

**HIGH COURT OF TRIPURA
AGARTALA**

CRL.REV.P. NO.83 OF 2006

1. Sri Nani Gopal Das

S/o Lt. Bharat Das,
Resident of Vill Gautamnagar (Rajnagar),
P.S.- P.R. Bari Belonia,
Distt. South Tripura.

2. Sri Parimal Das,

S/o Sri Nani Gopal Das,
Resident of Vill Gautamnagar (Rajnagar),
P.S.- P.R. Bari Belonia,
Distt. South Tripura.

3. Sri Amal Das,

S/o Sri Nani Gopal Das,
Resident of Vill Gautamnagar (Rajnagar),
P.S.- P.R. Bari Belonia,
Distt. South Tripura.

.... Convict-Petitioners.

-- Vrs --

1. The State of Tripura,

..... Respondent.

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the Petitioners : Mr. B. Debnath, Advocate &
Mr. S.S.Debnath, Legal Aid
Counsel.

For the Respondent : Mr. A. Ghosh, P.P.

Date of hearing & delivery : **31.10.2014**
of Judgment & order

Whether fit for reporting : **Yes**

JUDGMENT & ORDER (ORAL)

No representation on behalf of the petitioners.
Learned P.P. is present for the State-respondent.

2. The revisional application was filed in the year 2006 and it is so long pending for hearing. On the last occasion i.e. 01.08.2014 also there was no representation on behalf of the petitioners and so learned counsel Mr. S.S.Debnath who was present in the Court was engaged as a Legal Aid counsel to conduct the case on behalf of the petitioners but today even after repeated call neither the engaged counsel of the petitioners is present nor the learned Legal Aid Counsel is also present. So the engagement of learned Legal Aid Counsel, Mr. S.S. Debnath stands cancelled.

3. Since the revisional application is pending from the year 2006, I think it should be disposed of on merit even in the absence of learned counsel of the petitioners.

4. Heard learned P.P. for the State-respondent.

5. The revisional application is directed against the judgment and order dated 05.07.2006 passed by learned Addl. Sessions Judge, Belonia in Criminal Appeal No. 6(2) of 2006 where-under the learned Addl. Sessions Judge affirmed the

judgment and order of conviction and sentence dated 23.05.2006, passed by learned SDJM, Belonia in Case No.CR 429 of 2005(F).

6. Prosecution case is that on the strength of a search warrant issued by Wild Life Warden of Trishna Wild Life Sanctuary, P.W.5 Sri Chandan Kumar Bardhan, Assistant Wild Life Warden of Rangamura Wild Life Range under Trishna Wild Life Sanctuary along with P.Ws 1,2 and 3 and in presence of P.W.4 made a search in the house of the accused persons at village Goutam Nagar(Rajnagar) under P.S. P.R.Bari and recovered from the house and house premises of the accused persons two numbers of trapping nets of catching wild animals, a skin of barking deer, Stomach and stomach materials of a barking deer, hooves of barking deer, skin, skull, hair etc. of barking deer and dressed meat of barking deer of about 12 Kgs. Meat was kept concealed in a ring well inside a polythene bag. Stomach, stomach materials, hooves etc. were recovered which was put under the earth from the house premises of the accused persons. At the time of search the accused persons fled away from their house and search was made in presence of Smt. Jogamaya Das, wife of the accused petitioner Nani Gopal Das and another Subrata Das, a relative of accused petitioner Nani Gopal Das. After recovery of those materials, Sri Chandan

Kumar Bardhan, Assistant Wild Life Warden prepared a seizure list in presence of P.Ws. 1, 2, 3 and 4 and also in presence of Jogamaya Das and took all those materials in custody. The stomach and stomach materials etc. of the barking deer were sent to Sepahijala Wild Life Sanctuary for postmortem examination and PW.6, Dr. Santosh Bhowmik after examination of those seized materials reported that it was of a barking deer. On 25.04.2005, P.W.5, the Assistant Wild Life Warden lodged the complaint before the learned SDJM, Belonia alleging violation of Section 9,27,29 of Wild Life (Protection) Act 1972 which is an offence punishable under Section 51 of the Said Act.

7. Cognizance was taken on the basis of that complaint and in course of trial, accused persons were examined under Section 251 of Cr.P.C. to which they pleaded not guilty and claimed to be tried.

8. Prosecution examined 6(six) witnesses to prove the case. P.W.5 is the complainant of the case who conducted search and seizure of meat and body remains of barking deer. P.Ws 1, 2 and 3 were the companion staff of P.W.5. P.W.4 is a resident of that locality and was working as a labourer at the relevant point of time.

9. After closure of the prosecution evidence accused persons were examined under Section 313, Cr.P.C. and thereafter in their turn, they adduced no defence evidence.

Defence case is nothing but denial of the prosecution case.

