

(1998) 12 BOM CK 0047

Bombay High Court

Case No: Criminal Revision Application No. 127 of 1997

The State of
Maharashtra

APPELLANT

Vs

Capt. C.P. Krishna Nair
and others

RESPONDENT

Date of Decision: Dec. 21, 1998

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 377
- Evidence Act, 1872 - Section 101
- Wild Life (Protection) Act, 1972 - Section 51, 58(2)

Citation: (1999) 5 BomCR 286 : (1999) 1 BOMLR 873

Hon'ble Judges: D.G. Deshpande, J

Bench: Single Bench

Advocate: J.S. Pawar, app, for the Appellant; S.V. Marwadi, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

D.G. Deshpande, J.

Heard J.S. Pawar, A.P.P. for the State/appellant and Mr. Marwadi for the respondents.

2. The State has filed this application challenging the Order of Magistrate, 22nd Court, Andheri, Mumbai G.V. Wadekar dated 3-7-1996 discharging all the respondents from their prosecution under the provisions of The Wild Life (Protection) Act, 1972 (in short "the Act").

3. It was contended by the learned A.P.P. for the appellant that finding of the Magistrate that the complaint was barred by limitation was wrong because the bird Peafowl (*Pavo Cristatus*) at Sr. No. 11 in Part III of Schedule I was a protected bird which was found in possession of the accused-respondents, is made punishable

under the proviso to section 51 and the sentence that is prescribed is six years and hence the complaint was filed within limitation. Mr. Marwadi tried to contend from the report of Zoology Expert Dr. M.S. Pradhan that the bird was described by Dr. Pradhan as Pavo Cristatus Linn and hence according to him this was different species of birds not falling under Part III of Schedule I of the Act.

4. It is true that in his report Dr. Pradhan has referred to this bird as Pavo Cristatus Linn. However, the Book on Indian Birds written by Salim Ali and published by Bombay Natural History Society in its Edition of 1979 at Entry No. 71 described this bird in the local name as "Mor" or "Mayura". It comes under the head of Common Peafowl and the latin name is Pavo Cristatus Linnaeus and the female species is called hen. The bird is fully described in this entry and therefore it is clear that the bird found with the accused- respondents was the bird coming under Entry No. 11 of Part III of Schedule I of the Act, and as such the punishment u/s 51 was for six years and consequently the complaint was filed within limitation.

5. Mr. Marwadi however further contended that so far as the joinder of accused is concerned, the complainant has joined all the Directors of Hotel Leela Kempenski from accused No. 1 to 13 or respondent No. 1 to 13. In view of section 68, it was necessary for the complainant to plead in their complaint that the Directors who are made accused were persons in charge of and were responsible for the conduct of the business of the company. According to Mr. Marwadi these particulars were wanting in the complaint and therefore at least respondent Nos. 2 to 12 are liable to be discharged. The learned A.P.P. on the other hand contended that as per sub-section (2) of section 58 the burden of proving that the offences were committed without the consent and connivance of the Directors accused No. 2 to 12 was on the accused and since the case was at the stage of recording evidence, it was open to the accused respondents to discharge their burden and get acquitted.

6. It is true that as per sub-section (2) of section 58 burden of proving exception is on the accused. However, that does not absolve the complainant to make necessary allegations regarding the compliance of sub-section (1) of section 58. There are number of judgments of Supreme Court in this regard and consequently the prayer of Mr. Marwadi is required to be considered.

7. However, from the record that is produced, it is found that accused No. 1 was the Chairman, accused No. 2 was the Managing Director and the accused No. 3 was the person with whom different officers under the Act have entered into correspondence in respect of the offences. These three are therefore directly concerned in the day to day working of the accused No. 1 and therefore prayer of Mr. Marwadi cannot be considered in this regard For all these reasons, I pass the following order :

ORDER

Application partly allowed. It is held that the complaint is within limitation. However, respondent Nos. 3 to 12 are discharged from the proceedings. Proceedings in respect of respondent Nos. 1, 2, 13 and 14 to proceed according to law. Parties to appear before the trial Court on 22-1-1999. All other points, not considered above and which can be raised at the time of the trial are kept open.

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8. Application partly allowed.