
(2023) 09 CHH CK 0032

Chhattisgarh High Court

Case No: Writ Petition (PIL) No. 121 Of 2021

People For Animals Raipur,
Unit-II

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: Sept. 11, 2023

Acts Referred:

- Wild Life (Protection) Act, 1972 - Section 43, 48A, 49C(6), 50(3A), 51, 54, 55

Hon'ble Judges: Ramesh Sinha, CJ; N. K. Chandravanshi , J

Bench: Division Bench

Advocate: Aditi Singhvi, H.S. Ahluwalia

Final Decision: Disposed Of

Judgement

1. Heard Ms. Aditi Singhvi, learned counsel for the petitioner. Also heard Mr. H.S. Ahluwalia, learned Deputy Advocate General, appearing for respondents No. 1 to 5/State.

2. The present writ petition styled as public interest litigation has been filed by the petitioner with the following prayers:

10.1 The Hon^{ble} Court may kindly be pleased to quash the order dated 15.07.2019 (Annexure P/1) and direct the respondent State and

Forest Department to proceed in accordance with law within a period of 15 days.

10.2 The Hon^{ble} Court may kindly be pleased to direct the State to take appropriate actions against the responsible officers for violating the law.

10.3 The Hon^{ble} Court may kindly be pleased to pass any further orders, as it may deem fit, in the facts and circumstances of the case.

3. Ms. Aditi Singhvi, learned counsel for the petitioner submits that the importance of conservation of wildlife cannot be denied and Chhattisgarh being a home to wild elephants and a Project Elephant State with an Elephant Reserve, plays an important role in conservation of the species which are endangered and a Schedule-I animal. Ms. Singhvi further submits that the petitioner is a Society Registered under the Societies Registration Act, 1870 having its Registration No. 31762. The petitioner society has been working for the development and welfare of the animals in the State and is actively involved in treatment of injured animals. The petitioner has filed this petition at its own cost and expenses and not at the instance of some other person. No other petition of the same nature or involving the same issue has either been filed before this Court nor is pending.

4. Ms. Singhvi submits that on 08.07.2019 Forest Crime Case No. 6287/02 was registered by the respondent Forest Department in regard to illegal transportation of domestic elephants from the State of Uttar Pradesh to State of Chhattisgarh being used for begging. An offence under Sections 48A and 49C(6) of the Wild Life (Protection) Act, 1972 (for short, "Act of 1972") was registered against the private respondent. The Range Officer, Forest Range, Raipur investigated the matter and it was found that two elephants (one male and one female) were brought to Raipur since last 25 to 30 years and the said elephants were used for begging during various festivals. The Mahavats were unable to produce the documents relating to the ownership when the same were demanded by the Forest Department. After the offence was registered the said elephants were seized and it was found that the elephants belong to one Kewla Shankar Charitable Trust which is owned by the private respondent. She further submits that at first it was intimated by the Mahavats that there were two female elephants, namely, Chanchal and Anarkali, however, during the investigation it was found that there was one male and one female elephant, namely Mithun and Anarkali respectively. The owner, private respondent herein, produce the ownership certificate of the elephants. However, it was found that proper documentation relating to the male elephant was not available as the records has not been mutated after the male elephant was donated by one Mohammad Anwar to Kewla Shankar Charitable Trust. It is pertinent to mention

that one of the elephants was blind.

5. Ms. Singhvi would further submit that after investigation it was concluded that the private respondents had violated the provisions of Sections 48A

and 49C(6) of the Act of 1972. However, surprisingly instead of following the procedure provided under the Act of 1972, the respondent forest

officials compromised the matter with the private respondents and fined them Rs. 25,000/- each, total Rs. 50,000/- and released the elephants on

Supurdnama with condition that the private respondents will get the ownership documents rectified and will not enter the State of Chhattisgarh without

permission.

6. It is further submitted by Ms. Singhvi that if an offence under Section 51 of the Act of 1972 is committed, cognizance can only be taken by the

Court under Section 55 of the Act of 1972 and the Forest officials have a very limited power to compound the offences under Section 54 of the Act of

1972. The Section 54 of the Act of 1972, reads as under:

“54. Power to compound offence. - (1) The Central Government may, by notification, empower the Director of Wild Life Preservation or any

other officer not below the rank of Assistant Director of Wild Life Preservation and in the case of a State Government in the similar manner,

empower the Chief Wild Life Warden or any officer of a rank not below the rank of a Deputy Conservator of Forests, to accept from any person

against whom a reasonable suspicion exists that he has committed an offence against this Act, payment of a sum of money by way of composition of

the offence with such person is suspected to have committed.

