

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr. Revision No. 4 of 2008 along
with Cr. Revision No. 12 of 2008.**

Reserved on: 16th April, 2019.

Date of Decision: 30th April, 2019.

1. Cr. Revision No. 4 of 2008.

Davinder Sharma

.....Appellant.

Versus

State of H.P.

....Respondent.

2. Cr. Revision No. 12 of 2008.

Mahender Singh

.....Appellant.

Versus

State of H.P.

....Respondent.

Coram

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting? Yes.

For the Appellant(s): Ms. Tim Saran, Advocate, in Cr. R. No.4 of 2008 and Mr. N.K. Tomar, Advocate in Cr. R. No. 12 of 2008.

For the Respondent(s): Mr. Hemant Vaid and Mr. Desh Raj Thakur, Additional Advocate Generals.

Sureshwar Thakur, Judge

Both the aforesaid Criminal Revisions are being disposed of by a common judgment, as, both arise, from, a common verdict rendered, by the learned trial Court.

2. Both the aforementioned criminal revisions, stand directed, by the accused/convicts, against, the concurrently recorded verdicts by both the learned courts below, vis-a-vis, a charge framed, for, the commission, of, an offence punishable under Section 51 of the Wild Life Protection Act (hereinafter referred to as the Act), and, the consequent thereto, hence, sentences imposed, upon, them.

3. The facts relevant to decide the instant case are that on 7.5.2000, around 8.00 p.m., the police party headed by Durga Dass Sharma, incharge, CIA Solan, along with other police officials was present at Nagali rain shelter in connection with patrolling and was checking the vehicles. It is alleged that at that time a blue coloured vehicle No. HP-16-0405 came from Solan side which was stopped at the spot by Inspector D.D. Sharma and on checking the accused were found sit in the car. It is alleged that on checking the vehicle, a plastic bag was kept in the back seat of the car, which on opening was found to contain three leopard skins

of different sizes, regarding which the accused could not produce the permit and then IO seized the leopard skins, bag under memo EX.PW2/A in the presence of witnesses. The IO prepared the rukka and sent it to the police station concerned, on the basis of which FIR borne in Ex.PB came to be registered. The IO prepared the site map as also the statements of the witnesses were recorded. Thereafter police completed all the investigating formalities and arrested the accused.

4. On conclusion of the investigation, into the offence, allegedly committed by the accused, a report, under Section 173 of the Code of Criminal Procedure, was prepared, and, filed before the learned trial Court.

5. The accused/convicts stood charged, by the learned trial Court, for, theirs committing, an, offence, punishable under Section 51 of the Wild Life Protection Act (hereinafter referred to as the Act). In proof of the prosecution case, the prosecution examined 4 witnesses. On conclusion of recording, of, the prosecution evidence, the statements of the accused, under, Section 313 of the Code of Criminal Procedure, were, recorded by the learned trial Court, wherein, the accused claimed innocence, and, pleaded false implication in the case.

6. On an appraisal of the evidence on record, the learned trial Court, returned findings of conviction, upon, the accused/convicts/petitioners herein, for, theirs committing, an, offence, punishable under Section 51 of the Wild Life Protection Act. In appeals preferred therefrom, by the accused/appellants herein, before, the learned Addl. Sessions Judge concerned, the latter affirmed the apposite findings of conviction, and, the, consequent therewith imposition, of, sentence(s), upon, them, as borne, in the judgment, pronounced, by the learned trial Court.

7. The convicts/accused/petitioners herein, stand aggrieved, by the concurrent findings of conviction, recorded, by the learned Courts below. The learned counsel(s) appearing for the accused/petitioners herein, have, concertedly and vigorously contended, qua the findings of conviction, recorded by both the learned Courts below, standing not, based on a proper appreciation of the evidence on record, rather, theirs standing sequelled by gross mis-appreciation, by them, of the material on record. Hence, they contends qua the concurrent findings of conviction hence warranting reversal by this Court, in the exercise of its revisional jurisdiction, and, theirs being replaced by findings of acquittal.

8. On the other hand, the learned Additional Advocate General appearing for the respondent/State, has, with considerable force and vigour, contended qua the findings of conviction, recorded, by both the learned Courts below, rather standing based, on a mature and balanced appreciation, by them, of the evidence on record, and, theirs not necessitating any interference, rather theirs meriting vindication.

