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NATIONAL JUDICIAL ACADEMY



**Training of Trainers Workshop to Build Master Trainers on Prevention of
Cruelty to Animals Act, 1960
27th and 28th January, 2016**

READING MATERIAL

COMPILED & PREPARED BY

Ms. Paiker Nasir, Research Fellow

&

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NATIONAL JUDICIAL ACADEMY

TRAINING OF TRAINERS WORKSHOP TO BUILD MASTER TRAINERS ON PREVENTION OF CRUELTY TO ANIMALS ACT, 1960
JANUARY 27 & 28, 2016 (SE-2) [Yoga classes-6 AM to 7 AM Daily]

PROGRAMME SCHEDULE

Programme Coordinators: Ms. Paiker Nasir, Research Fellow & Ms. Shruti Jane Eusebius, Law Associate, National Judicial Academy

Wednesday January 27, 2016	10:00 AM – 12:30 PM SESSION 1		L U N C H B R E A K	01:30 PM – 02:30 PM SESSION 2		T E A B R E A K	03:00 PM – 04:00 PM SESSION 3		T E A	04:30 PM – 05:30 PM SESSION 4		
	Overview of Animal Welfare Laws in India: Comparison with International Standards			Jurisprudence and Ethics of Animal Welfare			Animal Welfare Legislations, Challenges and Case studies			Landmark Judgments in Animal Welfare		
	Speaker Smt. Maneka Gandhi Hon'ble Union Minister for Women & Child Development, Union of India			Speaker Hon'ble Justice KSP Radhakrishnan			Speaker Mr. N.G Jayasimha			Speaker Mr. Mihir Samson		
Thursday January 28, 2016	9:00 AM – 10:00 AM SESSION 5		T E A B R E A K	10:30 AM – 11:30 AM SESSION 6		T E A B R E A K	12:00 PM – 01:00 PM SESSION 7		L U N C H B R E A K	B R E A K	02:00 PM – 03:00 PM SESSION 8	
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	Speaker Mr. N.G Jayasimha			Speaker Smt. Gauri Maulekhi			Speakers Mr. N.G Jayasimha Smt. Gauri Maulekhi			Speaker Mr. Ritwick Dutta		
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Animals and Birds Charitable Trust and Ors.
Vs.
Municipal Corporation of Greater Mumbai and Ors.

Equivalent Citation: 2015(4)ABR242, 2015(4)BomCR1

Hon'ble Judges/Coram:

Abhay Shreeniwas Oka and A.K. Menon, JJ.

Brief Facts

In this Public Interest Litigation, the attention of the Court is invited to the plight of the horses and ponies used for victorias and horse carriages in the City of Mumbai. It is pointed out that the victorias/horse carriages are being used in the City of Mumbai only for joyrides and not as a mode of public conveyance. The attention of the Court is also invited to the conditions of horse stables in the City of Mumbai.

The First Petitioner made an Application under the Right to Information Act, 2005 seeking information about the licences granted to the stables of horses and ponies used for pulling the carriages and joyrides in the City of Mumbai. The information was furnished by the First Respondent Mumbai Municipal Corporation. The Municipal Corporation stated that a licence under Section 394 of the Mumbai Municipal Corporation Act of 1888 is issued for horses' stables. It was, however, contended that the subject of granting permission to keep the horses for entertainment/horse rides/joy carts does not come within the purview of the Public Health Department of the said Corporation. It was stated that the prosecutions have been lodged against the four horse stables from "D" Ward Office. there were four horse stables existing in the city of Mumbai which are unlicensed for which the prosecutions have been lodged. The Municipal Corporation forwarded to the Petitioners special conditions which are incorporated in the licenses granted for keeping the horses. In the said stables, the horses are consistently standing in their own dung for hours. The dung is thrown into dustbins and is allowed to flow into the drains. The stables are maintained in a very unhygienic condition. The dung of the horses and ponies can cause tetanus

on coming in contact with a human wound. Majority of the horses and ponies used for carriages in the City of Mumbai do not have proper stables or a shelters to live in.

Various instances of cruelty to horses and ponies used for victorias and joyrides have been set out in the Petition. The horses are forced to overwork and they regularly suffer from various injuries. The instances of accidents suffered by the horse carriages/victorias used for joyrides are pointed out in which the horses have suffered injuries. The provisions of the Prevention of Cruelty to Animals (Licensing of Farriers) Rules, 1965 have been violated. No horse or pony is registered under the Performing Animals (Registration) Rules, 2001

Decision of the High Court

The high court relied upon the law laid down by the Apex Court in the case of Animal Welfare Board of India. The law laid down in Paragraph 72 of the said judgment reads thus:

"72. Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word "life" has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution. So far as animals are concerned, in our view, "life" means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honour and dignity. Animals' well-being and welfare have been statutorily recognised under Sections 3 and 11 of the Act and the rights framed under the Act. Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Sections 3 and 11 of the PCA Act read with Article 51-A(g) of the Constitution. Right to get food, shelter is also a guaranteed right under Sections 3 and 11 of the PCA Act and the Rules framed thereunder, especially when they are domesticated. The right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. The right, not to be beaten, kicked, overridden, overloaded is also a right recognised by Section 11 read with Section 3 of the PCA Act. Animals also have a right against human beings not to be tortured and against infliction of unnecessary pain or suffering.

Penalty for violation of those rights are insignificant, since laws are made by humans. Punishment prescribed in Section 11(1) is not commensurate with the gravity of the offence, hence being violated with impunity defeating the very object and purpose of the Act, hence the necessity of taking disciplinary action against those officers who fail to discharge their duties to safeguard the statutory rights of animals under the PCA Act."

The law laid down by the Apex Court in the said decision can be summarized as under:

(a) Under Clause (g) of Article 51A of the Constitution of India, it is the fundamental duty of every citizen to have compassion for living creatures which means concern for their suffering, sympathy, kindness, etc.;

(b) Clause (h) of Article 51A of the Constitution of India provides that it shall be the duty of every citizen to develop humanism which includes sensibility for our species;

(c) Clauses (g) and (h) of Article 51A of the Constitution of India will have to be read into the PCA Act and especially into Sections 3 and 11 thereof;

(d) Article 21 of the Constitution of India protects any disturbance from the basic environment which includes animal life which is necessary for human life;

(e) So far as the animals are concerned, life means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honour and dignity;

(f) Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Sections 3 and 11 of the PCA Act read with Clause (g) of Article 51A of the Constitution of India;

(g) Right to dignity and fair treatment is not confined to human beings alone, but it applies to animals as well;

(h) Right not to be beaten, kicked or overridden is also a right recognized by Sections 3 and 11 of the PCA Act;

High Court's view on Prevention of cruelty against animals

- a) The use of horse driven carriages/victorias in the city of Mumbai for joy rides is completely illegal
- b) All the Authorities of the State shall ensure that use of such horse driven carriages and/or victorias in the city of Mumbai shall be completely stopped on expiry of a period of one year from today.
- c) The State Government shall also formulate a scheme for rehabilitation of the horses used for plying victorias in the city of Mumbai. If any Animal Welfare Organization comes forward to take care of the horses, the State Government shall be free to consider the said option
- d) All the concerned Authorities of the State to take action in accordance with the provisions of the PCA Act in case of violation of the provisions of the PCA Act by use of horses and ponies for joyrides in the city of Mumbai. The Petitioners and the intervenors are free to point out the instances of violations to the Concerned Authorities who shall be under an obligation to take action in accordance with law.

ANIMAL WELFARE BOARD OF INDIA v. A. NAGARAJA

Equivalent Citation: (2014)7SCC547, 2014(6)SCALE468

Hon'ble Judges/Coram: K.S. Panicker Radhakrishnan and Pinaki Chandra Ghose, JJ.

Brief Facts

The present case pertains to the Rights of Animals under our Constitution, laws, culture, tradition, religion and ethology, which we have to examine, in connection with the conduct of Jallikattu, Bullock-cart races etc. in the States of Tamil Nadu and Maharashtra, with particular reference to the provisions of the Prevention of Cruelty to Animals Act, 1960 (for short 'the PCA Act'), the Tamil Nadu Regulation of Jallikattu Act, 2009 (for short "TNRJ Act") and the notification dated 11.7.2011 issued by the Central Government Under Section 22(ii) of the PCA Act.

In this case, the Animal Welfare Board of India (AWBI) has brought into the spotlight, the customs and practices involving cruelty and torture of animals for human pleasure. It has been argued that cruel animal usage in events like Jallikattu, Bullock-cart Race and such events which per se violate Sections 3, 11(1)(a), 21 and 22 of Prevention of Cruelty to Animals Act, 1960.

Decision of the Supreme Court

Supreme Court's view on Rights of Animals

What is noteworthy is that at the outset the Supreme Court set the focus of the discussion on the issue in the case to be the welfare and the well-being of the animals, and not the stand point of the Organizers and other stakeholders in the events. Recognizing the role of human beings as being in domination over sentient beings, the Supreme Court stressed on the necessity of deciding the issue on hand on the basis of the principle of the "Species Best Interest", subject to just exceptions, out of human necessity.

The Supreme Court stressed on the role of the courts with relation to the rights of animals and observed that PCA Act being a welfare legislation should be construed bearing in mind the purpose and object of the Act and the Directive Principles of State Policy. In the matters of welfare legislation, the provisions of law should be liberally construed in favour of the weak and infirm. Court also should be vigilant to see that benefits conferred by such remedial and welfare legislation are not defeated by subtle devices. Regulations or guidelines, whether statutory or otherwise, if they purport to dilute or defeat the welfare legislation and the constitutional principles, Court should not hesitate to strike them down so as to achieve the ultimate object and purpose of the welfare legislation. Court has also a duty under the doctrine of *parens patriae* to take care of the rights of animals, since they are unable to take care of themselves as against human beings.

Noting the lack of international agreements and covenants ensuring the welfare of animals, the Supreme Court opined that from the national and international perspective, every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity. Animal has also honour and dignity which cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks.

Furthermore, the Supreme Court has stressed that every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity. Animal has also honour and dignity which cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks.

In this case, the Supreme Court has interpreted the word 'life' in Article 21 of the Constitution, to include the basic environment which includes all forms of life, including animal life, which are necessary for human life. The Court opined that so far as animals are concerned, "life" means something more than mere survival or existence or instrumental value for human-beings, but to lead a life with some intrinsic worth, honour and dignity.

Rights of Animals under the PCA Act

Animals' well-being and welfare have been statutorily recognized under Sections 3 and 11 of the Act and the rights framed under the Act. Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right

guaranteed to the animals under Sections 3 and 11 of the PCA Act read with Article 51A(g) of the Constitution. Right to get food, shelter is also a guaranteed right Under Sections 3 and 11 of the PCA Act and the Rules framed thereunder, especially when they are domesticated. Right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. Right, not to be beaten, kicked, over-rider, over-loading is also a right recognized by Section 11 read with Section 3 of the PCA Act. Animals have also a right against the human beings not to be tortured and against infliction of unnecessary pain or suffering. Penalty for violation of those rights are insignificant, since laws are made by humans. Punishment prescribed in Section 11(1) is not commensurate with the gravity of the offence, hence being violated with impunity defeating the very object and purpose of the Act, hence the necessity of taking disciplinary action against those officers who fail to discharge their duties to safeguard the statutory rights of animals under the PCA Act.

Violation of Animal Rights under PCA Act in Jallikattu and Bullock Cart Races

The Supreme Court observed that during Jallikattu and bullock cart races, many animals were observed to engage in flight response as they try to run away from arena when they experience fear or pain, since area was completely enclosed. Jallikattu demonstrated link between actions of humans and fear, distress and pain experienced by bulls. The rough or abusive handling of Bulls compromises their welfare and for increasing Bulls fear, often, they were pushed, hit, prodded, abused, causing mental as well as physical harm. The organizers of Jallikattu were depriving rights guaranteed to bulls under Section 3 of PCA Act. Sadism and perversity was writ large in actions of organizers of Jallikattu and event was meant not for well-being of animal, but for pleasure and enjoyment of human beings.

The Supreme Court dealt with the issue as to whether bulls would be performing animals under the scope of the PCA Act and other legislations, and opined that bulls are not anatomically designed to perform but are forced to perform through the infliction of pain and suffering. In Jallikattu, Bull is expected to fight with various Bull tamers, for which it is incited solely to provide entertainment for the spectators by sale of tickets or otherwise. Inciting the Bull to fight with another animal or human being matters little, so far as the Bull is concerned, it is a fight, hence, cruelty. Jallikattu, Bullock-cart Race, therefore, violate not only Sections, 3, 11(1)(a) & (m) and

Section 22, but also the notification dated 11.7.2011 issued by the Central Government Under Section 22(ii) of the PCA Act.

The Supreme Court analysed the scope of the term 'cruelty to animals' as provided in the PCA Act and opined that if an animal is in pain, distress, or acute or unduly prolonged discomfort. In its study of the reports on the events like Jallikattu, the Supreme Court opined that Bulls involved in these events were being treated with extreme cruelty and suffering, violating the provisions of Section 11(1) of the PCA Act

As regards the application of the doctrine of necessity, the Supreme Court opined that animal welfare laws have to be interpreted keeping in mind the welfare of animals and species best interest subject to just expectations out of human necessity mentioned under Sections 11 (3) and 28 of the Prevention of Cruelty to Animals Act, 1960. The said exceptions were clarified to be unavoidable activities though these cause pains and sufferings to animals. But other activities which are avoidable and which are not exceptions under sub section 11(3) and 28 and which do not arise out of human necessity (for eg. Jallikattu) violate Sections 3 and 11 of the PCA Act and cannot be permitted because pain, suffering and anxiety inflicted to bulls during Jallikattu events is solely for human pleasure and can be avoided.

Jallikattu or Bullock-cart race, from the point of the animals, is not an event ensuring their well-being or an event meant to prevent the infliction of unnecessary pain or suffering, on the contrary, it is an event against their well-being and causes unnecessary pain and suffering on them. Hence, Section 3 of PCA Act has been violated while conducting Jallikattu and Bullock-cart race.

The Supreme Court held that the events such as Jallikattu, Bullock-cart Races violate Sections 3, 11(1)(a), 21 and 22 of PCA Act. The Supreme Court held that rights guaranteed to bulls under Sections 3 (Duties of persons having charge over animals) and 11 (Penal provision regarding cruel treatment of animals) of PCA Act read with Articles 51A(g) & (h) are cannot be taken away or curtailed, except Under Sections 11(3) and 28 of PCA Act.

The Supreme Court also directed the States, Central Government, Union Territories, MoEF and AWBI to protect and safeguard the rights on animals under the PCA Act and to take appropriate steps to see that the persons-in-charge or care of animals, take reasonable measures to ensure the

well-being of animals. Directions were also given to take steps to prevent the infliction of unnecessary pain or suffering on the animals, to ensure that the provisions of Section 11(1)(m)(ii) scrupulously followed, meaning thereby, that the person-in-charge or care of the animal shall not incite any animal to fight against a human being or another animal. Even in cases where necessity requires the infliction of pain on an animal under Section 11(3), the AWBI and the Governments were enjoined to ensure that unnecessary pain and suffering is not inflicted on the animal and scientific methods be adopted to achieve the same. The Supreme Court also directed that steps should be taken to impart education in relation to human treatment of animals in accordance with Section 9(k) inculcating the spirit of Articles 51A(g) & (h) of the Constitution.

The Supreme Court expressed its expectations from the Parliament to elevate rights of animals to that of constitutional rights, as done by many of the countries around the world, so as to protect their dignity and honour. Expectations are also cast on the Parliament to make proper amendment of the PCA Act to provide an effective deterrent to achieve the object and purpose of the Act and for violation of Section 11, adequate penalties and punishments should be imposed, and to ensure that the provisions of the PCA Act, the declarations and the directions issued by this Court are not properly and effectively complied with so that the purpose and object of PCA Act could be achieved.