“|”|”|”|”|”|”|”|”|

Provided that no offence, for which a minimum period of imprisonment has been prescribed in Section 51, shall be compounded.”

7. Ms. Singhvi also submits that Section 54 of the Act of 1972 very specifically provides that the State Government may empower the Chief Wild Life

Warden or any officer of the rank not below the rank of below Deputy Conservator of Forest to accept a fine of not more than Rs. 25,000/-from any

person against whom a reasonable suspicion exists that he has committed an offence against this Act, however the proviso to this Section very clearly

provides that no offence for which a minimum period of imprisonment has been prescribed in Section 51 of the Act of 1972 shall be compounded. The

Section 51 of the Act of 1972, reads as under:

“51. Penalties. - (1) Any person who contravenes any provision of this Act (except Chapter VA and Section 38J) or any rule or order made

thereunder or who commits a breach of any of the conditions of any license or permit granted under this Act, shall be guilty of an offence against this

Act, and shall, on conviction, be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to twenty

five thousand rupees, or with both:

Provided that where the offence committed is in relation to any animal specified in Schedule-I or Part II of Schedule-II or meat of any such animal or

animal article, trophy or uncured trophy derived from such animal or where the offence relates to hunting in a sanctuary or a National Park or altering

the boundaries of a sanctuary or a National Park, such offence shall be punishable with imprisonment for a term which shall not be less than three years

but may extend to seven years and also with fine which shall not be less than ten thousand rupees:

Provided further that in the case of a second or subsequent offence of the nature mentioned in this sub-section, the term of the imprisonment shall not

be less than three years but may extend to seven years and also with fine which shall be less than twenty five thousand rupees.”

8. Mr. Singhvi further submits that in the instant matter the subject matter of the violation of Section 48A of the Act of 1972 is a Schedule-I animal

against which a minimum sentence of 03 years has been provided under Section 51 of the Act of 1972. The same cannot be compounded under

Section 54 of the Act of 1972 as has been done by the Forest Officials herein. Furthermore, the wild animals so seized could not have been released

back on Supurdnama by the Range Officer as the power for the same lies with Assistant Conservator of Forests.

9. On the other hand, Mr. H.S. Ahluwalia, learned Deputy Advocate General, appearing for respondents No. 1 to 5/State submits that a written

complaint was received to the officer of Divisional Forest Officer, Raipur that two elephants are being used for begging within the town of Raipur.

The forest staff reached to the spot and prepared seizure panchnama in which to Indian Elephants, one male and one female were taken into custody

from Mahavat of the elephants named as Rinku Sonkar and Kamlesh Giri. Thereafter, detail enquiry was conducted and it was found that these two

elephants were transported from the State of Uttar Pradesh to State of Chhattisgarh and query was made from the Mahavat regarding the ownership

documents with respect to the elephants and the permission, if any granted for transportation of the elephants from State of Uttar Pradesh to State of

Chhattisgarh. The ownership documents was seized which shows that the owner of the elephants were Kesar Shankar Tiwari and Mohammed

Ahmad and the whole proceeding was conducted in front of the two independent witnesses, namely, Amit Singh and Sunil Saha of nearby locality. On

the basis of search, seizure and enquiry conducted by the forest officials, it was found that there was clear violation of the Section 48A and 49C(6) of

the Wild Life (Protection) Act, 1972 (for short, "Act of 1972") and preliminary offence report (POR) bearing registration number 6287/02 was

registered against the Mahavat of the elephants. He also submits that Section 50 sub-section 3(A) provides as follows:

"50. 3(A) Any officer of a rank not inferior to that of an Assistant Director of Wild Life Preservation or [an Assistant Conservator of Forests],

who, or whose subordinate, has seized any captive animal or wild animal under clause (c) of sub-section (1) may give the same for custody on the

execution by any person of a bond for the production of such animal if and when so required, before the Magistrate having jurisdiction to try the

offence on account of which the seizure has been made."