9. This Court with the able assistance of the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.

10. Initially, the learned counsel appearing, for the convicts/accused proceeded to make a vehement submission before this Court (a) that the assumption of cognizance by the learned trial Court, upon, the apposite complaint, and, thereafter, the, order framing, the, charge, and, the consequent therewith conviction, and, imposition, of, sentence, upon, the convicts/accused, by both the learned courts below, being all legally fallible, and, also being ridden with, a, gross legal infirmity, (b) sparked by the factum of the mandate of Section 55, of the Wild life (Protection) Act (hereinafter referred to as the Act), provisions whereof stand extracted hereinafter:-

“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 authorised 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 38]; 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 authorised as aforesaid].”

hence standing transgressed, (c) transgression whereof is contended to spur, from, the Divisional Forest Officer concerned, not being contemplated, to be the statutorily authorised officer, rather to make a complaint, vis-a-vis, the commission, of, the charged offence. However, the afore

submission addressed before this Court, (d) is neither weighty nor is acceptable, given it being rested, upon, the counsel(s) appearing for the petitioners, rather remaining oblivious qua the mandate, of, Section 5 of the Act, provisions whereof stand extracted hereinafter:-

“5. Power to delegate.—[\(1\)](#) The Director may, with the previous approval of the Central Government, by order in writing, delegate all or any of his powers and duties under this Act to any officer subordinate to him subject to such conditions, if any, as may be specified in the order. [\(2\)](#) The Chief Wild Life Warden may, with the previous approval of the State Government by order in writing, delegate all or any of his powers and duties under this Act, except those under clause (a) of sub-section (1) of section 11, to any officer subordinate to him subject to such conditions, if any, as may be specified in the order. [\(3\)](#) Subject to any general or special direction given or condition imposed by the Director or the Chief Wild Life Warden, any person, authorised by the Director or the Chief Wild Life Warden to exercise any powers, may exercise those powers in the same manner and to the same effect as if they had conferred on that person directly by this Act and not by way of delegation.”

(e) wherein, in sub-section (2), the, Chief Wild Life Warden is empowered, to, with the prior approval, of, the State Government, hence, delegate all or any of his powers, and, duties, as contemplated in the Act, (f) and, with sub-section

(3) thereof, also foisting, in the delegatee officer, all, the powers as are exercisable under the Act, by the delegating authority, hence, even if, the extant complaint, is, not made by the Chief Wild Life Warden, the afore factum, cannot, grip the extant complaint, with, an aura of invalidity, (g) unless, the learned Additional Advocate General fails, to, place on record, hence, material exemplifying qua the Chief Wild Life Warden rather validly delegating all the statutorily vested powers in him, vis-a-vis, the officer making the complaint, and, the afore delegation, reiteratedly hence, occurring, after adherence to the procedure, as, prescribed in sub-section (2), and, sub-section (3) of Section 5 of the Act.

11. For determining the afore factum, initially, an allusion, to Rule 49 of the Rules framed under Section 64 of the Act, is imperative, provisions of Rule 49 stand extracted hereinafter:-

“49. Cognizance of offences:- The following officers shall be authorised to make complaints under Section 55, namely;-

- (a) The Chief Wild Life Warden;
- (b) The Wild Life Warden;”

(a) wherein amongst the officers empowered, to make, a, valid complaint under Section 55 of the Act, the Wild Life

Warden is also enunciated or stipulated therein. Since, a reading of the complaint also makes upsurging, qua the complaint, being preferred, by the Wild Life Warden-cum-DFO, hence, with the Wild Life Warden, being, the officer stipulated in the Act, (b) thereupon, the extant complaint, whereupon, the accused stood charged, and, convicted, is to be construed, to be a valid complaint, made by the Wild Life Warden, and, also assumption of jurisdiction thereon, is, both legally valid and justifiable. In aftermath, the mandate borne in Section 5 of the Act, is, also deemed to beget satiation, de hors, the requisite delegating notification remaining omitted to be placed on record or hence through the afore recursings, the requisite delegation, does make, its upsurging.