10. Learned SDJM considering the evidence on record found the accused petitioners guilty of committing offence punishable under section 51 of the Wild Life (Protection) Act and sentenced them to suffer S.I. for one year and to pay a fine of Rs.5000/- each in default to suffer S.I. for 3(three) months. The accused-petitioners preferred Criminal Appeal No. 6(2) of 2006 and the learned Addl. Sessions Judge, Belonia by impugned judgment dated 05.07.2006 dismissed the appeal and thereby upheld the judgment and order of conviction and sentence. Hence, the present revisional application.

11. P.W.5, the complainant, lodged the complaint in writing on 25.04.2005. The search and seizure of meat, skin, stomach and stomach materials, hooves, hair, skull etc. of barking deer alleged to have recovered from the house and house premises of the accused petitioners on 23.04.2005 at about 4-30 p.m., on the strength of a search warrant issued by the Wild Life Warden of Trishna Wildlife Sanctuary. The original

search warrant has not been produced. A photocopy of a search warrant has been marked as Exhibit 2 subject to objection by defence. The defence rightly raised objection since the original was not produced. Therefore, search warrant is not proved.

12. Though search warrant has not been proved, the alleged search and seizure cannot be termed as without jurisdiction since Section 50 of the Wild Life (Protection) Act prescribes the procedure for having such entry, search, arrest and detention etc. by a person prescribed under that Section. As prescribed under Section 50, the Director or any other officer authorized by him or the Chief Wild Life Warden or the authorized officer or any forest officer or any police officer not below the rank of Sub Inspector, may, if he has reasonable grounds for believing that any person has committed an offence against the act he may make entry in any place and make search in respect of captive animal, wild animal, animal article, meat, trophy, uncured trophy, specified plant or part of derivative thereof etc. The complainant being an Assistant Wild Life Warden, a forest officer was no doubt authorized to do so and hence, even if the search warrant has not been proved, the search and seizure of the materials cannot be said to be altogether illegal.

13. The evidence of P.W.5 is supported by P.Ws 1, 2, 3 and 4 in respect of the alleged search and recovery of meat, skin, stomach materials and other remains of a barking deer. The evidence of P.W.6 proved the fact that the stomach materials which were recovered were of a barking deer. It is, therefore, amply proved that meat, skin and other remains of a barking deer was recovered from the house and house premises of the accused petitioners and the accused petitioners failed to give any accounts for the same.

14. This is an offence under a Special Act and it should be tried as per the provisions prescribed under the Act. In the revisional application a point has been raised that the complainant was not authorized to make the complaint and cognizance taken on the basis of such a complaint is bad in law. Section 55 of the Wildlife Protection Act reads as follows:-

“1[55. Cognizance of offences.—No court shall take cognizance of any offence against this Act except on the complaint of any person other than—

(a) the Director of Wild Life Preservation or any other officer authorized in this behalf by the Central Government; or

2[aa the Member-Secretary, Central Zoo Authority in matters relating to violation of the provisions of Chapter IVA; or]

3[(ab) Member-Secretary, Tiger Conservation Authority; or

(ac) Director of the concerned tiger reserve; or]

(b) the Chief Wild Life Warden, or any other officer authorised in this behalf by the State Government

*2[subject to such conditions as may be specified by that Government]; or
2[(bb) the officer-in-charge of the zoo in respect of violation of provisions of section 38J; or]*

(c) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Central Government or the State Government or the officer authorized as aforesaid.]”

15. The complainant is an Assistant Wild Life Warden. So, apparently according to the provisions prescribed in Section 55 of the Act, complainant is not an authorized officer to file the complaint. No document produced to show that the complainant was authorized by the State Government to file the complaint. Even in the written complaint there is not even a whisper that the complainant has been authorized by the State Government or that complainant is an authorized officer having power to file the complaint. In his evidence also complainant did not spare a single word to show that he had the authority to file the complaint in respect of the offence punishable under the Wild Life (Protection) Act. Therefore, cognizance taken on the basis of a complaint filed by a person having no authority cannot stand and entire trial, therefore, vitiated.

16. Though it is proved that materials such as meat, skin and other remains of a barking deer were recovered and seized from the house and house premises of the accused

petitioners, a presumption has to be drawn against the accused petitioners as prescribed under Section 57 of the Act but the prosecution case cannot stand since complaint was not filed by an authorized person.

17. In view of the discussion made above, the revisional application is allowed.

18. The judgment and order of conviction and sentence dated 23.05.2006 passed by learned SDJM, Belonia in Case No. CR 429 of 2005(F) which has been affirmed by the learned Addl. Sessions Judge, Belonia, in Criminal Appeal No.6 (2) of 2006 vide judgment dated 05.07.2006 are liable to be set aside and accordingly I set aside the judgment and order of conviction and sentence and the accused petitioners are set at liberty.

19. Send back the L.C. records along with a copy of this judgment.

JUDGE