



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

CRIMINAL REVISION APPLICATION NO. 94 OF 2022

1. Firoz Shah s/o Babbu Shah,
aged about 36 years,
Occ. Auto Driver,
R/o Budhwar Peth, Katol,
Tq. Katol, District – Nagpur.
2. Dinesh s/o Gajanan Belkhede,
aged about 30 years,
Occ. Labour Work,
R/o Khandala, District – Nagpur.
3. Prashant @ Golu s/o Shriram Nadekar,
aged about 36 years,
Occ. Labour Work,
R/o Jalalkheda, Tq. Narkhed,
District – Nagpur.
4. Pawan s/o Vasantao Tayade,
aged about 34 years,
Occ. Labour Work,
R/o Govindpur, Tq. Chandur Bazar,
District – Amravati.

...APPLICANTS

Versus

State of Maharashtra,
represented through Forest Officer, Amravati.

...NON-APPLICANT

Shri P.V. Navlani, Counsel for the applicants.
Ms Kavita Bhondge, Additional Public Prosecutor for the non-
applicant.

CORAM : ANIL L. PANSARE, J.

ARGUMENTS WERE HEARD ON : DECEMBER 18, 2023

JUDGMENT IS PRONOUNCED ON : DECEMBER 21, 2023

JUDGMENT :

The applicants/original accused nos. 1 to 4 have questioned the legality, correctness and propriety of the judgment and order dated 28/3/2022 passed by the learned Sessions Judge, Amravati in Criminal Appeal No. 64/2016, thereby dismissing the appeal by which the applicants had challenged the judgment and order dated 9/3/2016 passed by the learned Joint Additional Chief Judicial Magistrate, Amravati in Regular Criminal Complaint Case No. 1022/2014. The learned Magistrate has convicted the applicants for contravention of Sections 40(1)(2), 48(A), 44 and 49(B) punishable under Sections 51, 51, 51 and 51(1-A) respectively of the Wild Life (Protection) Act, 1972 (for short "the Act"). The maximum punishment imposed is of three years. The appeal having been dismissed, the conviction of the applicants has been upheld.

The facts, which are necessary to decide the present application, are as under :

2] According to prosecution, in the month of March – 2014, at Adaumar, Taluka – Bhainsdehi, District – Betul (M.P.),

original accused nos. 5 - Bhimrao and 6 - Ramaji, who have also been convicted by the learned trial Court, hunted a Panther, a wild animal specified in Schedule I, Part I (16-B) in contravention of Section 9 of the Act. These two accused have allegedly removed the skin and two teeth of the Panther. The reason for killing the Panther was that it killed a white bull belonging to accused no.5 – Bhimrao and, therefore, Bhimrao, by taking help of Ramaji, has killed the Panther. Ramaji has fired one bullet, which hit the neck of the Panther.

3] Thereafter, the skin and two teeth of the Panther were removed and kept at the house of Bhimrao. Later on, Bhimrao met one person named Tapa (not made accused). Bhimrao asked Tapa to search for a customer for Panther's skin. After few days, Tapa, Mama (not made accused) and applicant/accused no.4 - Pawan met Bhimrao and informed him that they have a customer and instructed him to bring the skin at Kundi Village, when so directed. After few days, Tapa and Pawan along with applicant/accused no.1 - Firoz and applicant/accused no.2 - Dinesh came to Kundi Village where Bhimrao showed them the Panther's skin. Thereafter, Pawan

told him to take back the skin and to wait for further instructions.

4] After few days, Pawan instructed Bhimrao to bring the skin. Bhimrao went to Pawan's house. Next day, they approached one Vinod Raut (Absconding Accused) and handed over the skin to him in the presence of applicant/accused no.3 - Prashant @ Golu. Thereafter, Prashant and Vinod brought the Panther's skin to Farid Baba Hill. Prashant informed Firoz about the possession of Panther's skin.

5] On 31/8/2014, one Vikas (not made accused) instructed Firoz to bring Panther's skin at Warud road to fix the deal. Firoz and Dinesh accordingly went in an Omni Car. Prashant and Vinod handed over the skin to Firoz and Dinesh. The skin was kept in Omni Car. Thus, applicant no.1 – Firoz and applicant no.2 – Dinesh were in possession of the skin. Vinod proceeded on motorcycle and asked them to follow him. Prashant, who was on another motorcycle said that he will follow the Omni Car. They all stopped at some distance from Warud. They called Vikas, who came with the party (punter) and took the Panther's skin in their possession. In few

moments, 5-6 people came there and apprehended them.

6] Thereafter, the Preliminary Offence Report (POR) was registered. The investigation was carried out and chargesheet came to be filed.

7] It appears that accused nos. 5 and 6, who were convicted, have not challenged the judgment and have undergone the imprisonment. The applicants have unsuccessfully challenged the judgment. The present revision has been filed mainly on the ground that the confessional statements of accused nos. 1 to 6 were not recorded in terms of sub-section 8 of Section 50 of the Act.

