R.M. JOSHI, J

DATE : SEPTEMBER 08, 2023

PER COURT :

1. This Petition takes exception to the order dated 08.05.2023 passed by learned Additional Sessions Judge, Aurangabad in Criminal Revision Application No. 65/2023 whereby the order dated 17.02.2023 of dismissal of application for discharge passed by JMFC, Aurangabad in R.C.C. No. 2091/2019 is confirmed.

2. Petitioners are accused tried in R.C.C. No. 2091/2019 pending before learned JMFC, Aurangabad for the offences punishable under Section 9 of the Wildlife Protection Act, 1972 (for short '**the Act**') with Section 34 of the Indian Penal Code.

3. It is the contention of learned Counsel for the Petitioner that in order to attract offence under the said Act, the animals/species must be part of the scheduled I to IV as enumerated in the said Act. By drawing attention of the Court to the charge-sheet, it is contended that there is absolutely no material on record to indicate that the turtle allegedly found in the possession of the present Petitioners was a scheduled animal. He drew attention of the Court to the provisions of Section 58(e) of the Act, which mandates the identification and certification of the animal by the competent authority. It is submitted that in the instant case, there is no certificate obtained from the Veterinary Surgeon confirming that the species seized fall under any of the schedule provided under the Act.

4. He placed reliance on the judgments of the Hon'ble Apex Court in cases of M. E. Shivalingamurthy Vs. Central Bureau of Investigation, Bengaluru, (2020) 2 SCC 768 and Titty Alias George Kurian Vs. Deputy Range Forest Officer, (2021) 1 SCC 812.

5. Learned APP opposed the said submissions by referring to first information report as well as

statements of witnesses to claim that turtle was black in colour and hence, it is covered by entry no. 38 of Scheduled I. According to him, the issue as to whether the species seized falls in the said schedule can be gone during the course of trial only.

6. It is not in dispute that possession of turtle by itself is not an offence. General principle of law regarding discharge of accused is settled to say that accused is entitled to discharge if evidence which prosecution proposes to adduce to prove guilt of accused, even if fully accepted without cross-examination cannot show that accused committed the offence. In the instant case, for the purpose of framing charge against the accused for offence punishable under Section 9 of the Act, there has to be material on record if it goes unchallenged would prove offence i.e., species seized from the accused falls in any of the entries from Sr. Nos. 38 to 62 of Scheduled I to IV of the Act. In absence of any such evidence on record, framing of charge cannot be permitted.

7. The submission of learned APP that the colour of turtle seized is black and hence, it is scheduled species cannot be accepted. Even perusal of entry no. 38 shows that possession of "Black Softshell Turtle" is permitted. In this regard, it would be relevant to take note of Section 58(E) of the Act, which reads thus:

58E. Identifying illegally acquired property.—

(1) An officer not below the rank of Deputy Inspector General of Police duly authorised by the Central Government or as the case may be, the State Government, shall, on receipt of a complaint from the competent authority about any person having illegally acquired property, proceed to take all steps necessary for tracing and identifying any property illegally acquired by such person.

(2) The steps referred to in sub-section (1) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or financial institution or any other relevant step as may be necessary.

(3) Any inquiry, investigation or survey referred to in sub-section (2) shall be carried out by an officer mentioned in sub-section (1) in accordance with such directions or guidelines as the competent authority may make or issue on this behalf.

This provision clearly requires steps to be taken for tracking and identifying property illegally

acquired by such person. Thus, identification of turtle to be one of species mentioned in the entry nos. 38 to 62 of Scheduled I of the Act is must for sustaining a valid prosecution.

8. Perusal of charge-sheet shows that Police Head Constable of Pundaliknagar, Police Station, conducted raid in the house and a turtle was seized. After its seizure, turtle was sent to Forest Department, Aurangabad on 30.05.2018. There is no evidence on record to show that the seized turtle has been identified to be from schedule of the Act. Merely because in the supurdnama and statement of witness it is mentioned that the colour of turtle is black, it cannot be presumed to be "Black Softshell Turtle". Thus, even if evidence of prosecution goes unchallenged, it cannot be established that turtle seized from Petitioner is scheduled species to attract offence under the Act.

9. Thus, in such circumstance, no charge could be framed against accused for offence punishable under Section 9 of the Act. In the result, Petition is allowed in terms of prayer clauses 'B' and 'C'.

Petitioners/Accused stands discharged.

(R.M. JOSHI, J.)

Malani