The Supreme Court ruled that TNRJ Act was repugnant to PCA Act, which is a welfare legislation and hence was constitutionally void, being violative of Article 254(1) of the Constitution of India. Directions were given to the AWBI to take effective and speedy steps to implement the provisions of PCA Act in consultation with SPCA and make periodical reports to the Governments and if any violation is noticed, the Governments should take steps to remedy the same, including appropriate follow-up action.

IN THE HIGH COURT OF DELHI

People for Animals

Vs.

Mohazzim and Ors.

Equivalent Citation: 2015(3)RCR(Criminal)94

Hon'ble Judges/Coram: Manmohan Singh, J.

Brief facts:

An intimation was given to SHO PS Lajpat Nagar, New Delhi for violation of various provisions of Prevention of Cruelty (Capture of Animals) Rules, 1979. Police on 13th October, 2004 seized birds and animals and registered FIR against the owner. The same was shifted to recognized body of the Ministry of Environment and Forest, Govt, of India. The owner moved the application for release of the birds on superdari. The same was allowed by releasing the birds on superdari. The complainant, i.e., People for Animal filed the revision petition. The revision petition was dismissed despite of arriving at a finding that the respondent is not the owner of the birds as they are not exotic and the respondent/alleged owner has not committed any cruelty and therefore, the respondent cannot be deprived of his property if he is otherwise entitled for the same. The order at present is only confined to birds. Coloured photographs have been filed on behalf of NGO people for animals which would show that the birds were kept in small cages though it is not sure whether their wings and tails were cut or not. No order was passed to be released them in the open sky. I have been informed by the learned counsel for the petitioner i.e. NGO People for Animals that more than thousands of birds are subjected to pain as the so called owner put them in small cages and sell them in the commercial market for his vested rights, despite of statutory and constitutional right to live with dignity.

The Supreme Court has recently recognized the five fundamental rights of the animals including the right to live with dignity and announced twelve stringent measures/directives for the Govt. and other implementing authorities to stop cruelty on animals in the case of A. Nagaraja & Ors. v. Animal Welfare Board of India on 7th May, 2014.

It is argued that the so-called owners were given superdari of birds without hearing the petitioner.

Held:

After hearing both sides, this Court is of the view that running the trade of birds is in violation of the rights of the birds. They deserve sympathy. Nobody is caring as to whether they have been inflicting cruelty or not despite of settled law that birds have a fundamental right to fly and cannot be caged and will have to be set free in the sky. Actually, they are meant for the same. But on the other hand, they are exported illegally in foreign countries without availability of proper food, water, medical aid and other basic amenities required as per law. Birds have fundamental rights including the right to live with dignity and they cannot be subjected to cruelty by anyone including claim made by the respondent. Therefore, I am clear in mind that all the birds have fundamental rights to fly in the sky and all human beings have no right to keep them in small cages for the purposes of their business or otherwise. The petition requires consideration.

Laxmi Narain Modi
Vs.
Union of India (UOI) and Ors.

Equivalent Citation: 2014(1)CDR284(SC), (SCSuppl)2015(2)CHN31, 2014(4)FLT248, 2014(1)SCALE754, (2014)3SCC143, 2014 (4) SCJ 343

Hon'ble Judges/Coram:

K.S. Panicker Radhakrishnan and Pinaki Chandra Ghose, JJ.

ORDER

K.S. Panicker Radhakrishnan, J.

1. We, in our order dated 23.8.2012, had highlighted the extreme necessity of constituting State Committees for the purpose of supervising and monitoring the implementation of the provisions of the Prevention of Cruelty to Animals (Establishment and Registration of Societies for Prevention of Cruelty to Animals) Rules, 2000, the Environment Protection Act, 1986, the Solid Waste (Management and Handling) Rules, 2000, the Prevention of Cruelty to Animals (Slaughter House) Rules, 2000 etc.

2. We passed another order on 10.10.2012 and, following that order, almost all the States and Union Territories have constituted the State Committees. On 27.8.2013, we passed a detailed order directing those Committees to implement the broad framework prepared by the MoEF, which we have incorporated in the said order. We also directed the various State Committees to file an Action Taken Report. Few Committees have filed their Action Taken Reports.

3. We notice that there is no periodical supervision or inspection of the various slaughter houses functioning in various parts of the country. Action Taken Reports would indicate that, in many States, slaughter houses are functioning without any licence and even the licenced slaughter houses are also not following the various provisions as well as the guidelines issued by the MoEF, which we have already referred to in our earlier orders. We feel that the presence of an experienced Judicial Officer in the State Committees would give more life and light to the Committees, who

can function as its Convener. The Convener, so appointed, would see that the Committees meet quite often and follow and implement the provisions of the Act as well as the guidelines issued by the MoEF, which has been made a part of our order dated 27.8.2013.

4. In such circumstances, we are inclined to request the Chief Justices of the various High Courts in the country to nominate the name of a retired District Judge for a period of two years as a Convener of the Committee so as to enable him to send the quarterly reports to this Court. First report be sent within two months. Communicate this order to the Chief Justices of the various High Courts in the country, along with a copy of this Court's orders dated 23.8.2012, 10.10.2012 and 27.8.2013. We fix a consolidated remuneration of Rs. 20,000/- per month as honorarium to be paid to the District Judge (Retd.), which will be borne by the respective State Governments/Union Territories, as the case may be. Union of India and various State Governments have raised no objection in adopting such course, so that the Committees could function efficiently and the provisions of the Act and the framework prepared by the MoEF could be given effect to in its letter and spirit.

ITEM NO.17

COURT NO.4
S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SECTION PIL(W)

Writ Petition(s) (Civil) No(s). 881/2014

GAURI MAULEKHI

Petitioner(s)

VERSUS

UNION OF INDIA AND ORS.

Respondent(s)

(with appln. (s) for directions and exemption from filing O.T. and office report) WITH

W.P. (C) No. 210/2015 (With appln(s) for directions and exemption from filing OT and office report)

Date : 13/07/2015 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Petitioner(s) Mr. Anand Grover, Sr. Adv.
Ms. Nithya Rajshekhar, Adv.
Mr. Purushottam Sharma Tripathi, Adv.
Mr. Mukesh Kumar Singh, Adv.

Dr. Manish Singhvi, Adv.
Mr. Mumal Rajvi, Adv.
Mr. D.K. Devesh, Adv.
Mr. Shantanu Sagar, Adv.

For Respondent(s) Ms. Binu Tamta, Adv.
Ms. Vimla Sinha, Adv.
Mr. Sridhar Pottaraju, Adv.
For Ms. Sushma Suri, AOR

Mr. Anip Sachthey, Adv.
Ms. Shagun Matta, Adv.

Ms. Vimla Sinha, Adv.
for Mr. Gopal Singh, AOR

Mr. Siddhjarth Singh, Adv.
Mr. Samir Ali Khan, Adv.

Ms. Rachana Srivastava, Adv.

Mr. Milind Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Learned counsel for the rival parties are agreed, that

the suggestions formulated by all the respondents, and incorporated in annexure A-2 placed on the record of this case (along with the affidavit dated 28.5.2015, filed by Mr. Banshi Dhar Sharma, IPS, Director General, Sashastra Seema Bal), deserves to be accepted, and an appropriate order need be passed for implementation thereof.

Based on the acceptance of the proposals, we direct all concerned, to implement the same forthwith. Whilst doing so, it shall be imperative for all the concerned State Governments to constitute District SPCAs, in each and every District of the State, as per Rule 3 of the SPCA Rules, within four weeks from today. Likewise, the State Governments concerned are directed to constitute State Animal Welfare Boards, to supervise and co-ordinate with the District SPCA. The aforesaid State Animal Welfare Boards, shall also be constituted within four weeks from today.

All State Governments concerned are directed to submit compliance report to this Court, within eight weeks from today. The aforesaid compliance report shall be verified by respondent no.7, i.e., The Secretary, Animal Welfare Division, Ministry of Environment and Forests, New Delhi, within a further period of four weeks.

List the instant writ petitions for further consideration on 16.11.2015.

(Renuka Sadana)
Court Master

(Parveen Kr. Chawla)
AR-cum-PS

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
WRIT PETITION (PIL) NO. 41 OF 2013

Mrs Gauri MaulekhiPetitioners.

Versus

Government of Uttarakhand and others.Respondents.

Mrs. Gauri Maulekhi, petitioner, in person.
Mr. Vinay Kumar, Standing Counsel for the State of Uttarakhand / respondent nos. 1 to 4.
Mr. Shailendra Singh Chauhan, Advocate for respondent no. 5.
Mr. D.S. Patni, Advocate for respondent no. 6.

Coram: Hon'ble Barin Ghosh, C.J.
 Hon'ble Servesh Kumar Gupta, J.

Barin Ghosh, C.J. (Oral)

The writ petition seeks implementation of the provisions contained in Animal Birth Control Rules, 2001 by the State Government and Authorities under it. Accordingly, following prayers have been made in the writ petition:-

I. To direct the Principal Secretary Urban Development Government of Uttarakhand to create a regular budgetary allocation to discharge the obligations imposed upon the local authorities under Rule 6 of the Animal Birth Control Rules, 2001.

II. To instruct the Department of Urban Development to create Animal Birth Control (ABC) Campus for feral dogs in each urban area in the manner suggested below-

a) For areas with a human population exceeding 1 lakh, a large ABC campus as per prescribed standard operating procedures comprising at least 300 kennels to house feral dogs before and after surgical intervention.

b) For areas with a human population less than 1 lakh a small ABC campus as per prescribed standard operating procedures comprising at least 100 kennels to house feral dogs before and after surgical intervention.

III. To direct the Uttarakhand Animal Welfare Board and the Animal Welfare Board of India to strictly monitor and ensure that the district SPCA's in the entire State of Uttarakhand participate actively in the implementation of the

Animal Birth Control programme as laid down in the Rule 7(6) of the Animal Birth Control Rules, 2001.

IV. To direct the Department of Urban Development to ensure that all local bodies have adequate trained staff and suitable vehicles for catching, transporting and sterilizing feral dogs.

V. To direct the Department of Urban Development to ensure that no dog killing or relocation is done in any district or township as it is blatantly illegal and unscientific.

VI. To direct the department of urban development to adequately ensure by means of suitable advertisements that all resident welfare associations are adequately apprised that feeding and looking after feral dogs is an act of compassion required to be performed as a fundamental duty by each citizen as per Article 51A of the Indian Constitution and must therefor not be opposed / challenged.”

2. In the writ petition, Government of Uttarakhand, its Urban Development Department, its Animal Husbandry Department, Nagar Palika Parishads, Nainital and Dehradun, Uttarakhand Animal Welfare Board have been impleaded amongst others. Uttarakhand Animal Welfare Board has filed an affidavit, where it has indicated that time has come to implement the provisions of the said Rules. Other respondents, despite obtaining opportunity to deal with the writ petition, have chosen not to deal with the same. We, accordingly, allow the writ petition and issue directions in terms of the prayers as above. Respective Departments of the State of Uttarakhand are directed to implement the above directions as quickly as possible, but not later than six months from today.

(Servesh Kumar Gupta, J.)

(Barin Ghosh, C.J.)

04.03.2014

Rathour

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No. 77 of 2010

Gauri Maulekhi Petitioner.
Versus

State of Uttarakhand and others Respondents.

Ms. Gauri Maulekhi, Petitioner, in person.
Mr. C.D. Bahuguna, *Amicus Curiae* with Mr. Lalit Miglani, Advocate for the petitioner.
Mr. J.P. Joshi, Chief Standing Counsel (Govt. of Uttarakhand) for the respondents.

With

Writ Petition (PIL) No. 73 of 2010

People for Animals Dehra Dun, Dehradun Petitioner.
Versus

State of Uttarakhand and others Respondents.

Mr. C.D. Bahuguna, *Amicus Curiae* with Mr. Lalit Miglani, Advocate for the petitioner.
Mr. J.P. Joshi, Chief Standing Counsel (Govt. of Uttarakhand) for the respondent Nos. 1, 2, 4 and 28 to 42.
Ms. Pushpa Joshi, Senior Advocate with Mr. Amit Kapri, Advocate for respondent No. 7.
Mr. P.S. Rawat, Advocate for respondent No. 10.
Mr. Siddharth Sah, Advocate for respondent No. 14.
Mr. L.K. Tiwari, Advocate for respondent No. 15.

Date of Judgment: 19.12.2011

JUDGMENT

**Coram: Hon'ble Barin Ghosh, C.J.
Hon'ble U.C. Dhyani, J.**

BARIN GHOSH, C.J. (ORAL)

These two Public Interest Litigations seek a total ban on animal sacrifice in the State of Uttarakhand. It has been contended in these writ petitions that animals are being slaughtered in a number of Temples situated in the State, contrary to law governing the field. It has also been stated that while such sacrifices are made, buffalos are sacrificed, alongwith goats, and the corpses of the buffalos are left for the purpose of rotting. It has further been stated that the manner in which animals are sacrificed is obnoxious, not acceptable in public view and is not good for public health.

2. The contentions, thus put forward, have not been disputed. It has been accepted that a fair, in the name of *Bhookhal Kalinka Mela*, is organized at *Bhookhal* on *Shukla Paksha* of *Margshirsh* month, when

buffalos are sacrificed, alongwith goats, and the corpses of buffalos are left unattended to rot.

3. In respect of one of these writ petitions, a direction was issued for publication of advertisements in Newspapers, *Amar Ujala* and *Dainik Jagran*, to inform the people, in general, that the said writ petition has been filed, where the petitioner is seeking complete ban on sacrifice of animals in the name of religion. Such advertisements have been published. In the said writ petition, a direction was issued to the District Magistrates to ensure that animal sacrifice takes place within the confinement, beyond public view, and that, corpse of the sacrificed animal is taken by the person sacrificing the same for his / her use and not to permit such corpse to loiter on any land, public or private. Pursuant to the said advertisement, many a persons, representing many Temples of the State, have intervened and they have indicated that some of them have already given up the practice of sacrificing animals, in the presence of deities of Temples represented by them. Some of them have also expressed that they do not encourage animal sacrifices in the name of religion and are taking steps to bring to an end such practice within a short while. Some such persons have contended that the practice of animal sacrifice, in presence of or in respect of deity, installed in the Temples represented by them, is an ancient practice, the same cannot be stopped and if the same is stopped, there will be unjust interference with the religion of the people, who sacrifice animals. In view of the order, passed on 7th December, 2010, referred to above, in one of these writ petitions, it was reported that in course of *Bhookhal Kalinka Mela*, organized at *Bhookhal* on *Shukla Paksha* of *Margshirsh* month of 2010, though animal sacrifices were made, but the corpses of such animals were not permitted to loiter on any land, public or private. Since after 7th December, 2010, however, there were reports that animal sacrifices are taking place outside the confinement and within public view at many a places in the State.

4. While the matter thus stood and the Court was making an inquiry whether animal sacrifices are still being made in full public view or not, it was reported to this Court that at *Bhookhal Kalinka Mela*, organized at *Bhookhal* on *Shukla Paksha* of *Margshirsh* month of 2011, no animal has

been sacrificed. Therefore, it is clear, from the conduct of the people of the State, that there is a consciousness not to sacrifice animals to appease the Gods, worshipped in the form of deities installed in many a Temples in the State.

5. We bow down to such enlightenment of the people of the State and wholeheartedly appeal to them that they are right in their conclusion that there is no need to appease the Gods by making animal sacrifices. We request the State Government to make our appeal known to the people of the State by publishing appropriate advertisements in the newspapers.