12. In proof of the seizure of Ex.P-1 to P-4, being made from the exclusive, and, conscious possession, of, the accused/convicts, (i) the seizure memo borne in Ex.PW2/A, hence stood drawn, (ii) and, it contains thereon, the, signatures of the witnesses thereto, and, of the officer scribing it. The recitals borne in Ex.PW2/A were proven, by one, of the witnesses thereto, namely, Ravinder Lal, who stepped into the witness box as PW-2, (iii) and, during the course of his testification, he has rendered proof qua it

carrying his signatures, and, also the authentic signatures of the other witness thereto, one Sanjay Kumar, (iv) and, thereafter during the course of his being subjected, to, an exacting cross-examination, no affirmative elicitations hence emanated from him, for, dispelling the efficacy of Ex.PW2/A or qua it containing false recitals, (v) thereupon, all the recitals borne, in Ex.PW2/A, are, to be concluded to be unflinchingly proven. Moreover, with the Investigating Officer concerned, while stepping into the witness box as PW-3 also proving, the, valid drawing of Ex.PW2/A, and, his also enunciating therein qua the recovery of Ex.P-2 to P-4, hence, occurring therethrough, and, when during the course of his cross-examination, no elicitations rather emerging, for dispelling the efficacy, of, the preparation of Ex.PW2/A, and, also for belying, the recoveries made therethrough, (vi) thereupon, the afore exhibit is concluded to be validly prepared, and, also all the recitals occurring therein, are, also concomitantly concluded to be hence validly proven.

13. In addition, added impetus to the afore inference, is, also garnered (a) from the factum of photographic evidence, comprised in Ex.P-5 to Ex.P-6, negatives whereof are borne in Ex. P-7 to EX.P-8, rather all unveiling qua the accused/convicts hence figuring therein.

The factum of occurrence therein, of, the accused/convicts, along with, the leopard skins, as, recovered from their exclusive, and, conscious possession, through Ex.PW2/A, (b) exhibit whereof, for reasons aforestated, is concluded to be validly drawn, and, also validly proven, rather never came to be denied by the accused/convicts, nor evidence was adduced, qua the afore photographic evidence rather being manipulated, fabricated or being morphed. The effects of the afore omission, (c) is, qua hence the afore wants, rather constraining, a, conclusion qua all the recitals, borne in EX.PW2/A, rather being unflinchingly proven.

14. Lastly, the learned counsel appearing for the accused/appellants, have, contended with much vigour before this Court (a) that there exists, no proof, on record rather amply, and, potently pronouncing qua the case property borne in Ex.P-2 to P-4, as stood recovered, from, the exclusive, and, conscious possession of the convicts/accused, being, of, a prohibited animal skin or it being leopard skin, (b) given no expert evidence being adduced on record, for, establishing the factum of the seized skins, being of leopard. The afore submission, is concerted to acquire strength, from, a communication, occurring in the cross-examination of PW-4, who thereat has

admitted a suggestion, meted to him, by the counsel for the accused, that there are, a, number of wool type items, bearing resemblance hence with the skin of leopard. Moreover, none of the afore submission(s) hence hold any tenacity, as, in his cross-examination, PW-4 has, testified qua issuance of certificate, borne in Ex.PW3/B, wherein a categorical echoing occurs qua three leopard skins, as stood shown to him, rather being of leopard, (c) and, further, with, his during the course of his cross-examination, hence voluntarily making an articulation qua after, an, inspection being carried of the seized property, it being decipherable qua it being, a, genuine leopard skin or a duplicate thereof, and, further there onwards, his, testifying qua his obtaining, from, the Indian Forest College, professional training, in Wild Life Management, and, on conclusion of the training, his, receiving a certificate, for, the purpose, in respect whereof Ex.PW3/B stood issued, (d) thereupon, PW-4 is to be concluded to be an expert for the relevant purpose, and, his certificate comprised in Ex.PW3/B, is, to be also concluded, to be, a rendition of an expert evidence, vis-a-vis, the seized skins being, of, leopard, without, any further reference to any expert.

15. For the reasons which have been recorded hereinabove, this Court holds that both the learned Courts below, has appraised the entire evidence on record in a wholesome and harmonious manner, apart therefrom, the analysis of the material, on record, by the learned courts below, hence, not suffering from any gross perversity or absurdity of mis-appreciation, and, non appreciation of germane evidence on record.

16. Consequently, there is no merit in the instant criminal revision petitions, and, they are dismissed accordingly. In sequel, the impugned judgments are affirmed and maintained. All pending applications also stand disposed of. Records be sent back forthwith.

30th April, 2019.
(jai)

(Sureshwar Thakur)
Judge.