10. It is further submitted by Mr. Ahluwalia that the respondent No. 5 concluded the enquiry initiated under POR No. 6287/07 and came to conclusion

on following grounds:

i. The owner of the female elephant is Prem Kumar Tiwari who is having permanent resident of Jaunpur District, State of Uttar Pradesh.

Whereas, the male elephant belongs to the Mohammad Ahmad of Hamirpur, Uttar Pradesh. It has been found that both the elephants are pet animals.

ii. It has been found that there was clear violation of the provision of Section 48A and 49C (6) of the Act of 1972.

iii. After considering various factors as mentioned in the enquiry report the authority handed over the elephants to their owner on Supurdnama with security amount of Rs. 25,000/- each for production of such elephants as and when required.â€

The impugned order dated 15.07.2019 annexed with the petition is Annexure P/1 is an execution part of the preliminary enquiry order dated

15.07.2019 which reflects that the offence under Sections 48A and 49C (6) of the Act of 1972 was registered in Crime No. 6287/02 and the security

amount mentioned as Rs. 50,000/- for two elephants.

11. Mr. Ahluwalia further submits that the respondent No. 5 vide letter dated 29.07.2019 intimated to the Divisional Forest Officer/respondent No.3

about the result of preliminary enquiry conducted by him. In the said letter, the concerned officer has specifically mentioned that after considering

relevant factors present in case, the elephants were handed over to the custody of their owners, after execution of affidavit on stamp paper of

Rs.100/-, with surety amount in mode of bankers cheque No. 278750 dated 19.07.2019 for Rs. 50,000/-. It has been categorically mentioned in the

said letter that the concerned officer has handed over the elephants on Supurdnama to the owners in front of two independent witnesses. Copy of the

letter dated 29.07.2019 is annexed as Annexure R/1 in the return filed by the State. He also submits that the offence registered under Crime

No.6287/02 is still pending against the Mahavats and the owners of the elephants. With respect of the said crime, the respondent No. 3 issued letter

dated 17.07.2019 to the Chief Wild Life Warden, Lucknow, Uttar Pradesh to verify the ownership certificate which was seized during the preliminary

enquiry. In reply to the letter dated 17.07.2019, the Principal Chief Conservator of Forest, Project Tiger, Lucknow, Uttar Pradesh vide letter dated

01.08.2019 informed to the respondent No. 3 that the ownership certificate is genuine and further, it has been mentioned that no permission was

obtained under provision of Section 43 of the Act of 1972 by the accused persons.

12. Mr. Ahluwalia also submits that upon receiving the information from the authority of State of Uttar Pradesh, the respondent No. 3 vide letter dated

30.08.2019 directed the respondent No. 5 to proceed ahead in Crime No. 6287/02 against the accused persons. He further submits that the petitioner

has wrongly interpreted the impugned order dated 15.07.2019 indicating that authority had compounded the offences instead of taking any action under Section 51 of the Act of 1972. The order dated 15.07.2019 merely reflects that security amount to be received from the accused persons under provision of Section 50 sub-section 3A of the Act of 1972. It is respectfully submitted that the respondent No. 5 has initiated the Superdnama proceeding as per provisions of Section 50(3A) of the Act of 1972 on instruction received from superior authority Principal Chief Conservator of Forest, Wild Life and Divisional Forest Officer.

13. Mr. Ahluwalia further submits that the respondent No. 3 vide letters dated 26.10.2021 and 07.04.2023 directed the respondent No. 5 to intimate about the status of the proceedings initiated under the provision of the Act of 1972 against the private respondents No. 6 and 7. In similar manner, letters were issued by respondent No. 4 vide letters dated 04.02.2020 and 06.02.2023 to the respondent No. 5 directing to intimate about the status of the investigation for offences registered under the provisions of the Act of 1972. In reply to the letters, the concerned authority i.e. respondent No. 5 vide letter dated 15.06.2023 intimated that on 31.01.2023 notices were issued to the private respondents for appearing before the office with regard to the investigation of the offence registered under the provisions of the Act of 1972, but the private respondents till date did not turned up to the notice.

14. We have heard learned counsel for the parties and perused the materials available on record.

15. Considering the submissions made by the learned counsel for the parties, we direct the authority concerned to conclude the investigation within a period of six weeks from the date of receipt of copy of this order and thereafter to submit a report before the competent Court.

16. With the aforesaid observation/direction, the present writ petition is disposed off.