8] Having heard both the sides, it is evident that the entire story of prosecution, as has been narrated above, has been extracted from the confessional statements of the accused persons. Except for the confessional statements of accused nos. 1 to 6 coupled with the allegation that applicant no.1 – Firoz and applicant no.2 – Dinesh were found in possession of the skin, there is absolutely no other evidence to connect the applicants with the crime.

9] Admittedly, the confessional statements of these accused have been not recorded by an Officer of the rank of Assistant Conservator of Forests (ACF) or by any Officer above the rank of ACF. These confessions have been recorded by the Range Forest Officer, Paratwada (RFO). The confessions of applicants/accused nos. 1 to 4 have been recorded in presence of Deputy Conservator of Forests (DCF), who is above the rank of ACF. The confessions of accused nos. 5 and 6 are not even recorded in the presence of any Officer of the rank of ACF or above.

10] Be that as it may, the fact remains that the confessional statements of all the accused have been recorded by the RFO.

11] The learned Counsel for the applicants submitted that these confessions, having been not recorded by an Officer of the rank of ACF, are not admissible in evidence. The learned Counsel further submitted that the RFO, who has recorded the confessions, has been not examined and even on that count, the confessions cannot be relied upon.

12] As against this, the learned Additional Public Prosecutor submitted that the confessions of applicants/accused nos. 1 to 4, having been recorded in the presence of DCF, are admissible. She further submitted that the said confessions if looked into, the applicants have clearly admitted handling of Panther's skin, which was killed by the accused nos. 5 and 6.

13] Before I deal with the rival contentions, it will be appropriate to reproduce sub-section 8 of Section 50 of the Act. It reads thus :

“50. Power of entry, search, arrest and detention.-

(1) to (7) XXXX

(8) Notwithstanding anything contained, in any other law for the time being in force, any officer not below the rank of an Assistant Director of Wild Life Preservation or an officer not below the rank of Assistant Conservator of Forests authorised by the State Government in this behalf shall have the powers, for purposes of making investigation into any offence against any provision of this Act,-

(a) to issue a search warrant;

(b) to enforce the attendance of witnesses;

(c) to compel the discovery and production of

documents and material objects; and
(d) to receive and record evidence.”

14] Bare reading of the aforesaid provision would indicate that an Officer not below the rank of an Assistant Director of Wild Life Preservation or an Officer not below the rank of ACF authorised by the State Government in this behalf shall have the powers, for purposes of making investigation into any offence committed against the provisions of the Act. The powers available are (a) to issue warrant, (b) to enforce the attendance of witnesses, (c) to compel the discovery and production of documents and material objects and (d) to receive and record evidence. The process of recording the confessional statement would fall in sub-clause (d) of sub-section 8 of Section 50 of the Act. This confession ought to be recorded by an Officer not below the rank of an Assistant Director of Wildlife Preservation.

15] It is not the case of the prosecution that the said Officer has recorded the confessions. If that be so, the other Officer, who could have recorded the confession in terms of sub-section 8 of Section 50 must be an Officer not below the

rank of an ACF and must be authorised by the State Government in this behalf. This would require that the rank of the Officer recording confession must not be below the rank of an ACF and further should be also authorised by the State Government in this behalf. In the present case, none of the confessions have been recorded by an Officer of the rank of ACF or above. In fact, the admitted position is that the confessional statements of all the accused have been recorded by the RFO.

16] Sub-section 8 of Section 50 of the Act commences with non obstante clause and, therefore, will have overriding effect. This being the special provision, its strict compliance would be necessary. In other words, non-compliance of sub-section 8 of Section 50 of the Act will vitiate the investigation to the extent where powers under sub-section 8 of Section 50 have been exercised by an Officer not mentioned in the said provision. In the present case, the confessions having been recorded by the RFO, who is below the rank of the Officers mentioned in sub-section 8 of Section 50 of the Act, will be rendered inadmissible.

17] Once it is held that the confessional statements of the accused are inadmissible, there is absolutely no evidence against the applicants to connect them with the crime except the alleged possession of the skin by applicant nos. 1 and 2, which I will deal with little later.

18] That apart, there are multiple discrepancies in the investigation. As noted above, the persons namely Tapa, Mama and Vikas, who have played vital role, have been not made accused. There is no explanation coming forth from the prosecution as to why these persons have been not arrayed as accused. The another discrepancy is that the skin that was seized from the applicants was having four bullet holes. This is contrary to the prosecution's story that accused no.6 had fired only one bullet which hit at the neck of the Panther. The prosecution has not explained as to how the skin that has been recovered from the applicant nos. 1 and 2 was having four bullet holes.