6. However, we have also been called upon by the people of the State, by filing the present Public Interest Litigations, to decide whether animal sacrifice can, at all, be made to appease the Gods and if it is permissible, how such sacrifice can be effected.

7. The subject is covered by the Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as, 'the Act') enacted by the Parliament, which came into operation on 26th December, 1960, more than 50 years back. By and under the Act, "animal" has been defined to be any living creature other than a human being. Section 11(1) of the Act specifies the actions against an animal, which can be treated as cruelty to the animal. Killing of an animal is not one of those actions mentioned in Section 11 (1) of the Act. However, Section 11(3)(e) of the Act provides as follows:

"Nothing in this section shall apply to –

(e) the commission or omission of any act in the course of the destruction or the preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering."

Therefore, by reason of Section 11(3)(e) of the Act, commission or omission of any act in course of destruction of any animal should be deemed to be treating the animal in question cruelly, unless, of course, such destruction was aimed at arranging food for mankind. Even for such purpose unnecessary pain or suffering cannot be inflicted. In as much as treating animals cruelly entails punishment of fine and imprisonment too, it goes without saying, that destruction or killing of animal, other than for arranging

food for mankind, is barred. Section 28 of the Act makes it clear that such destruction or killing, in the manner required by religion of any community, shall not render it an offence. Therefore, for the purpose of arranging food for mankind, if an animal is sacrificed, the same may be sacrificed in the manner followed by the religion of any community, but such sacrifice should only be for the purpose of arranging food for mankind and for no other purpose.

8. In the circumstances, it is illegal to sacrifice an animal and leave the corpse of the animal to rot. The person sacrificing an animal can only sacrifice the same, not for the purpose of appeasing the Gods, as he believes, but only for the purpose of arranging food for mankind.

9. Section 38(1) of the Act has granted rule-making power to the Central Government to carry out the purposes of the Act. Section 38(2) of the Act, without prejudice to the generality of the power granted by Section 38(1) of the Act, authorizes Central Government to make rules providing for, amongst others, the method by which any animal, which cannot be removed without cruelty, may be destroyed under sub-Section (3) of Section 13 of the Act. In terms of such rule-making power, the Central Government has made the Prevention of Cruelty to Animals (Slaughter House) Rules, 2001, which came into force, on its publication in the Gazette of India, on 26th March, 2001, i.e., more than 10 years back. Though the heading of Rule 3 of the said Rules is “Animals not to be slaughtered except in recognized or licensed houses,” but in the body of sub-Rule (1) thereof, it has been provided that no person shall slaughter any animal within a municipal area except in a slaughter house recognized or licensed by the concerned authority empowered under the law for the time being in force to do so. In sub-Rule (3) thereof, municipal or other local authority has been mentioned signifying all those areas under municipalities in whatsoever name they may be called. Accordingly, destruction or killing of an animal, in the manner required by the religion of any community for the purpose of arranging food for mankind, can only be done in a slaughter house recognized or licensed by the concerned authority, when such destruction or killing is done in municipal areas under municipalities or other local authorities, i.e., in cities,

towns, urban and semi-urban areas under the jurisdiction of municipalities or other local authorities. Such ban is not applicable when the destruction or killing of an animal is taking place at pure rural areas not coming under municipalities or other local authorities. Rule 6 of the said Rules deals with slaughter. Sub-Rule (5) thereof deals with ritual slaughter. Thus, ritual slaughter is also to be conducted at slaughter houses when the same is to be performed in the areas coming under municipalities or other authorities.

10. In such view of the matter, the legal conclusion would be that in view of the law made, despite there being old tradition of sacrificing animals to appease deities, no such sacrifice is permissible outside a slaughter house, in the event such sacrifice is attempted to be made within the municipal area or within cities, towns or urban or semi-urban areas under the jurisdiction of municipalities or other local authorities. However, there appears to be no bar on slaughter of animals outside slaughter houses in the event such slaughter is done or intended to be done in a rural area not coming under the jurisdiction of a local authority.

11. We, accordingly, conclude the matter and direct the State and its agencies to ensure that no destruction / killing / sacrifice of any nature of any animal takes place outside a registered or licensed slaughter house, if such destruction / killing / sacrifice is to take place in any city, town or urban or semi-urban areas of the State, which areas are within the jurisdiction of municipalities or other local authorities, and to ensure that the purpose of such destruction / killing / sacrifice is to arrange food for mankind and for no other purpose. Though it is not necessary that destruction / killing / sacrifice of animals in rural area should take place within slaughter house, it is obligatory on the part of the State to ensure that such destruction / killing / sacrifice is for the purpose of arranging food for mankind and for no other purpose. We, accordingly, direct the State and its agencies to adhere to their obligations, as indicated above, and to implement the same vigorously, with an appeal to the people of the State as above.

12. While parting, it would be appropriate to record that on the records of these petitions, there is no information whether in the areas coming under

municipalities and other local authorities, there are adequate number of slaughter houses or not. Therefore, in the event for non-availability of slaughter houses, it becomes necessary to destroy or kill animals outside slaughter houses in the areas coming under municipalities or other local authorities, it would be necessary for the protection of human health, hygiene and sentiment to arrange such destruction / killing outside the public view and to ensure removal of the corpse and blood in such manner that the same do not cause any harm to the public health, hygiene and sentiment. The same is also applicable to rural areas outside the purview of municipalities and other local authorities. The State and its agencies are, accordingly, directed to ensure the same. It would be appropriate on the part of the State and its agencies to ensure that adequate number of slaughter houses are available in the areas coming under the municipalities and other local authorities within a period of three years.

13. After we had dictated the order, in the Court, learned *Amicus Curiae* submitted that no religion directs sacrifice of animal, and the case of the petitioners is founded on Section 28 of the Act. While Section 28 of the Act gives emphasis to the manner of killing as may be required by religion of any community, sub-Rule (5) of Rule 6 of the said Rules contemplates ritual slaughter, and, accordingly, the contention to the effect, that no religion authorizes sacrifice of animals and, accordingly, Section 28 prevents sacrifice of animal, is not acceptable. According to us, Section 28 of the Act accepts that killing of an animal in a manner may be required by the religion of any community. The learned *Amicus Curiae* has cited the judgment of the Hon'ble Supreme Court rendered in the case of *Commissioner of Police and Others Vs. Acharya Jagadishwarananda Avadhuta and Another* reported in 2004(2) Supreme 427, which is totally misplaced, since in the instant case the Statute recognizes killing in a manner required by the religion of any community.

(U.C. Dhyani, J.)
19.12.2011

(Barin Ghosh, C.J.)
19.12.2011

Amit

MANU/HP/0934/2014

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 9257 of 2011 and CWP Nos. 4499 and 5076/2012

Decided On: 26.09.2014

Ramesh Sharma Vs. State of Himachal Pradesh

Hon'ble Judges/Coram: Rajiv Sharma and Sureshwar Thakur, JJ.

Sacrifice of Animals in Religious Ceremony

This petition is about the slaughtering of thousands of animals in the name of religious sacrifice held by devotees throughout the State of Himachal Pradesh. Petitioner has placed on record photographs of the animal sacrifice being performed. The State has not taken any effective steps to prevent the sacrifice of innocent animals. According to the petitioner, this practice is not in conformity with Article 51-A(h) of the Constitution of India. Animals are beaten up mercilessly and dragged up to mountain slopes to meet their death. The scenic beauty of the religious places is not maintained. According to the petitioner, it takes 25 minutes to kill a buffalo bull. At times, buffalo runs amuck to save itself. The animals are mercilessly beaten up and chilies are thrown into their eyes. Petitioner has laid great stress for improved scientific and rational thinking by the people, who are indulged in this practice. Petitioner has also filed representation before the Deputy Commissioner, Kullu requesting to prevent sacrifice of animals at Dhalpur Maidan, Kullu. The larger beneficiaries of this practice are priests and the Mandir Committee, animal breeders and designated butchers community of the temples. Petitioner has sought direction to the State to stop illegal animal slaughtering in the temples and public places. She has also sought direction to the Deputy Commissioners of all the District of Himachal Pradesh to ensure complete ban on animal sacrifices in temples and public places. An action is also sought to be taken against the persons, who are indulging in this practice.

Held:

The core issue involved in these petitions is whether animal sacrifice is an essential/central theme and integral part of Hindu religion or not? The Apex Court, in the case of *The Commissioner, Hindu Religious Endowments, Madras vrs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, reported in AIR 1954 SC 282,, have held that a religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral part of religion and the forms and observances might expand even to matters of food and dress. What constitutes the essential/integral part of Hindu religion is primarily to be ascertained in respect of the doctrine of that religion itself. We could not find it from the material placed on record that animal sacrifice is an essential part of the religion by making reference to the doctrines of Hindu religion itself.

The overt act of sacrificing animals in the temples or its premises is not obligatory overt act to reflect religious belief and idea. Their lordships of the Hon'ble Supreme Court in the case of *Durgah Committee, Ajmer (supra)*, have held that even practices though religious, may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. Unless such practices are bound to constitute an essential and integral part of a religion, the protection under Article 26 of the Constitution of India is not available.

As regards the contention that the scope of judicial review in these matters is very limited is concerned, is no more res integra in view of the law laid down by the Hon'ble Supreme Court in the case of *Tilkayat Shri Govindlalji Maharaj etc. vs. State of Rajasthan and others*, reported in AIR 1963 SC 1638. Their lordships of the Hon'ble Supreme Court have held that the question will always have to be decided by the Court whether a given religious practice is an integral part of religion or not and the Court may have to enquire whether the practice in question is religious in character and if it is, whether it can be regarded as an integral or essential part of the religion and the finding of the Court on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its religion.

In the case of *A.S. Narayana Deekshitulu vs. State of A.P. and others*, reported in (1996) 9 SCC 548, their lordships of the Hon'ble Supreme Court held that the integral or essential part of religion

is to be ascertained from the doctrine of that religion itself according to its tenets, historical background and change in evolved process. Their lordships have further held that whether the practice in question is religious in character and whether it could be regarded as an integral and essential part of the religion and if the Court finds upon evidence adduced before it that it is an integral or essential part of the religion, Article 25 accords protection to it. In the case of *N. Adithayan vs. Travancore Devaswom Board and others*, reported in (2002) 8 SCC 106, their lordships of the Hon'ble Supreme Court have held that custom or usage, even if proved to have existed in pre-Constitutional period, cannot be accepted as a source of law, if such custom violates human rights, human dignity, concept of social equality and the specific mandate of the Constitution and law made by the parliament. Their lordships have also highlighted that the vision of the founding fathers of the Constitution was to liberate society from blind adherence to traditional superstitious beliefs sans reason or rational basis. The animal sacrifice can not be treated as fundamental to follow a religious belief and practice. It is only if taking away of that part of practice can result in a fundamental change in the character of that religion or belief that could be treated as essential or integral part. We reiterate that if animal sacrifice is taken out, it will not result in fundamental change in the character of the Hindu religion or in its belief. Their lordships of the Hon'ble Supreme Court in the case of *State of Karnataka and another vs. Dr. Praveen Bhai Thogadia*, reported in (2004) 4 SCC 684 have held that the core of religion is based upon spiritual values which the Vedas, Upanishads and Puranas were said to reveal to mankind, seem to be "love others, serve others, help ever, hurt never."

The hymn of Rig Veda were much occupied with some ritual and animal sacrifices are indicated by the Apri Suktas. However, these practices were prevalent only in pre-historic times. Now, in this era, these practices have no social sanction but merely based on superstition and ignorance.

What can be gathered from the facts enumerated, hereinabove, is that the practice of animal sacrifice is prevalent in some areas of the State. There is ample material placed on record by the petitioners and the persons who have filed individual affidavits that the animals are put to a lot of suffering, pain and agony at the time of their sacrifice. The methods adopted to kill these innocent animals are barbaric. It is stated in the affidavits by various individuals that at times it takes about 15 blows to kill the animal. The animal runs amok to save his life. The animals are sacrificed in the presence of other animals, which must be an agonizing experience for those animals.

Articles 25 and 26 of the Constitution of India protects, of course, the religious beliefs, opinions and practices but not superstitions. A religion has to be seen as a whole and thereafter it can be seen whether a particular practice is core/central to the religion. It can be a hybrid also. In the instant case, offerings in the temples can be made by offering flowers, fruits, coconut etc. According to us, there are compelling reasons and grounds to prohibit this practice. A democratic polity is required to be preferred to a system in which each one's conscience is a law unto itself. The State has also the obligation under constitutional mandate to promote the health, safety and general welfare of the citizens and animals.

The Vedas were composed in 1500 B.C. There is reference to sacrifices made in Upanishads and Puranas. The Vedas are eternal, Puranas are the governing of mythological beliefs and the manner in which the 'pooja/archana' is to be offered to the Gods. The Bhagwat Gita does not deal with this aspect of sacrifices as contained in the Puranas. The Vedas, Upanishads and Puranas were composed during the earliest phase of civilization. The devotees in these days were put to fear and were also afraid of the wrath of natural calamities. The society has advanced. We are in a modern era. The rituals, which may be prevalent in the early period of civilization have lost their relevance and the old rituals are required to be substituted by new rituals which are based on reasoning and scientific temper. Superstitions have no faith in the modern era of reasoning.

As far as Puranas are concerned, they only refer to the manner in which the sacrifices are to be performed. There is reference of "tradition of human sacrifice". The devotees are made to believe that the deity would be happy for a number of years as per the sacrifices of each species of animals/birds. The deity, as per this Purana, would be much happier if a man is sacrificed. These practices have outlived and have no place in the 21st century. The animal sacrifice of any species may be a goat or sheep or a buffalo, can not be, in our considered view, treated as integral/central theme and essential part of religion. It may be religion's practice but definitely not an essential and integral part of religion. Hindu Religion, in no manner, would be affected if the animal sacrifice is taken out from it. We have to progress. A society should look forward, of course, by following values of all religions. The essentials of any religion are eternal. The non-essentials are relevant for some time. The animal/bird sacrifice cannot be treated as eternal. We should experience religion. We have to stand up against the social evils, with which the society at times is beset with. Social reforms are required to be made. We are required to build up a new social order. We have

to take a pragmatic approach. The new Mantra is salvation of the people, by the people. The Hindus have to fulfill the Vedantic ideas but by substituting old rituals by new rituals based on reasoning.

The animals have basic rights and we have to recognize and protect them. The animals and birds breathe like us. They are also a creation of God. They have also a right to live in harmony with human beings and the nature. No deity and Devta would ever ask for the blood. All Devtas and deities are kind hearted and bless the humanity to prosper and live in harmony with each other. The practice of animal/bird sacrifice is abhorrent and dastardly.

The welfare of animals and birds is a part of moral development of humanity. Animals/birds also require suitable environment, diet and protection from pain, sufferings, injury and disease. It is the man's special responsibility towards the animals and birds being fellow creatures. We must respect the animals. They should be protected from the danger of unnecessary stress and strains.

Article 48 of the Constitution of India provides for organization of agriculture and animal husbandry. Article 48-A talks of protection and improvement of environment and safeguarding of forests and wild life. It is the fundamental duty of every citizen as per Article 51-A(g) of the Constitution of India to protect and improve natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. Article 51-A(h) stresses to develop the scientific temper, humanism and the spirit of inquiry and reform. Article 51-A(i) talks of safeguarding public property and to abjure violence. 'Ahimsa' is also the central theme of the Hindu Philosophy though later on expounded by Buddha. The State's affidavit talking of vegetarian and non-vegetarian food is wholly misplaced. The core issue has never been addressed in the reply filed by the State government to the issues. The Court can always see whether a particular practice is essential or non-essential by taking into evidence, including by going through the religious scriptures. It is not a forbidden territory but the Court has to tread cautiously. The Court has to necessarily go into the entire gamut of Articles 25 and 26 the statutes pertaining to religion. Every citizen has a freedom of conscience including right to freely profess, practise and propagate religion and also to manage its own affairs in the matter of religion. The right to freedom of conscience and right to profess, practise and propagate religion and manage its own affairs in the matter of religion would not be affected if the practice of animal sacrifice is discontinued. It may strengthen the religion. The discontinuation of animal sacrifice would not in any manner violate

Articles 25 and 26 of the Constitution of India. Articles 25 and 26 of the Constitution of India are to be read with Articles 48, 48-A and 51-A of the Constitution of India.

