

(2016) 09 KAR CK 0003

KARNATAKA HIGH COURT

Case No: Criminal Petition No. 6083 of 2016

Mrs. Miekyung Koak

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision: Sept. 1, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482

Citation: (2016) 4 AirKarR 603

Hon'ble Judges: Anand Byrareddy, J.

Bench: Single Bench

Advocate: Joshua Hudson Samuel, Advocate, for the Petitioner; K. R. Keshav Murthy, State Public Prosecutor-II, for the Respondent/State

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Anand Byrareddy, J. - Heard the learned counsel for the petitioner and the learned State Public Prosecutor.

2. The petitioner is said to be a Korean national and she is holding a spousal visa given to her, on account of the fact that her husband is pursuing his Ph.D. in Peace at the Martin Luther King University at Shillong, Meghalaya.

3. It is the case of the respondents that on 13.04.2015 at about 6.50 a.m., the petitioner was to travel from Kempegowda International Airport, Bangalore by Indigo Flight bearing No.6E-457 to Guahati. When she was subjected to security check, she had been found to possess a horn of a Chital Deer (Axis Axis). The petitioner was apprehended by the security personnel of the Airport and the matter was reported to the Station House Officer, Devanahalli Police Station and an F.I.R. came to be registered by the respondent in Crime NO.53/2015 for offences punishable under Sections 39, 40, 44, 49(B), 49(C) and 51 of the Wildlife Protection

Act, 1972 and the petitioner was arrested and the property was seized by the police under a mahazar. The petitioner was then produced before the jurisdictional Magistrate, who remanded her to judicial custody. The petitioner had moved for regular bail and thereafter she was granted bail on certain conditions which included that the petitioner shall not leave the country and was required to surrender her passport. It is that which is under challenge in the present proceedings.

The petitioner also claims that the entire proceedings are misconceived, as there is no offence committed by her under the Wild Life (Protection) Act, 1972 and in this regard, she had produced a report dated 29.04.2015 by the National Centre for Biological Sciences, which would reveal that the sample was allegedly an antler matching the DNA of the Chital Deer (Axis Axis) which is an animal classified at Schedule III of the Wild Life (Protection) Act, 1972, whereas the offences alleged under Sections 40, 44, 49(B) and 49(C) in the F.I.R. and the charge-sheet do not pertain to a Schedule III animal. Insofar as Section 39 of the Act, is concerned, the same is not applicable, as the seized article is not the outcome of any hunting referred to in Section 11 and it was neither found in a Sanctuary referred to in Section 29 of the Act nor in any National Park referred to in Section 35 of the Act.

The Magistrate, however, was not impressed by the report and has proceeded to pass the above order taking cognizance of the alleged offences. It is that which is under challenge in the present petition.

4. The learned counsel for the petitioner would further argue that Section 39 defines what would be Government property of either the State or the Central Government. It states that for it to constitute Government property, the wild animal must have been either hunted or kept or bred in captivity or hunted in contravention of the provision of the Wild Life Protection Act or any rule or order made thereunder or found dead or killed by mistake and any animal article, trophy, uncured trophy or meat should be derived from the wild animal mentioned above. And that trade or commerce in wild animals, animal articles and trophies was to be shown as being carried on. It was not the respondent's case that the petitioner was indulging in any such trade or commerce. Further, no document has been produced to show that the antler has been derived from a hunted animal or an animal kept or bred in captivity or hunted or obtained from an animal found dead or killed by mistake. Hence, the alleged "antler" cannot be termed as Government property referred to in Section 17-H. Even assuming that an "antler" could be construed Government property, it is not the case of the respondents that the petitioner was in possession of the same for more than 48 hours. Thus, if 48 hours has not elapsed after the petitioner coming in possession, such act does not amount to an offence, as the person has that time period to report its possession.

The report of the expert is that the antler sample sent for forensic examination was found to match the DNA of the Chital deer species. The allegation in the

charge-sheet was the petitioner was found to possess chital deer in her check-in baggage. It was not practicable for a chital deer to be carried in her baggage. Therefore, it is contended that this itself shows that there is non-application of mind. The petitioner thus seeks that the proceedings be quashed and there be a direction for release of the petitioner's passport.

5. On the face of it, it is evident that the petitioner was in possession of an antler. The antler of a deer is not really a horn, but a bony skeletal protuberance of the skull and consists mainly of the protein collagen and the mineral calcium hydroxyapatite. Antlers occur in most species of the deer family and are grown and shed annually, typically only by males. (See: "Indian Journal of Traditional Knowledge", Volume-9(2), April 2010 pages 245 to 251.)

6. Therefore, the piece of antler which the petitioner was carrying in her baggage was a souvenir she was carrying back home to Korea and the same being characterised as Government property or as part of an animal, is itself misconceived. The question of applying several provisions, as rightly contended by the learned counsel for the petitioner, does not arise. The entire proceedings are misconceived and therefore the petition is summarily allowed and the proceedings are quashed. The Passport that has been seized shall be released forthwith to the petitioner.