19] In addition to above, the learned Counsel for the applicants has argued that the skin was seized on 31/8/2014. It was sent to Forensic Science Laboratory (FSL) after about 1

½ month. The prosecution is completely silent as to where was the skin preserved/kept for 1 ½ month. In other words, there is no linking evidence that the skin that was seized from applicant nos. 1 and 2 was sent to FSL. Thus the prosecution failed to prove that the skin which was seized from applicant nos. 1 and 2 was sent to FSL. It is thus not known as to which skin was sent to FSL. In the circumstances, the FSL report, which shows that skin was of Panther, is of no use to prove guilt of applicant nos. 1 and 2.

20] What is then left is confessions of applicants, which have been not recorded in compliance with sub-section 8 of Section 50 of the Act. On this point, the learned Counsel for the applicants has relied upon the judgment of a co-ordinate Bench of this Court in the case of *State of Goa Vs. Francis Masrenhas* [2016 ALL MR (Cri) 2510]. The argument before the High Court was that Forest Officers are not Police Officers and thus could record the confession, as it would not hit by Section 25 of the Evidence Act, 1872. The confession was recorded by the Range Forest Officer. The co-ordinate Bench took a view that such confession, even 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, which is a special enactment and which would prevail in the matter. Thus, the co-ordinate Bench, in a way, held that the confessional statement of accused recorded by the Deputy Range Forest Officer is not admissible.

21] The learned Counsel for the applicants has also referred to the judgment of the High Court of Kerala in the case of *Prakashan and Ors. Vs. State of Kerala* [MANU/KE/0497/2023] wherein the High Court was required to consider the effect of Section 58 of the Act. The Court held that the Officer not below the rank mentioned in the provision cannot have the power to do any acts provided under Clauses (a) to (d) and anything done by the Officer below the rank is a nullity and has no legal effect. The Court further noted that the confession recorded by the Forest Ranger is a nullity and the same has no legal effect.

22] The aforesaid finding of this Court as also of the Kerala High Court is in tune with the provision of the Act. I do not find any reason to take a different view in the matter. Sub-

section 8 of Section 50 of the Act makes it mandatory to exercise the powers under Clauses (a) to (d) therein by an Officer not below the rank of Assistant Director of Wildlife Reservation or an Officer not below the rank of ACF authorised by the State Government in this behalf. Thus, the mandate is that the investigation into the offence, as regards Clauses (a) to (d) can only be done by an Officer, who is not below the rank of Assistant Director of Wildlife Reservation. This investigation can also be done by an Officer not below the rank of ACF, but only if authorised by the State Government in this behalf.

23] Thus, what transpires is that original accused nos. 5 and 6, in the month of March – 2014, have allegedly killed the Panther. The only evidence to prove this fact was the confessional statements of original accused nos. 5 and 6. The said confessional statements, having been recorded by the RFO, are inadmissible. Therefore, there is no evidence that the Panther has been killed, as alleged. In absence of evidence on this point, there arises no question of the applicants/original accused nos. 1 to 4 handling or possessing the skin of the said Panther.

24] What remains then is that on 6/9/2014, applicant nos. 1 and 2 were found in possession of the Panther's skin. They had kept the skin in the Omni Car and, therefore, have been said to be in possession of the Panther's skin. The skin was seized by the Forest Officials. However, there is no linking evidence to prove that the skin seized was sent to FSL. The FSL report, which show the skin to be of Panther is therefore of no relevance in absence of evidence on the fact that the skin seized from the possession of applicant nos. 1 and 2 was the same as was sent to FSL. In that sense, the prosecution failed to prove that the skin seized from the possession of applicant nos. 1 and 2 was Panther's skin.

25] As regards applicant nos. 3 and 4, they were riding motorcycles when the Omni Car was intercepted. They were thus not in possession of any skin much less the Panther's skin. Their nexus with the crime is said to have been established only on the basis of the confessional statements of the applicants/accused nos. 1 to 4. These confessional statements, having been recorded by RFO, are again inadmissible and, therefore, there is no evidence of involvement of applicant nos.

3 and 4 in the crime.

26] That being so, the Courts below have committed an apparent error of law by relying upon these confessional statements to convict the applicants. The blatant illegality will have to be corrected. Hence, the following order :

ORDER

i] The revision application is allowed.

ii] The judgment and order dated 28/3/2022 passed by the learned Sessions Judge, Amravati in Criminal Appeal No. 64/2016 so also the judgment and order dated 9/3/2016 passed by the learned Joint Additional Chief Judicial Magistrate, Amravati are quashed and set-aside.

iii] The applicants are acquitted for contravention of Sections 40(1)(2), 48(A), 44 and 49(B) punishable under Sections 51, 51, 51 and 51(1-A) respectively of the Act.

iv] The applicants have been released on bail pending revision. The bail bonds of the applicants shall stand discharged.

JUDGE

Sumit