Section 11 and Section 28 of the Prevention of Cruelty to Animals Act, 1960 are to be interpreted as per Articles 48, 48-A, 51-A(g), 51-A(h) and 51-A(i). The underlying principle of Section 28 is that it would not be an offence to kill any animal in the manner required by the religion of any community. It does not permit, in any manner, to sacrifice an animal in temple. Mostly the temples are open to public and the conscience of all the devotees are to be taken into consideration. It has come on record that the killing of animals in a brutal manner causes immense pain, strain, agony and suffering to the animals. The animals are left to bleed after inflicting injuries on their parts. The blood is strewn all over. The Apex Court, as we have already noted above has held that killing of cows on Bakrid is not an integral part of Muslim religion.

The Hon'ble Supreme Court, in the case of *Sardar Syedna Taher Saifuddin Sahib vs. State of Bombay*, AIR 1962 SC 853, have already held human and animal sacrifice to be deleterious. We have advanced by another half century but till date, the practice of animal sacrifice is still prevalent in this part of the country. The killing of various species of animals/birds is not an integral/central and essential part of Hindu religion. According to rule 3 of the Prevention of Cruelty to Animals (Slaughter House) Rules, 2001, no person is authorized to slaughter any animal within a municipal area except in a slaughter house recognized or licensed by the concerned authority. No animal, which is pregnant, or has an offspring less than three months old, or is under the age of three months or has not been certified by a veterinary doctor that it is in a fit condition can be slaughtered. According to sub-rule (1) of rule 6, no animal can be slaughtered in a slaughter house in sight of other animals and according to sub-rule (3) of rule 6, slaughter house shall provide separate sections of adequate dimensions sufficient for slaughter of individual animals to ensure that the animal to be slaughtered is not within the sight of other animals. Sub-rule (5) of rule 6 provides that knocking section in slaughter house is so planned as to suit the animal and particularly the ritual slaughter, if any, and such knocking section and dry landing area associated with it is so built that escape from this section can be easily carried out by an operator without allowing the animal to pass the escape barrier. If the animal cannot be slaughtered in a slaughter house in sight of other animals, how human can see sacrifice of animal, that too, in a holy and pious places like temples.

The prominence of values enshrined in the Constitution is above any religious values or values enshrined in any personal or religious law. They have no right, whatsoever, to issue any mandate/dictate in violation of basic human rights of the human beings as well as animal rights. The animals have emotions and feelings like us. Religion cannot be allowed to become a tool for perpetuating untold miseries on animals. If any person or body tries to impose its directions on the followers in violation of the Constitution or validly enacted law, it would be an illegal act (see: *Visha Lochan Madan vs. Union of India and ors.*, reported in (2014) 7 SCC 707).

We have invoked the 'doctrine of parens patriae' alongwith other constitutional provisions, as discussed hereinabove, to protect the basic rights of animals. we allow the writ petition CWP No. 5076/2012 and issue the following mandatory directions, prohibiting/banning animal/bird sacrifice in the temples and public places as under:

- 1) No person throughout the State of Himachal Pradesh shall sacrifice any animal or bird in any place of religious worship, adoration or precincts or any congregation or procession connected with religious worship, on any public street, way or place, whether a thoroughfare or not, to which the public are granted access to or over which they have a right to pass;
- 2) No person shall officiate or offer to officiate at, or perform or offer to perform, or serve, assist or participate, or offer to serve, assist, or participate, in any sacrifice in any place of public religious worship or adoration or its precincts or in any congregation or procession, including all lands, buildings near such places which are ordinarily used for the purposes connected with religious or adoration, or in any congregation or procession connected with any religious worship in a public street;
- 3) No person shall knowingly allow any sacrifice to be performed at any place which is situated within any place of public religious worship, or adoration, or is in his possession or under his control;
- 4) The State Government is directed to publish and circulate pamphlets henceforth to create awareness among the people, to exhibit boards, placards in and around places of worship banning the sacrifice of animals and birds;
- 5) The State Government is further directed to give due publicity about the prohibition and sacrifice in media both audio and visual, electronic and in all the newspapers; and

- 6) All the duty holders in the State of Himachal Pradesh are directed to punctually and faithfully comply with the judgment. It is made clear that the Deputy Commissioners and Superintendents of Police of all the Districts shall personally be responsible to prevent, prohibit the animal/bird sacrifices throughout the State of Himachal Pradesh.
- 7) The expression 'temple' would mean a place by whatever designation known, used as a place of public worship and dedicated to, and for the benefit of, or used as a right by the Hindu community or any section thereof, as a place of public religious worship. The temple premises shall also include building attached to the temple, land attached to the temple, which is generally used for the purposes of worship in the temple, whether such land is in the property of temple area or place attached to the temple or procession is performed.

ITEM NO.5

COURT NO.5

SECTION IX, IVA
XIA, XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No.691/2009

(Arising out of impugned final judgment and order dated 19/12/2008
in ASWP No. 6257/2006 passed by the High Court of Bombay)

ANIMAL WELFARE BOARD OF INDIA

Petitioner(s)

VERSUS

PEOPLE FOR ELIMINATION OF STRAY
TROUBLES & ORS.

Respondent(s)

(With appln.(s) for intervention and impleadment and interim
relief and office report)
(For final disposal)

WITH S.L.P. (C) No.1627/2009

(With interim relief and office report)

S.L.P. (C) No.1740/2009

(With interim relief and office report)

S.L.P. (C) No.11467/2009

(With office report)

S.L.P. (C) No.13004/2009

(With appln.(s) for permission to file additional documents and
office report)

S.L.P. (C) No.13772/2012

(With office report)

S.L.P. (C) No.4453/2013

(With appln.(s) for impleadment and interim relief and office
report)

S.L.P. (C) No.5899/2013

(With interim relief and office report)

S.L.P. (C) No.5900/2013

(With interim relief and office report)

S.L.P. (C) No.17112/2013

(With interim relief and office report)

S.L.P. (C)...CC 16880/2015

(With appln.(s) for impleadment as petitioner and appln.(s) for
impleadment as party respondent and appln.(s) for c/delay in
filing SLP and office report)

Date: 18/11/2015 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

For Petitioner(s) Mr. Raj Panjwani, Sr. Adv.
Mrs. Anjali Sharma, Adv.
Ms. Norma Alvares, Adv.
Mr. Hardeep Singh Anand, AOR
Mr. Rohan Thawani, Adv.
Ms. Vandana Sehgal, Adv.
Mr. Deepak Bashta, Adv.
Mr. Anand Daga, Adv.

Mr. B. S. Banthia, AOR

Mr. Mukul Talvar, Sr. Adv.
Mr. Sudhanshu S. Choudhari, AOR

Mr. Aniruddha P. Mayee, AOR

Mr. S. C. Birla, AOR

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Mr. Raj Panjwani, Sr. Adv.
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Mr. Aum Mangalassmy, Adv.

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Mr. Manu Seshadri, Adv.
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Mr. Raj Panjwani, Sr. Adv.
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Mr. Kunwar Pal Singh, Adv.
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Mr. Nishant Ramakantrao Katneshwarkar, AOR
Mr. Arpit Rai, Adv.

Mr. Shreekant N. Terdal, AOR

Mr. Purushottam Sharma Tripathi, AOR
Mr. Ravi Chandra Prakash, Adv.
Mr. Sanjeeb Panigrahi, Adv.
Mr. Mukesh Kumar Singh, Adv.
Mr. Shantanu J., Adv.
Mr. Ranvir Singh Chillar, Adv.
Ms. Sushama Singh, Adv.

for M/s. Lex Regis Law Offices

Mr. Shekhar Naphade, Sr. Adv.
Mr. Atul Yeshwant Chitale, Sr. Adv.
Mrs. Suchitra Atul Chitale, AOR
Mr. Tanvi Kakar, Adv.
Mr. Chetan Sharma, Adv.

Mr. Nikhil Nayyar, AOR

Mr. Pukhrambam Ramesh Kumar, AOR
Mr. Sumit Kumar, Adv.

Mr. Basant R., Sr. Adv.
Mr. Karthik Ashok, Adv.
Ms. Liz Mathew, AOR
Mr. M.F. Philip, Adv.

Mr. E.C. Vidyasagar, Adv.
Ms. Jennifer John, Adv.

Mr. Aditya Dhawan, Adv.
Mr. Varinder Kumar Sharma, AOR

Mr. Rakesh Kumar, Adv.
Mr. Mukul Singh, Adv.

Mr. Suryanarayana Singh, Sr. AAG
Ms. Pragati Neekhara, Adv.

Mr. V. Giri, Sr. Adv.
Mr. M. Gireesh Kumar, Adv.
Mr. Sriram P., Adv.

Mr. Raj Panjwani, Sr. Adv.
Mr. Anip Sachthey, Adv.
Ms. Anjali Sharma, Adv.
Ms. Shagun Matta, Adv.

Ms. Mahima Sareen, Adv.

UPON hearing the counsel the Court made the following
O R D E R

All the applications for intervention stand allowed.

Heard learned counsel for the parties and the intervenors, Mr. Dushyant Dave, learned senior counsel, the Amicus Curiae, engaged in Writ Petition (C) No.599 of 2015 [*Anupam Trivathi vs. Union of India and Others*].

Though this matter was to be finally heard today, yet due to paucity of time, it has not been finally taken up for hearing for the purpose of final disposal. That apart, number of issues have also cropped up including the defensibility of the judgment and orders passed by the High Courts of Bombay, Kerala and Karnataka. We have been apprised that initially in 2006, the Kerala High Court had passed a judgment dismissing the writ petition, which was filed for protection of the stray dogs. Recently, another

Division Bench has passed a judgment on 4th November, 2015, taking the view that the Animal Birth Control Rules, 2001, (for short, 'the 2001 Rules') shall prevail over the provisions contained in Kerala Municipality Act, 1994 and the Kerala Panchayat Act, 1994.

It is submitted by Mr. Shekhar Naphade, learned senior counsel appearing for the Bombay Municipal Corporation that the legislation passed by the State of Maharashtra forming the subject matter of Bombay Municipal Corporation Act, 1888, as amended by Section 191-BA - Control and other provisions relating to dogs in the year 1975, shall withstand the test of repugnancy if challenged as there was assent from the President of India under Article 200 of the Constitution. Be that as it may, we do not intend to enter into the said debate today.

There can be no trace of doubt that there has to be compassion for dogs and they should not be killed in an indiscriminate manner, but indubitably the lives of the human beings are to be saved and one should not suffer due to dog bite because of administrative lapse.

In course of hearing, learned counsel appearing for the petitioners, except the Animal Welfare Board, would pyramid their case on the plinth and foundation that the dogs, who have various uses for human society and have served

the society for centuries and also have constitutional protection under Article 51A of the Constitution of India and the laws made, have to be taken care of. The resistance from the other side is that a bite by a stray dog creates menace in the society and in the name of compassion for dogs, the lives of human beings cannot be sacrificed.

Mr. Raj Panjwani, learned senior counsel appearing for the Animal Welfare Board, supported by Mr. C.A. Sundaram, learned senior counsel in that regard, would submit that the legislation by the Parliament has struck a balance by legislating the Prevention of Cruelty to Animals Act, 1960, (for short, 'the 1960 Act') and the 2001 Rules.

Mr. Dushyant Dave, learned senior counsel, who has been appointed as Amicus Curiae, has interestingly produced certain writings on the stray dogs by Mahatama Gandhi, the Father of the Nation. He has drawn our attention to various paragraphs, but we shall refer to the same at the time of final disposal. The said write-up be kept on record.

For the purpose of certain interim order, we have to *prima facie* understand the provisions of the 1960 Act. Section 2(b) of the said Act defines the "Board" which is established under Section 4 and reconstituted from time to time under Section 5A. Section 2(e) defines "local authority" which means a municipal committee, district board

or other authority for the time being invested by law with the control and administration of any matters within a specified local area. Section 9 deals with the functions of the Board. The said provision reads as under:

"Functions of the Board: The functions of the Board shall be Board

(a) to keep the law in force in, India for the prevention of cruelty to animals under constant study and advise the Government on the amendments to be undertaken in any such law from time to time;

(b) to advise the Central Government on the making of rules under this Act with a view to preventing unnecessary pain or suffering to animals generally, and more particularly when they are being transported from one place to another or when they are used as performing animals or when they are kept in captivity or confinement;

(c) to advise the Government or any local authority or other person on improvements in the design of vehicles so as to lessen the burden on draught animals;

(d) to take all such steps as the Board may think fit for 11(amelioration of animals)by encouraging or providing for, the construction of sheds, water-troughs and the like and by providing for veterinary assistance to animals:

(e) to advise the Government or any local authority or other person in the design of slaughter-houses or the maintenance of slaughter houses or in connection with slaughter of animals so that unnecessary pain or suffering, whether physical or mental, is eliminated in the pre-slaughter stages as far as possible, and animals are killed; wherever necessary, in as humane a manner as possible;

(f) to take all such steps as the Board may

think fit to ensure that unwanted animals are destroyed by local authorities, whenever it is necessary to do so, either instantaneously or after being rendered insensible to pain or suffering.

(g) to encourage by the grant of financial assistance or otherwise, 12 (the formation or establishment of pinjrapoles, rescue homes, animal shelters, sanctuaries and the like) where animals and birds may find a shelter when they have become old and useless or when they need protection:

(h) to co-operate with, and co-ordinate the work of, associations or bodies established for the purpose of preventing unnecessary pain or suffering to animals or for the protection of animals and birds;

(i) to give financial and other assistance to animal welfare organisations functioning in any local area or to encourage the formation of animal welfare organisations in any local area which shall work under the general supervision and guidance of the Board;

(j) to advise the Government on matters relating to the medical care and attention which may be provided in animal hospital, and to give financial and other assistance to animal hospitals whenever the Board thinks it necessary to do so;

(k) to impart education in relation to the humane treatment of animals and to encourage the formation of public opinion against the infliction of unnecessary pain or suffering to animals and for the promotion of animal welfare by means of lectures, books, posters, cinematographic exhibitions and the like;

(l) to advise the Government on any matter connected with animal welfare or the prevention of infliction of unnecessary pain or suffering on animals.

(Underlining is ours)"

We have emphasized on clause (f) as it empowers the

Board to ensure that unwanted animals are destroyed by local authorities, wherever it is necessary to do so, either instantaneously or after being rendered insensible to pain of suffering. The significant words are "the Board has to form an opinion".

Section 11 deals with treating animals cruelly. Section 12 provides for penalty of practising *phooka* or *doom dev.* Section 13 of the Act deals with destruction of suffering animals. The said provision is reproduced below:

"13. *Destruction of suffering animals.-*

(1) Where the owner of an animal is convicted of an offence under section 11, it shall be lawful for the court, if the court is satisfied that it would be cruel to keep the animal alive, to direct that the animal be destroyed and to assign the animals to any suitable person for that purpose, and the person to whom such animal is so assigned shall as soon as possible, destroy such animal or cause such animal to be destroyed in his presence without unnecessary suffering: and any reasonable expense incurred in destroying the animal may be ordered by the court, if the court is satisfied that it would be cruel to keep the animal alive, to direct that the animal be destroyed and to assign the animal to any reasonable expense incurred in destroying the animal may be ordered by the court to be recovered from the owner as if it were a fine:

Provided that unless the owner assents thereto, no order shall be made under this section except upon the evidence of a veterinary officer in charge of the area.

(2) When any magistrate, commissioner of police or district superintendent of police has reason to believe that an offence under section 11 has

been committed in respect of any animal, he may direct the immediate destruction of the animal, if in his opinion, it would be cruel to keep the animal alive.

(3) Any police officer above the rank of a constable or any person authorised by the State Government in this behalf who finds any animal so diseased or so severely injured or in such a physical condition that in his opinion it cannot be removed without cruelty, may, if the owner is absent or refuses his consent to the destruction of the animal, forth with summon the veterinary officer in charge of the area in which the animal is found, and if the veterinary officer certifies that the animal is mortally injured or so severely injured or in such a physical condition that it would be cruel to keep it alive, the police officer or the person authorised, as the case may be, may, after obtaining orders from a magistrate, destroy the animal injured or cause it to be destroyed; 22 (in such manner as may be prescribed).

(4) No appeal shall lie from any order of a magistrate for the destruction of an animal."

Section 38 provides for power to make rules. In exercise of power under sub-sections (1) and (2) of Section 38 of the 1960 Act, the 2001 Rules, have been framed. Rule 2(c) of the Rules mentions about the "Board" and gives the same colour and character as in Section 4 of the 1960 Act. The said rule reads as follows:

"Board" means the Animal Welfare Board of India, established under section 4 and as reconstituted under section 5A of the Act."

Rule 4 deals with formation of Committee and Rule 5 deals with the functions of the Committee. The said Rule being relevant, is reproduced below:

"5. *Functions of the Committee.*- The committee constituted under rule 4 shall be responsible for planning and management of dog control programme in accordance with these rules. The committee may:

(a) issue instructions for catching, transportation, sheltering, sterilisation, vaccination, treatment and release of sterilized vaccinated or treated dogs.

(b) authorize veterinary doctor to decide on case to case basis the need to put to sleep critically ill or fatally injured or rabid dogs in a painless method by using sodium pentathol. Any other method is strictly prohibited.

(c) create public awareness, solicit co-operation and funding.

(d) provide guidelines to pet dog owners and commercial breeders from time to time.

(e) get a survey done of the number of street dogs by an independent agency.

(f) take such steps for monitoring the dog bite cases to ascertain the reasons of dog bite, the area where it took place and whether it was from a stray or a pet dog.

(g) keep a watch on the national and international development in the field of research pertaining to street dogs' control and management, development of vaccines and cost effective methods of sterilization, vaccination, etc.

(h) the activities of the Committee shall be brought to the public notice by announcements and advertisements."

Rule 6 provides for obligations of the local authority. Rule 7 deals with capturing/sterilisation/immunisation/release. Rule 8 deals with identification and recording and Rule 9 provides for euthanasia of street dogs. Rule 10 deals with furious or dumb rabid dogs.

As we find, the local authorities have a sacrosanct duty to provide sufficient number of dog pounds, including animal kennels/shelters, which may be managed by the animal welfare organizations, that apart, it is also incumbent upon the local authorities to provide requisite number of dog vans with ramps for the capture and transportation of street dogs; one driver and two trained dog catchers for each dog van; an ambulance-cum-clinical van as mobile centre for sterilisation and immunisation; incinerators for disposal of carcasses and periodic repair of shelter or pound.

Rule 7 has its own significance. The procedure has to be followed before any steps are taken. Rules 9 and 10 take care of the dogs which are desirable to be euthanised.

We may note with profit that Mr. Shekhar Naphade, learned senior counsel appearing for the Bombay Municipal Corporation would contend with vehemence that the Corporation

has a duty under the Act to remove the dogs that create nuisance. As stated earlier, we will advert to the same at a later stage, but for the present it is suffice to say that all the State municipal corporations, municipal committees, district boards and local bodies shall be guided by the Act and the Rules and it is the duty and obligation of the Animal Welfare Board to see that they are followed with all seriousness. It is also the duty of all the municipal corporations to provide infrastructure as mandated in the statute and the rules. Once that is done, we are disposed to think for the present that a balance between compassion to dogs and the lives of human being, which is appositely called a glorious gift of nature, may harmoniously co-exist.

Learned counsel appearing for both the sides are at liberty to file affidavits which may contain the data of the dog bites and the steps taken by the local bodies with regard to destruction/removal of the stray dogs. They are also at liberty to file data pertaining to population of stray dogs. The local authorities shall file affidavits including what kind of infrastructures they have provided, as required under the law. Needless to emphasize, no innovative method or subterfuge should be adopted not to carry out the responsibility under the 1960 Act or the 2001 Rules. Any kind of laxity while carrying out statutory obligations, is not countenanced in law.

A copy of the order passed today be sent to the Chief Secretary of each of the States and the competent authority of Union Territories, so that they can follow the same in letter and spirit.

We would also request all the High Courts not to pass any order relating to the 1960 Act and the 2001 Rules pertaining to dogs. Needless to say, all concerned as mentioned herein-above, shall carry out this order and file their respective affidavits as directed.

Let the matter be listed on 9th March, 2016.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master

IN THE HIGH COURT OF BOMBAY (PANAJI BENCH)

People for Animals through Mrs. Norma Alvares and Anr.

Vs.

The State of Goa through its Chief Secretary and Ors.

Equivalent Citation: 1997(4)ALLMR397, 1997(4)BomCR271, 1998(100(1))BOMLR226

Hon'ble Judges/Coram: R.K. Batta and R.M.S. Khandeparkar, JJ.

Brief facts:

The petitioners approached the Court with the complaint that the statutory authorities are either hesitant or negligent in taking appropriate steps to prevent the cruelty to the animals that is being inflicted in the course of the game of bull fights taking place in the State of Goa. According to the petitioners, bull fights are in contravention of section 11(1) of the Prevention of Cruelty to Animals Act, 1968, hereinafter called as "the said Act". It is the contention of the petitioners that inspite of their efforts to bring this fact to the notice of the authorities concerned, such illegalities are being committed in the State of Goa and further that inspite of requests to such authorities to take appropriate steps in the matter to prevent the same, no action is being taken by the respondents and the bull fights are continuing to take place in Goa. It is further contended by the petitioners that the immediate occasion for the petitioners to approach this Court is the incident of killing of a person in a most brutal fashion by a violent bull at one of such bull fights organized at Fatorda near Margao on 17th September 1996 and that further bull fight which was scheduled to take place on 2nd October 1996.

The petitioners claimed that the bull fights are recent introduction in the State of Goa and though initially, no money or gambling was associated with it, in the recent times, due to the patronage of local politicians, the frequency of bull fights have increased enormously and they have become completely commercialised. Besides the fact that they prove fatal to some animals, even spectators have occasionally fallen victims. Such bull fights are locally known as 'dhirio' and they are in direct contravention of the provisions contained in section 11(1)(m) and section 11(1)(n) of the Prevention of Cruelty to Animals Act, 1960 and that the authorities are duty-bound to take action against the said offenders.

In brief the bull fight involves fight between two bulls or buffaloes without any restrictions to be observed in such fights & without any control of human being as regards the nature of the fight which can take place between such bulls and in the result the animals are injured and at times go insane and also can inflict injuries to the spectators of such bull fights.

The records further show that the bull fights have gained popularity in the recent years solely because of betting that goes with it. People bet huge amounts of money, earning quite a packet from these fights sometimes. This is one of the social evils brought in by these fights, which are no more mere fun. In spite of clear provisions contained in the said Act whereby any type of cruelty to the animals is considered an offence, surprisingly the state agencies have been silent spectators to such offences being committed in the name of bull fights. The facts brought on record also show that these bull fights are not only blessed by the politicians but by the Police Officers of the rank of Dy.S.P.

Issue involved:

- Whether organizing bull fights or 'dhirio', by itself amounts to commission of an offence under section 11 of the Prevention of Cruelty to Animals Act, 1960?
- Whether the state agencies should enforce law prohibiting such activities?

View of the High Court

The enactment of the law to prevent cruelty to the animals is not an end in itself. What is more important is the implementation of that Act and to see to it that the activities which are prohibited under the said Act do not take place in the State & in case of infringement of the provisions of the said Act, to take strict action against the offenders. It cannot be disputed that all animals are born with an equal claim for life without any cruelty to them. Perhaps if this right was given proper recognition by the human-beings, there would have been no necessity to bring on the statute book the said Act. Unfortunately, even though the said Act has been brought in force in the State, still there appears to be either lack of courage or wilful negligence on the part of the respondents to implement the provisions of the said Act and, therefore, in our considered opinion, the petitioners are justified in making grievance about the same. In fact, to prevent such cruelty to animals it is obligatory upon the state agencies to take action under the various provisions contained in the said

Act. Tolerance of infringement of the provisions of the Act is worse than not enacting the law itself. Merely because infringement of the provisions of the said Act was tolerated for some time, that cannot create any right on the intervenors to insist upon the continuation of tolerance of infringement of the provisions of the said Act.

Before we conclude we must say that considering the materials brought on record regarding the cruelty sought to be inflicted on the animals in the process of such bull fights, we are reminded of the words of Justice Krishna Iyer in his Lectures on Human Rights. While expressing deep anguish and sigh of great displeasure over torture inflicted on innocent animals in this country & that too despite the Vedas, the Bible, the Koran, the Buddha and Mahavire and the Supreme miracle and revolutionary apostle of Ahimsa, Mahatmaji, Justice Krishna Iyer has warned us that we have forfeited the right to be heirs of a culture of Karuna, Samata and Dharma. Justice Krishna Iyer further reminds us that humanism cannot be halved by denying it to pre human brethren and compassion is beyond division by refusing it to the Darwinian species; all life is too divinely integral to admit of unnatural dichotomy as man and animal in the wholeness of ecology. Justice Krishna Iyer, therefore, reminds us the message of kindness found in Koran which reads as under:

"There is not an animal on the earth, nor a flying creature on two wings, but they are people like unto you."

Held:

The petition succeeds. The bull fights or 'dhirios' are in contravention of the provisions of the said Act &, therefore, illegal & cannot be permitted to be organized. The respondents are, therefore, directed to take immediate steps to ban all types of animal fights including bull fights and 'dhirios' in the State of Goa and to see to it that the direction is fully complied with in letter and spirit which the Act seeks to achieve. Rule made absolute accordingly in aforesaid terms.

Sansar Chand vs State Of Rajasthan

CRIMINAL APPEAL NO. 2024 OF 2010

[Arising out of Special Leave Petition (Crl.) No.5599 of 2009]

Bench: Markandey Katju, T.S. Thakur

Facts:

Sansar Chand, the appellant has a long history of such criminal activities, starting with a 1974 arrest for 680 skins including tigers, leopards and others. In the subsequent years the appellant and his gang has established a complex, interlinking smuggling network to satisfy the demand for tiger and leopard parts and skins outside India's borders, particularly to China. It is alleged that the appellant and his gang are accused in 57 wildlife cases between 1974 and 2005.

The present case is only one of the cases in which the appellant has been accused. On January 5, 2003 the police arrested one Balwan who was traveling in a train with a carton containing leopard's skin. During investigation the said Balwan on January 7, 2003 made a disclosure statement to the SHO, GRP Bhilwara that the two leopard skins were to be handed over to Sansar Chand at Sadar Bazar, Delhi. The appellant was charge sheeted and after trial he was convicted by the Additional Chief Judicial Magistrate (Railways), Ajmer, Rajasthan by his judgment dated 29.4.2004. The appellant filed an appeal which was dismissed by the Special Judge, SC/ST (Prevention of Atrocities) Cases, Ajmer vide his judgment dated 19.8.2006. Thereafter the appellant filed a Revision Petition, which was dismissed by the Rajasthan High Court by the impugned judgment dated 10.12.2008. Hence, this appeal.

Thus, all the courts below have found the appellant guilty of the offences charged.

Learned counsel for the appellant submitted that the prosecution case is solely based on the extra judicial confession made by co-accused Balwan vide Ex.P-33. We do not agree. Apart from the extra judicial confession of Balwan there is a lot of other corroborative material on record which establishes the appellant's guilt.

It must be mentioned that persons like the appellant are the head of a gang of criminals who do illegal trade in wildlife. They themselves do not do poaching, but they hire persons to do the actual work of poaching. Thus a person like the appellant herein remains behind the scene, and for this reasons it is not always possible to get direct evidence against him.

In the courts below the prosecution filed a list of pending cases against Sansar Chand, in some of which he has been found guilty and punished. The appellant has been prosecuted by the Wildlife Department in various courts as mentioned in the letter of the Deputy Inspector General of Police, CBI, New Delhi to the Inspector General of Police, Jaipur dated October 20, 2004.

Ex.P-33 which contains the confession of the appellant, was written by PW-11 Arvind Kumar on the instructions given by the accused Balwan while in custody. Prior to Ex.P-33, Balwan has also disclosed the name of the appellant vide Ex.P-6 on January 6, 2003.

In our opinion, Ex.P-33 supported by the evidence of Arvind PW 11 and Ex.P-6 cannot be treated to be concocted documents which cannot be relied upon. As per the disclosure statement of Balwan the other co-accused persons were also arrested and articles used for killing and removing skins from the bodies of leopards were also recovered.

The accused Balwan was released on bail on 18.01.2003, and thereafter he sent the written confession Exh.P-33 on 23.01.2003 during judicial custody at Central Jail, Ajmer. In our opinion it cannot be held that the accused Balwan was under any pressure of the police. The said letter Ex.P-33 dictated by Balwan to Arvind Kumar was directly sent from the Central Jail, Ajmer to the Chief Judicial Magistrate's Court, Ajmer. We are of the opinion that the letter P-33 was not fabricated or procured by pressure. The accused Balwan has clearly stated in Exh.P-33 that he was paid Rs.5000/- and Rs.10000/- by the appellant. The appellant has several houses in Delhi, purchased in his name and in the name of his wife. It appears that these houses were purchased with the help of gains made out of his illegal activities stated above.

Pw-11 Arvind Kumar has stated in his deposition before the Court that he wrote the letter Ex.P-33 at the instance of the accused Balwan. The thumb impression of the accused Balwan is on that letter.

At the instance of the appellant one Bhua Gameti was questioned who stated that the panther's skin had been taken by various persons e.g. Khima, Nawa, Kheta Ram, Mohan and Chuna, who were also arrested. At their pointing out the equipment used for hunting the leopard and poaching it were seized. Panther's nails were also recovered from accused Bhura and the guns, cartridges, and knives for removing the skins of panthers were recovered from the accused.

There is a large amount of oral and documentary evidence on record which has been discussed in great detail by the learned Magistrate and the learned Special Judge and hence we are not repeating the same here. Thus the appellant has rightly been held guilty beyond reasonable doubt.

The appellant, Sansar Chand has been doing this illegal trade for more than 30 years. He is habitual of doing this illegal business of trade in skins and parts of panthers and tigers. He has, as far back as in 1974, committed his first crime when he was barely 16 years of age and the conviction was upheld by the Supreme Court in Criminal Case No. 15 of 2001. A large number of cases are pending against him in Delhi, Uttar Pradesh and Rajasthan. Taking all these materials into account there is no doubt that the appellant is guilty of the offence charged.

There is no absolute rule that an extra judicial confession can never be the basis of a conviction, although ordinarily an extra judicial confession should be corroborated by some other material vide Thimma vs. The State of Mysore - AIR 1971 SC 1871, Mulk Raj vs. The State of U.P. - AIR 1959 SC 902, Sivakumar vs. State by Inspector of Police - AIR 206 SC 563 (para 41 & 42), Shiva Karam Payaswami Tewar vs. State of Maharashtra - AIR 2009 SC 1692, Mohd. Azad vs. State of West Bengal - AIR 2009 SC 1307. In the present case, the extra judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act.

The learned Magistrate and the Special Judge have discussed in great detail the prosecution evidence, oral as well as documentary and have found the appellant guilty. The High Court has affirmed that verdict and we see no reason to take a different view. The appeal, therefore, stands dismissed.

Before we part with this case, we would like to request the Central and State Governments and their agencies to make all efforts to preserve the wild life of the country and take stringent actions against those who are violating the provisions of the Wildlife (Protection) Act, as this is necessary for maintaining the ecological balance in our country.

State of M.P. & Ors vs Madhukar Rao

Bench: H.K.Sema, Aftab Alam

Appeal (civil) 5196 of 2001

DATE OF JUDGMENT: 09/01/2008

BENCH:

H.K.Sema & Aftab Alam

Facts:

On March 12, 1997 at about 3.30 a.m., in course of checking a Sub-Inspector of Excise found a Tata Sumo vehicle, bearing Registration No.MH.31-H/6919, carrying 206 kgs. of antlers. The vehicle was owned by Madhukar Rao, the respondent, but he was not in it at the time of checking. The Excise Sub- Inspector informed the officers of the Forest Department who registered a case being Offence No.6527/97 under Sections 39, 42, 43, 44, 49(Kha) and 51(Kha) of the Act. The four persons occupying the vehicle were arrested and the vehicle and the antlers were seized under Section 50(1)(c) of the Act. The Judicial Magistrate, Raipur, was duly informed about the institution of the case on March 13, 1997.

The respondent, being the owner of the vehicle, moved the Judicial Magistrate, First Class, Raipur on May 12, 1997 for its release on Supurdnama. On behalf of the respondent it was stated that he was not an accused in the case and he had no concern with the commission of any offences. It was further stated that his neighbour Shri Lohiya, one of the accused in the case, had borrowed the vehicle on the pretext of going to see his ailing father. The Magistrate allowed the petition and directed for release of the vehicle on Supurdnama by order, dated May 12, 1997.

Against the order of the Magistrate, the State Government filed a revision before the Sessions Judge, Raipur. In the revision, it was stated that the Magistrate had erred in allowing the release of the vehicle in disregard of Section 39(d) of the Act in terms of which the seized vehicle became the property of the Government and hence, the court had no power to release it on Supurdnama. It was further contended that the power of release under Section 451 of the Code could be exercised only in respect of vehicles seized by a police officer. The Sessions Judge

by order, dated June 5, 1997 allowed the revision, relying upon a Bench decision of the Gwalior Bench of Madhya Pradesh High Court in L.P.A.No.152 of 1996. (Here it is stated on behalf of the State that the S.L.P. filed against the order in the L.P.A. was dismissed by this Court in limine).

After the revision was allowed and the order of release passed by the Magistrate was set aside, the Wild Life Warden and Divisional Forest Officer, Raipur passed an order on June 16, 1997 declaring the seized vehicle as Government property in terms of Section 39(d) of the Act.

The respondent then went to the High Court at Jabalpur, in Writ Petition No.4421 of 1997, challenging the decision of the Sessions Judge and seeking a direction for release of the vehicle on Supurdnama as ordered by the Magistrate. The case of the present respondent along with three other cases (giving rise to the three other appeals in this batch) was finally heard by a full bench. The full bench judgment held and found that the Magistrates power to release a vehicle during the pendency of trial was not, in any way, affected by the legislative changes in the Act relied upon by the State and in appropriate cases it was fully open to the Magistrate to pass an order of interim release of a seized vehicle. The State is in appeal against the order passed by the High Court.

Issue:

Whether a vehicle or vessel etc. seized under Section 50(1)(c) of the Wild Life (Protection) Act, 1972 (hereinafter referred to as the Act) is put beyond the power of the Magistrate to direct its release during the pendency of trial in exercise of powers under Section 451 of the Code of Criminal Procedure, 1973.?

View of the Court: It would be necessary to examine the relevant provisions of law. Chapter VI of the Act contains provisions dealing with the prevention and detection of offences. The chapter begins with Section 50 that gives to the specified officers the powers of entry, search, arrest and detention. It is a long section having as many as nine sub-sections. Sub-section (1) which is sub-divided into three clauses is as follows : 50. Power of entry, search, arrest and detention - (1) Notwithstanding anything contained in any other law for the time being in force, the Director or any other officer authorized by him in this behalf or the Chief Wild Warden or the authorised officer or any Forest Officer or any Police Officer not below the rank of a sub-

inspector, may, if he has reasonable grounds for believing that any person has committed an offence against this Act

(a) require any such person to produce for inspection any captive animal, wild animal, animal article, meat, [trophy, uncured trophy, specified plant or part or derivative thereof] in his control, custody or possession, or any licence, permit or other document granted to him or required to be kept by him under the provisions of this Act;

(b) stop any vehicle or vessel in order to conduct search or inquiry or enter upon and search any premises, land, vehicle or vessel, in the occupation of such person, and open and search any baggage or other things in the possession;

(c) seize any captive animal, wild animal, animal article, meat, trophy or uncured trophy, or any specified plant or part or derivative thereof, in respect of which an offence against this Act appears to have been committed, in the possession of any person together with any trap, tool, vehicle, vessel or weapon used for committing any such offence and, unless he is satisfied that such person will appear and answer any charge which may be preferred against him, arrest him without warrant, and detain him.

Provided that where a fisherman, residing within ten kilometers of a sanctuary or National Park, inadvertently enters on a boat, not used for commercial fishing, in the territorial waters in that sanctuary or National Park, a fishing tackle or net on such boat shall not be seized. Before the Act was subjected to a large number of amendments with effect from October 2, 1991, Section 50 had sub-section (2) which was as follows :

(2) Any officer of rank not inferior to that of an Assistant Director of Wild Life preservation or Wild Life Warden, who, or whose subordinate has seized any trap, tool, vehicle, vessel or weapon under clause (c) of sub-section (1), may release the same on the execution by the owner thereof of bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made. The Amendment Act 44 of 1991 deleted sub-section (2) and inserted in its place sub-section (3-A) which is as follows : (3-A). Any officer of a rank not inferior to that of an Assistant Director of Wild Life Preservation of [as 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. At the same time, amendments were made in Section 39(1)(d) after which it reads as follows :

39. Wild animals, etc., to be Government property (1) Every

(a) xxx xxx xxx xxx

(b) xxx xxx xxx xxx

(c) xxx xxx xxx xxx

(d) vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act, shall be the property of the State Government, and, where such animal is hunted in a sanctuary or National Park declared by the Central Government, such animal or any animal article, trophy, uncured trophy or meat [derived from such animal, or any vehicle, vessel, weapon, trap or tool used in such hunting] shall be the property of the Central Government. Ms. Vibha Datta Makhija, learned counsel appearing for the State of Madhya Pradesh referred in detail to various sub-sections of Section 50. She also referred to Section 51 laying down the penalties for offences committed under the Act, Section 53 dealing with the punishment for wrongful seizure and Section 54 dealing with the power to compound offences. Learned counsel submitted that prior to October 2, 1991, while sub-section (2) of Section 50 was in existence, the specified officers were empowered to release any trap, tool, vehicle, vessel or weapon seized under clause (c) of sub-section (1) in connection with any offence under the Act. But the provision was deleted and was substituted by sub-section (3-A) that limited the power of release only in regard to any captive animal or wild animal. The legislative intent was thus clear that no release was permissible of any article other than a captive animal or wild animal that could be given in the custody of any person on execution of a bond.

Learned counsel submitted that Section 50 of the Act provided a complete and comprehensive scheme in matters of entry, search, arrest and detention for prevention and detection of offence under the Act and excluded the application of any other Act, including the Code, in the matter. She maintained that at no time it was open to the Magistrate to direct for interim release of a vehicle seized under Section 50(1)(c) of the Act. Previously officers of certain higher ranks

had the power to release the seized vehicle but after deletion of sub-section (2) the power was taken away from the departmental officers as well and hence, a vehicle seized for commission of an offence under the Act could no longer be released on interim basis. In support of the submission that Section 50 provided a complete Code she also referred to Sections 51 and 53 of the Act. She submitted that the punishment for wrongful seizure too was provided under the Act itself and hence, the seizure would not attract the provisions of any other law, including the Code. In support of the submission she relied upon the decision of this Court in State of Karnataka vs. K.A.Kunchindammed [2002 (9) SCC 90]. She particularly relied upon paragraph 23 of the decision.

We are unable to accept the submissions. To contend that the use of a vehicle in the commission of an offence under the Act, without anything else would bar its interim release appears to us to be quite unreasonable. There may be a case where a vehicle was undeniably used for commission of an offence under the Act but the vehicles owner is in a position to show that it was used for committing the offence only after it was stolen from his possession. In that situation, we are unable to see why the vehicle should not be released in the owners favour during the pendency of the trial.

We are also unable to accept the submission that Section 50 and the other provisions in Chapter VI of the Act exclude the application of any provisions of the Code. It is indeed true that Section 50 of the Act has several provisions especially aimed at prevention and detection of offences under the Act. For example, it confers powers of entry, search, arrest and detention on Wild Life and Forest Officers besides police officers who are normally entrusted with the responsibility of investigation and detection of offences; further sub-section (4) of Section 51 expressly excludes application of Section 360 of the Code and the provisions of Probation of Offenders Act to persons eighteen years or above in age. But it does not mean that Section 50 in itself or taken along with the other provisions under Chapter VI constitutes a self-contained mechanism so as to exclude every other provision of the Code. This position becomes further clear from sub-section (4) of Section 50 that requires that any person detained, or things seized should forthwith be taken before a Magistrate. Sub-section (4) of Section 50 reads as follows :

50(4). Any person detained, or things seized under the foregoing power, shall forthwith be taken before a Magistrate to be dealt with according to law [under intimation to the Chief Wild Life Warden or the officer authorized by him in this regard].It has to be noted here that the expression used in the sub- section is according to law and not according to the provisions of

the Act. The expression according to law undoubtedly widens the scope and plainly indicates the application of the provisions of the Code.

We find that the full bench of the High Court has correctly taken the view that the deletion of sub-section (2) and its replacement by sub-section (3-A) in Section 50 of the Act had no effect on the powers of the Magistrate to release the seized vehicle during the pendency of trial under the provisions of the Code. The effect of deletion of sub-section (2) and its replacement by sub-section (3-A) may be summed up thus: as long as, sub-section (2) of Section 50 was on the Statute Book the Magistrate would not entertain a prayer for interim release of a seized vehicle etc. until an application for release was made before the departmental authorities as provided in that sub-section. Further, in case the prayer for interim release was rejected by the departmental authority the findings or observations made in his order would receive due consideration and would carry a lot of weight before the Magistrate while considering the prayer for interim release of the vehicle. But now that sub-section (2) of Section 50 stands deleted, an aggrieved person has no option but to approach the Magistrate directly for interim release of the seized vehicle. We are also of the view that the decision in *Kunchindammed* is of no help to the State in the present appeals. Paragraph 23 of the decision apparently seems to support the appellants contention but we find it difficult to apply it in the facts of the present case. The decision in *Kunchindammed* was rendered on the provisions of the Karnataka Forest Act, 1963. In that case, an order of confiscation of the vehicle was passed by the competent authority and the confiscation order had attained finality. The present case arises under the Wild Life Protection Act and the facts are materially different.

The decision of this Court closer to the issue under consideration may be found in *Moti Lal vs. Central Bureau of Investigation & Anr.* [2002 (4) SCC 713]. In that case an offence committed under the Act was handed over for investigation to the Central Bureau of Investigation and the action was assailed exactly on the plea that the Wild Life Act was a special law and it contained comprehensive provisions for investigation, inquiry, search, seizure, trial and imposition of punishment and, therefore, the police force establishment under the Delhi Special Police Establishment Act was not empowered to investigate the case. This Court rejected the contention and after examining in detail the various provisions of the Act particularly the provisions of Section 50 came to find and hold as follows :

The scheme of Section 50 of the Wild Life Act makes it abundantly clear that a police officer is also empowered to investigate the offences and search and seize the offending articles. For

trial of offences, the Code of Criminal Procedure is required to be followed and for that there is no other specific provision to the contrary. The special procedure prescribed is limited for taking cognizance of the offence as well as powers are given to other officers mentioned in Section 50 for inspection, arrest, search and seizure as well as of recording statement. The power to compound offences is also conferred under section 54. Section 51 provides for penalties which would indicate that certain offences are cognizable offences meaning thereby a police officer can arrest without warrant. Sub-section (5) of Section 51 provides that nothing contained in Section 360 of the Code of Criminal Procedure or in the Probation of Offenders Act, 1958 shall apply to a person convicted of an offence with respect to hunting in a sanctuary or a national park or of an offence against any provision of Chapter 5-A unless such person is under 18 years of age. The aforesaid specific provisions are contrary to the provisions contained in the Code of Criminal Procedure and that would prevail during the trial. However, from this, it cannot be said that operation of rest of the provisions of the Code of Criminal Procedure are excluded.

In this view of the matter, there is no substance in the contention raised by the learned counsel for the appellant that Section 50 of the Wild Life Act is a complete code and, therefore, CBI would have no jurisdiction to investigate the offences under the said Act. Hence, it cannot be said that the judgment and order passed by the High Court rejecting the petition filed by the appellant is in any way illegal or erroneous. We have, therefore, no doubt that the provisions of Section 50 of the Act and the amendments made thereunder do not in any way affect the Magistrates power to make an order of interim release of the vehicle under Section 451 of the Code.

Learned counsel submitted that Section 39(1)(d) of the Act made the articles seized under Section 50(1)(c) of the Act as government property and, therefore, there was no question of their release. The submission was carefully considered by the Full Bench of the High Court and on an examination of the various provisions of the Act it was held that the provision of Section 39(1)(d) would come into play only after a court of competent jurisdiction found the accusation and the allegations made against the accused as true and recorded the finding that the seized article was, as a matter of fact, used in the commission of offence. Any attempt to operationalise Article 39(1)(d) of the Act merely on the basis of seizure and accusations/allegations leveled by the departmental authorities would bring it into conflict with the constitutional provisions and would render it unconstitutional and invalid. In our opinion,

the High Court has taken a perfectly correct view and the provisions of Section 39(1)(d) cannot be used against exercise of the Magisterial power to release the vehicle during pendency of the trial.

We thus find no merit in any of the submission made on behalf of the appellants. The High Court has taken a correct view that warrants no interference by this Court.

State of U.P. & Anr vs Lalloo Singh

Bench: Dr. Arijit Pasayat, D.K. Jain

CASE NO.: Appeal (crl.) 963 of 2001

DATE OF JUDGMENT: 20/07/2007

BENCH: Dr. ARIJIT PASAYAT & D.K. JAIN

1. Challenge in this appeal is to the judgment of a learned Single Judge of the Allahabad High Court allowing the revision petition filed by the respondent. The question of importance involved in this appeal relates to the ambit of Section 50(4) of the Wild Life (Protection) Act, 1972 (in short the 'Act'). Connected issues relate to the scope for exercise of jurisdiction under Section 457 of the Code of Criminal Procedure, 1973 (in short the 'Code').

Facts:

One Hoshiyar Singh, the brother of the revisionist, Lalloo Singh was allegedly found carrying sand on a tractor trolley being dug and loaded from the bed of Jamuna river, within the sanctuary declared under Section 18 of the Act. The Forest Authorities intercepted the tractor trolley, arrested Hoshiyar Singh and seized the tractor trolley in exercise of the powers conferred under the provisions of the Act. A revision was filed by Lalloo Singh claiming to be the owner of the tractor trolley. He, therefore, moved an application for release of the same. The VIIth Addl. Chief Judicial Magistrate in exercise of the powers conferred under Section 457 of the Code released the tractor trolley in favour of the revisionist on his furnishing personal bond of Rs.2 lacs and two sureties in the like amount. Against that order, the State of UP. through District Forest Officer, Agra filed a Criminal Revision No.85 of 1999 before the Sessions Judge, Agra which was heard and disposed of by Special Judge (E.C. Act). The revisional court being of the view that the tractor trolley seized under the Act, which has become the property of the Government, held that same could not be released by the Magistrate, allowed the revision and set aside the order of the Magistrate. Hence, the revision by the revisionist, Lalloo Singh was filed.

The High Court by the impugned order held that the Magistrate had the jurisdiction.

In support of the appeal, learned counsel for the appellant submitted that the effect of deletion of sub-section (2) of Section 50 of the Act has not been considered by the High Court. It also lost sight of the fact that the moment there is seizure of the seized property it becomes the property of the Government in terms of Section 39 of the Act. Section 457 of the Code has no application because it relates to only when a police officer produces the said property before the magistrate. The officials under the Act are not police officials.

Learned counsel for the respondent on the other hand submitted that the interpretation given by the High Court to Section 50 of the Act is correct. Sub section (2) of Section 50 has no effect on the power of the Magistrate to release the seized articles. For application of Section 39 of the Act there has to be first determination that the seized property in question was used for the purpose of commission of an offence.

Considering the fact that there is diversion of views of various High Courts, we requested Mr. Ashok Bhan to act as Amicus Curiae.

We have heard at length learned counsel for the parties. It is to be noted that substantial changes have been made in the Act by the Act 44 of 1991 operating with effect from 2.10.1991. The major changes so far as the present case is concerned relate to deletion of sub-section (2) of Section 50, insertion of clauses (c) & (d) in sub section (1) of Section 39, insertion of sub-section 3(a) in Section 50.

The question of importance involved in this appeal relates to the ambit of Section 50(4) of the Wild Life (Protection) Act, 1972 (in short the 'Act'). Connected issues relate to the scope for exercise of jurisdiction under Section 457 of the Code of Criminal Procedure, 1973 (in short the 'Code').

While dealing with the first question, what needs consideration is whether Section 457 of the Code has any application to the present case. Undisputedly, Section 457 of the Code applies when the seizure of property by a police officer is reported to a Magistrate under the provisions of the Code. There is a marked distinction between police officers and the officials under the Act as is evident from sub-section (1) of Section 50. The said Section so far as relevant reads as follows:-

"50. Power of entry, search, arrest and detention.(1) Notwithstanding anything contained in any other law for the time being in force, the Director or any other officer authorised by him in this behalf or the Chief Wild Life Warden or the authorised officer or any forest officer or any police officer not below the rank of a sub-inspector, may, if he has reasonable grounds for believing that any person has committed an offence against this Act,-

(a) require any such person to produce for inspection any captive animal, wild animal, animal article, meat, trophy uncured trophy, specified plant or part or derivative thereof] in his control, custody or possession, or any licence, permit or other document granted to him or required to be kept by him under the provisions of this Act;

(b) stop any vehicle or vessel in order to conduct search or inquiry or enter upon and search any premises, land, vehicle or vessel, in the occupation of such person, and open and search any baggage or other things in his possession;

(c) seize any captive animal, wild animal, animal article, meat, trophy or uncured trophy, or any specified plant or part or derivative thereof, in respect of which an offence against this Act appears to have been committed, in the possession of any person together with any trap, tool, vehicle, vessel or weapon used for committing any such offence and, unless he is satisfied that such person will appear and answer any charge which may be preferred against him, arrest him without warrant, and detain him:

Provided that where a fisherman residing within ten kilometers of a sanctuary or National Park, inadvertently enters on a boat, not used for commercial fishing, in the territorial waters in that sanctuary or National Park, a fishing tackle or net on such boat shall not be seized."

9. Sub-section (2) of Section 50 was omitted by Act 44 of 1991. The amendment read as follows:

"36. Amendment of Section 50.In Section 50 of the principal Act,-

(a) in sub-section (1),-

(i) in clause (a), for the words "trophy or uncured trophy", the words "trophy, uncured trophy, specified plant or part or derivative thereof" shall be substituted;

(ii) for clause (c), the following clause shall be substituted, namely:-

"(c) seize any captive animal, wild animal, animal article, meat, trophy or uncured trophy, or any specified plant or part or derivative thereof, in respect of which an offence against this Act appears to have been committed, in the possession of any person together with any trap, tool, vehicle, vessel or weapon used for committing any such offence and, unless he is satisfied that such person will appear and answer any charge which may be preferred against him, arrest him without warrant, and detain him:

Provided that where a fisherman, residing within ten kilometers of a sanctuary or National Park, inadvertently enters on a boat, not used for commercial fishing, in the territorial waters in that sanctuary or National Park, a fishing tackle or net on such boat shall not be seized.";

(b) sub-section (2) shall be omitted;

(c) after sub-section (3), the following sub-section shall be inserted, namely:-

"(3-A) Any officer of a rank not inferior to that of an Assistant Director of Wild Life Preservation or Wild Life Warden, 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.";

(d) in sub-section (6), for the words "meat or uncured trophy", wherever they occur, the words "meat, uncured trophy, specified plant, or part or derivative thereto" shall be substituted;

(e) after sub-section (7), the following sub-sections shall be inserted, namely:-

"(8) Notwithstanding anything contained in any other law for the time being in force, any officer not below the rank of an Assistant Director of Wild Life Preservation or Wild Life Warden shall have the powers, for purposes of making investigation into any offence against any provision of this Act,-

(a) to issue a search warrant;

(b) to enforce the attendance of witnesses;

(c) to compel the discovery and production of documents and material objects; and

d) to receive and record evidence.

(9) Any evidence recorded under clause (d) of sub-section (8) shall be admissible in any subsequent trial before a Magistrate provided that it has been taken in the presence of the accused person."

Sub-section (2) of Section 50 before omission reads as follows:

"Any officer of a rank not inferior to that of an Assistant Director of Wild Life Preservation or Wild Life Warden, who or chose sub-ordinate has seized any trap, tool, vehicle, vessel, or weapon under clause (c) of sub-section (1), may release the same, on the execution by the owner thereof a bond for the production of the property to be released, if and when required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made."

In view of the clear language of sub-section (1) of Section 50, Section 457 of the Code has no application. But there is another provision which also is relevant i.e. Section 451 of the Code that relates to the order for custody and disposal of the property pending trial in certain cases. It provides that when any property is produced before any criminal Court, during any enquiry or trial, the Court may make such order as it thinks fit for proper custody of such property pending the conclusion of the enquiry or the trial. It also provides for action to be taken when the property is subject to speedy and natural decay. If the Court otherwise thinks it expedient to do so, the Court may after recording such evidence as it thinks fit may pass orders for sale of the property or disposal thereof.

The real complexity of the issue arises as to what is the effect of the expression "to be dealt with according to law", as appearing in sub-section (4) of Section 50 of the Act.

Learned counsel for the appellant-State has submitted that when the property on seizure becomes the property of the Government, the Magistrate cannot pass any order for release thereof or interim custody thereof.

For appreciating this contention reference is necessary to Section 39 of the Act. Clause (d) of sub-section (1) of Section 39 deals with a situation when any vehicle, vessel, weapon, trap or

tool has been used for committing an offence and has been seized under the provisions of the Act. The twin conditions are that the vehicle etc. must have been used for committing an offence and has been seized. Mere seizure of the property without any material to show that the same has been used for committing an offence does not make the seized property, the property of the Government. At this juncture, it is also to be noted that under sub-section (1) of Section 50 action can be taken if the concerned official has reasonable grounds for believing that any person has committed an offence under the Act. In other words, there has to be a reasonable ground for belief that an offence has been committed. When any person is detained, or things seized are taken before the magistrate, he has the power to deal with the same "in accordance with law". There is a significant addition in sub-section (4) by Act 16 of 2003 i.e. requirement of intimation to the Chief Wild Life Warden or the officer authorized in this regard as to the action to be taken by the Magistrate when the seized property is taken before a Magistrate. A combined reading of the omitted sub-section (2) and the substituted sub-section (3A) of the Section 50 makes the position clear that prior to the omission, the officials under the Act had the power to direct release of the seized article. Under sub-section (3A), the power for giving temporary custody subject to the condition that the same shall be produced if and when required by the magistrate is indicative of the fact that the Magistrate can pass appropriate orders in respect of the purported seized property which is taken before him. While dealing with an application for temporary release of custody, there cannot be a complete adjudication of the issues involved as the same is a matter for trial. While dealing with the application the Magistrate has to take into account the statutory mandate that the seized property becomes the property of the State Government when the same has been used for commission of an offence under the Act and has been seized. It appears that insertion in sub-section (4) relating to the intimation to the Chief Wild Life officer or the officer authorized by him is intended to give concerned official an opportunity of placing relevant materials on record before the Magistrate passes any order relating to release or custody. In appropriate cases on consideration of materials placed before him, prayer for such release or custody can be rejected.

It is to be noted that under sub-section (1) of Section 50 for the purpose of entry, seizure, arrest and detention the official has to form the belief on reasonable grounds that the person has committed an offence under the Act. The Magistrate is, therefore, required to consider these aspects while dealing with the application as noted above. It cannot be a routine exercise. As noted above, the High Court is not justified in holding that Section 457 of the Code has application.

It appears that by order dated 26.3.2001 respondent was required to indicate whether he is prepared to deposit a bond of Rs.2,00,000/-as security. If the said security has been furnished, because of passage of time the impugned order shall remain in force, though in view of the analysis made above the conclusions are not sustainable.

Learned counsel for the parties could not tell us whether the trial in the matter has been completed. We dispose of the appeal on clarifying the legal issues involved.

The appeal is accordingly disposed of.

Mohammed Ismail vs State Of Kerala on 19 July, 2004

Equivalent citations: 2004 (3) KLT 322

Bench: K B Nair

JUDGMENT K. Balakrishnan Nair, J.

1. The point to be decided in this Writ Petition is whether the Judicial Magistrate, before whom a vehicle seized under the provisions of the Wild Life (Protection) Act, 1972, is produced, is competent to give interim custody of the same to the registered owner. The brief facts of the case, as stated by the petitioner, are the following:

2. The petitioner is the owner of a lorry bearing Registration No. KL5/F-7051. The driver of the said vehicle was taken into custody by the Forest Officials on 16.6.2004. His driver confessed that on 13.6.2004, the said lorry was used for transporting forest timber worth Rs. 75,000/-. On the basis of the said confession, the petitioner's vehicle was taken into custody under Ext.P2 mahazar. As per Ext.P2, the value of the logs transported is Rs. 2,50,000/- and the value of the lorry is Rs. 3 lakhs. The petitioner submits, the goods and the lorry were seized under Section 52(1) of the Forest Act, for action under Section 61A of the said Act. The petitioner further submits that his driver was specifically instructed not to transport any contraband goods. The petitioner was not aware of the seizure of the vehicle. On finding that the vehicle was missing, he filed a petition before the Sub Inspector of Police, Kanjirappally, which would be evident from Ext.P5. Later, on finding that the lorry was with the 2nd respondent, he filed Ext.P6 representation before the said respondent and also Ext.P7 representation before the 1st respondent for release of the lorry. Thereafter, this Writ Petition is filed, seeking appropriate reliefs.

3. The 2nd respondent has filed a counter affidavit, in which it is submitted that the vehicle has been seized under the provisions of the Wild Life (Protection) Act, 1972 and therefore, it has become the property of the Government. It is also submitted that neither the officers of the Forest Department nor the concerned Criminal Court, are competent to release the vehicle, in view of the deletion of Sub-section (2) of Section 50 of the Wild Life (Protection) Act, 1972, empowering the concerned Magistrate to release the goods or the vehicles seized. Therefore, it is submitted, once the vehicle is seized, it becomes the property of the Government and the same cannot be released. It is further submitted that the timber logs transported, using the petitioner's vehicle, were cut and removed from the Idukki Wild Life Sanctuary and therefore,

the vehicle and the timber logs have to be dealt with under the provisions of the Wild Life (Protection) Act, 1972.

4. I heard the learned Counsel on both sides. Section 39(d) of the Wild Life (Protection) Act, 1972 provides, inter alia, that any vehicle used for committing an offence under the Act and seized, shall be the property of the Government. The said provision is extracted below for convenient reference:-

"39. Wild animals etc., to be Government property (1) Every--

(a)

(b)

(c)

(d) vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of the Act, shall be the property of the Government.....".

The provision for seizure is contained in Section 50(1)(c) of the Act, which reads as follows:

50. Power of entry, search, arrest and detention (1). -- Notwithstanding anything contained in any other law for the time being in force, the Director or any other officer authorised by him in that behalf or the Chief Wild Life Warden or the authorised officer or any forest officer or any police officer not below the rank of a Sub-Inspector, may, if he has reasonable grounds for believing that any person has committed an offence against this Act -

(a)

(b)

(c) seize any captive animal, wild animal, animal article, meat, trophy or uncured trophy or any specified plant or part or derivative thereof, in respect of which an offence against this Act appears to have been committed, in the possession of any person together with any trap, tool, vehicle, vessel or weapon used for committing any such offence and unless he is satisfied that such person will appear and answer any charge which may be preferred against him, arrest him without warrant and detain him:

The said clause enables seizure of the vehicle and also the arrest of the persons, provided, the competent Officer authorised under Section 50, has reasonable grounds for believing that such person has committed an offence under the provisions of the Act. Sub-section (4) of Section 50 provides that any person detained under Sub-section (1) shall, forthwith, be taken to a Magistrate to be dealt with in accordance with law under intimation to the Chief Wild Life Warden or the Officer authorised by him in this regard. The said provision reads as follows:--

"Any person detained, or things seized under the foregoing power, shall forthwith be taken before a Magistrate to be dealt with according to law".

Section 51 (2) provides that upon conviction of a person under the Act, the Court, trying the offence, may order, inter alia, that the vehicle used for the commission of the offence shall be forfeited to the State Government. So, the vehicle will become the property of the Government, only on the order of the competent Magistrate under Section 51(2).

5. In this case, the vehicle was seized under Section 50(1)(c), as stated earlier, on the satisfaction of the concerned Officer that reasonable grounds existed for believing that a person has committed an offence under the Act, using the vehicle. If the property is to vest in the Government absolutely, on being seized, on the basis of the belief entertained by the concerned Officer, the said provision cannot stand scrutiny, in the light of Article 14 of the Constitution of India. Such a provision will run counter to the basic principles of Rule of law. The Apex Court in "Indian Handicrafts Emporium v. Union of India", 2003 (10) SBR 360, which was a case under the Wild Life (Protection) Act, has held as follows:

"The question as to whether an offence under the Act has been committed or not, at that stage, cannot be determined. Such a determination further more cannot be left for adjudication at the hands of the executive authority. As and when a seizure is made and the trader is prosecuted for alleged commission of an offence having regard to Sub-section (7) of Section 49-C of the Act; adjudication therefore must be made by a competent Court of law having jurisdiction in this behalf. Before a person is convicted, a Court has to arrive at the finding that the accused has committed an offence wherefor a full-fledged criminal trial would be necessary. In the absence of such criminal trial and offence having been found committed, Section 39 may not have any application. In that view of the matter, it is evident that the properties do not stand vested in the Government in terms thereof".

This decision also fully supports the view that the vehicle will not vest in the Government on its seizure, unless there is an order of the Court under Section 51(2).

6. Sub-section (5) of Section 51 provides, inter alia, that Section 360 of the Cr.P.C. will not apply to the trial of offences under the provisions of the Wild Life (Protection) Act, 1972. The said provision reads as follows:--

"Nothing contained in Section 360 of the Code of Criminal Procedure, 1973 (2 of 1974) or in the Probation of Offenders Act, 1958(2 of 1958) shall apply to a person convicted of an offence with respect to hunting in a sanctuary or a National Park or of an offence against any provision of Chapter VA unless such person is under eighteen years of age".

That means, by necessary implication, other provisions will apply. Section 4(2) of the Cr.P.C. also will support this view. Therefore, obviously, Section 451 will also be applicable to the trial of offences under the Act. But, the learned Special Government Pleader pointed out that Sub-section (2) of Section 50, which enabled the Magistrate to release the vehicle pending trial, has been deleted by Act 44 of 1991. Therefore, by necessary implication, it has to be held that the learned Magistrate is not competent to release the vehicle, it is submitted. Reliance is placed on Ext.R2(a) Judgment of the Madhya Pradesh High Court, to support this submission. But, by Act 44 of 1991, while Sub-section (2) of Section 50 was deleted, Sub-section (5) of Section 51 was added, providing, inter alia, that the provisions of the Cr.P.C., except Section 360, will apply. Apparently, Sub-section (2) of Section 50 was deleted in view of the introduction of Sub-section (5) to Section 51, Therefore, the contention of the learned Special Government Pleader that the Magistrate has no power under Section 451 of the Cr.P.C. to deal with the vehicle produced before him, cannot be accepted. The decision of the Madhya Pradesh High Court does not lay down the correct legal position.

7. In view of the above, the 2nd respondent is directed to produce the vehicle before the competent Magistrate, if so far, the same has not been produced. Thereafter, the petitioner may move the learned Magistrate by filing a petition under Section 451. In that event, the learned Magistrate will consider and dispose of the same expeditiously.

MOTILAL

Vs.

CENTRAL BUREAU OF INVESTIGATION AND ANOTHER

Equivalent Citation: 2002 AIRSCW 1626 = AIR 2002 SC 1691

Bench : Hon'ble Justice M.B.Shah and Hon'ble Justice B.N.Agarwal.

Facts :

The appellant, who is resident of Delhi, was arrested in connection with the offence punishable under Sections 9, 39(3), 44, 49, 50, 51, 57 and 58 of the Wild Life Act. It is alleged that the officers of the Sales Tax Department conducted checking of a truck at Mohan Nagar barrier in District Ghaziabad on the night of 18th/19th December, 1999 and a bundle of cotton cloth was found therein, which according to the documents, was being transported from Delhi to Siliguri. On opening the bundle, it was found that it contained 50 skins of leopard, 3 skins of tiger and 5 skins of jungle fox. On receipt of the said information, officers of the Forest Department, Ghaziabad arrived on the spot and seized the skins of animals under Section 50 of the Wild Life Act. Driver and the conductor of the truck were taken into custody and thereafter FIR was lodged and the case was registered as Crime No. 915 of 1999 under the Wild Life Act. By notification dated 21st March, 2000 issued by the Central Government, the investigation of the case was subsequently transferred to Delhi Special Police Establishment.

The order passed by the Central Government transferring the investigation to Delhi Special Police Establishment was challenged by filing Criminal Misc. Writ Petition No. 6830 of 2000 before the High Court of Allahabad with the prayer that the appellant be released forthwith. The High Court, by the impugned judgment and order dated 7th February, 2001, rejected the said petition. Hence, this appeal.

Issue: Whether the Central Bureau of Investigation (CBI) was authorised to investigate an offence, which is punishable under the Wild Life (Protection) Act, 1972 (hereinafter referred to as 'the Wild Life Act') as is contended that the said Act is a self contained Code?

At the time of hearing of this matter, Mr. D.N. Goburdhan, learned counsel appearing for the appellant submitted that the Wild Life Act is a special law as understood under Section 5 of the Code of Criminal Procedure, 1973 and it contains comprehensive provisions for investigation, inquiry, search, seizure, compounding of offences, trial and punishment and, therefore, the Police Force Establishment under the Delhi Special Police Establishment Act (hereinafter referred to as 'the Act') was not empowered to investigate the case. He also submitted that under the Act jurisdiction of the Special Police Force is limited in relation to the investigation of offences within the Union Territories as specified in the Notification issued under Section 3 of the Act. In support of his contention he relied upon the decision rendered

by this Court in Central Bureau of Investigation vs. State of Rajasthan & Ors. [(1996) 9 SCC 735]. As against this, learned counsel appearing on behalf of the respondents submitted that before transferring the investigation, the Central Government has issued Notification, as required under Section 5 of the Act and the State of U.P. has also issued necessary consent order, as required under Section 6 of the said Act. Hence, the CBI is having jurisdiction to investigate the offence.

For appreciating the said contentions, we would refer to relevant parts of Sections 3, 5(1) and 6 of the Act which read as under: -

"3. Offences to be investigated by special police establishment. The Central Government may, by notification in the Official Gazette, specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment.

5. Extension of powers and jurisdiction of special police establishment to other areas.

(1) The Central Government may by order extend to any area (including Railway areas), in a State, not being a Union Territory the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under section 3.

(3).

6. Consent of State Government to exercise of powers and jurisdiction. Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union territory or railway area, without the consent of the Government of that State."

Admittedly, in exercise of the powers conferred by Section 3 of the Act, notification dated 24.1.1996 was issued by the Central Government specifying that offences punishable under Section 51 of the Wild Life Act could be investigated by the Delhi Special Police Establishment. Thereafter, the State of U.P. has issued the Notification, as required under Section 6 of the Act wherein it has been stated that the State of Uttar Pradesh is pleased to accord the consent to the extension of powers and jurisdiction of the members of the Delhi Special Police Establishment in the investigation of the Offence(s) punishable relating to the seizure of skin of Tiger and Leopard under Schedule 1 of the Wild Life Act, namely, case Crime No. 915/99 under Sections 9/39(3), 44, 48, 49, 50, 51, 57, 58 of the Wild Life Act and also case Crime No. 11/2000 under Section 429/379/411 IPC and Section 49B/51 of the Wild Life Act and also under Section 10/15 of the Animal Cruelty Act. Subsequently, the Central Government had issued a Notification, as contemplated under Section 5 of the Act empowering members of Delhi Special Police Establishment for investigating the aforesaid cases. In view of the Notifications issued by the Central Government under Section 5 of the Act and the Notification issued by the State of U.P. according consent to the extension of powers and jurisdiction of the members of the Delhi Special Police Establishment to investigate the

offences, the contention raised by the learned counsel for the appellant that the CBI does not have jurisdiction to investigate the matter is without any substance.

Keeping the aforesaid Notifications in mind, we would first refer to the relevant provisions of the Wild Life Act. It is the contention of the learned counsel for the appellant that Section 50 prescribes exhaustive procedure to investigate and seize the articles specified therein. It also provides the procedure for the arrest of the persons, who are found in possession of the articles mentioned therein. It is his contention that sub-sections (1), (8) and (9) of Section 50 make the position abundantly clear that the officers mentioned and authorised under the Act, would only have jurisdiction to investigate the offences under the Wild Life Act. He also contended that sub-section (9) of Section 50 makes a departure and provides that evidence recorded by the officer empowered under sub-section (8) of Section 50 is made admissible in any subsequent trial before the magistrate and, therefore, also the police officer would not be entitled to investigate the offence because the evidence recorded by the police officer is inadmissible at the trial under the Evidence Act. For appreciating the said contention, we would refer to the relevant provisions of Sections 50 and 55:

"Chapter VI Prevention and Detection of Offences.

50. Power of entry, search, arrest and detention.

(1) Notwithstanding anything contained in any other law for the time being in force, the Director or any other officer authorised by him in this behalf or the Chief Wild Life Warden or the authorised officer or any Forest Officer or any Police Officer not below the rank of a sub-inspector, may, if he has reasonable grounds for believing that any person has committed an offence against this Act,-

(a) require any person to produce for inspection any captive animal, wild animal, animal article, meat, trophy, uncured trophy, specified plant or part or derivative thereof in his control, custody or possession, or any licence, permit or other document granted to him or required to be kept by him under the provisions of this Act;

(b) stop any vehicle or vessel in order to conduct search or inquiry or enter upon and search any premises, land, vehicle or vessel, in the occupation of such person, and open and search any baggage or other things in his possession;

(c) seize any captive animal, wild animal, animal article, meat trophy or uncured trophy, or any specified plant or part or derivative thereof, in respect of which an offence against this Act appears to have been committed, in the possession of any person together with any trap, tool, vehicle, vessel or weapon used for committing any such offence and, unless he is satisfied that such person will appear and answer any charge which may be preferred against him, arrest him without warrant and detain him:

Provided that where a fisherman, residing within ten kilometres of a sanctuary or National Park, inadvertently enters on a boat, not used for commercial fishing, in the territorial waters

in that sanctuary or National Park, a fishing tackle or net on such boat shall not be seized.] (4) Any person detained, or things seized under the foregoing power, shall forthwith be taken before a Magistrate to be dealt with according to law.

(5) Any person who, without reasonable cause, fails to produce anything, which he is required to produce under this section, shall be guilty of an offence against this Act.

(8) Notwithstanding anything contained in any other law for the time being in force, any officer not below the rank of an Assistant Director of Wild Life Preservation or Wile Life Warden shall have the powers, for purposes of making investigation into any offence against any provision of this Act,-

(a) to issue a search warrant;

(b) to enforce attendance of witnesses;

(c) to compel the discovery and production of documents and material objects; and

(d) to receive and record evidence.

(9) Any evidence recorded under clause (d) of sub- section (8) shall be admissible in any subsequent trial before a Magistrate provided that it has been taken in the presence of the accused person."

55. Cognizance of offences.No Court shall take cognizance of any offence against this Act 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

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

At this stage, we would mention that the Central Government has issued notification dated 7th April 2000 under the provisions of clause (a) of Section 55 of the Wild Life Act, authorizing the officers of Delhi Special Police Establishment not below the rank of Deputy Superintendent of Police, to file complaints with regard to the offences punishable under the Act in the areas in their respective jurisdiction. Therefore, it cannot be said that the CBI was not entitled to file the criminal complaint against the appellants.

Further, considering sub-section (1) of Section 50, it is apparent that under the Wild Life Act, the Director or any other officer authorised by him in this behalf or the Chief Wild Life Warden or the authorised officer or any Forest Officer are empowered to exercise the powers mentioned in sub-clauses (a), (b) and (c). Not only this, but it specifically empowers the Police Officer not below the rank of sub-inspector to inspect, conduct search or hold inquiry or seize articles, as provided in clauses (a), (b) and (c). This would certainly mean that the Police Officers are not excluded from investigating the offences under the Act. Sub-section (1) starts with a non-obstante clause that 'notwithstanding anything contained in any other law for the time being in force' which would include the Code of Criminal Procedure and the Officers mentioned therein are also entitled to inspect, search or seize the articles mentioned in clauses (a), (b) and (c). This would mean that apart from the Police Officers not below the rank of Sub-Inspector, other officers as mentioned above are given special powers for the purpose of prevention and detection of the offence under the Act.

Similarly, sub-section (8) empowers the officer not below the rank of an Assistant Director of Wild Life Preservation or Wild Life Warden for the purposes of making investigation into any offence against any provision of the Act: to issue search warrant; to enforce the attendance of witnesses; to compel the discovery and production of documents and material objects; and to receive and record evidence. Further, sub-section (9) provides that evidence recorded by such officer would be admissible in the trial if it is taken in presence of the accused person. But this would have no bearing on the question whether the Police Officers are entitled to investigate the case or not.

As provided under sub-section (1) of Section 50, 'police officers' are not excluded for the purpose of investigation including inspection, search and seizure of the offending articles. No doubt, special powers are conferred to other officers but that is in consonance with sub-section (2) of Section 4 of Code of Criminal Procedure. Section 4 of the Code reads thus:

"4. Trial of offences under the Indian Penal Code and other laws.(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

The aforesaid section inter alia specifically provides that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the Code of Criminal Procedure but it shall be subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences. In view of specific provision under the Wild Life Act, apart from the police officer not below the rank of sub-inspector, the Director or any other officer authorised by him in this behalf or the Chief Wild Life Warden or authorised officer or any Forest officer can inspect, conduct

search or inquire, seize article mentioned in the clauses (a), (b) and (c) of sub-section (1). To this extent, there is contrary provision under the Wild Life Act and would prevail as provided under sub-section (2) of Section 4 of Code of Criminal Procedure.

Learned counsel for the appellant referred to the decision in the case of State of Rajasthan (supra) wherein this Court dealt with the question whether the CBI can investigate the offences for violation of the Foreign Exchange (Regulation) Act, 1973 ("FERA" for short), more so, when the offence is alleged to have been committed outside the Indian territory? After referring to Sections 3, 4 and 5 of FERA, the Court held that the Act enacts that for implementing and enforcement of provisions of FERA, different classes of officers of Enforcement have been constituted in Section 3. The Court observed that from a combined reading of sections 3, 4 and 5 of FERA, it was clear that primarily officers of Enforcement Directorate as mentioned in Sections 3 and 4 have been empowered to exercise the powers and discharge the duties conferred or imposed on such officers of the Enforcement Directorate under FERA. And, in such cases, the Central Government under Section 5 can authorise any officer of the Customs or Central Excise Officer or Police Officer or any officer of the Central Government or State Government to exercise such of the powers and discharge such of the duties of the Director of Enforcement or any other officer of Enforcement under FERA as may be specified subject to such conditions and limitations as deemed fit by the Central Government. The Court also held that as it was nobody's case that any notification has been issued under FERA authorising the member of Delhi Special Police Establishment to discharge the duties and functions of an officer of Enforcement Directorate and in absence of such notification under FERA, a member of Delhi Special Police Establishment cannot be held to be an officer under FERA and, therefore, is not competent to investigate into the offences under FERA. The Court further observed that FERA being a special law containing provisions for investigation, inquiry, search, seizure, trial and imposition of punishment for offences under FERA, section 5 of the Code of Criminal Procedure is not applicable in respect of offences under FERA.

In our view, the aforesaid judgment has no bearing in the present case. As stated above, the Central Government has issued notification dated 21.3.2000 under Section 5 read with Section 6 of the Act empowering the CBI for investigation of the case against the appellants under the Wild Life Act and Indian Penal Code. The scheme of Section 50 of the Wild Life Act makes it abundantly clear that Police Officer is also empowered to investigate the offences and search and seize the offending articles. For trial of offences, Code of Criminal Procedure is required to be followed and for that there is no other specific provision to the contrary. Special procedure prescribed is limited for taking cognizance of the offence as well as powers are given to other officers mentioned in Section 50 for inspection, arrest, search and seizure as well of recording statement. The power to compound offences is also conferred under Section 54. Section 51 provides for penalties which would indicate that certain offences are cognizable offences meaning thereby police officer can arrest without warrant. Sub-section (5) of Section 51 provides that nothing contained in Section 360 of the Code of Criminal Procedure or in the Probation of Offenders Act, 1958 shall apply to a person convicted of an offence with respect to hunting in a sanctuary or a national park or of an offence against any provision of Chapter 5A unless such person is under 18 years of age. The aforesaid specific provisions are contrary

to the provisions contained in Code of Criminal Procedure and that would prevail during the trial. However, from this, it cannot be said that operation of rest of the provisions of the Code of Criminal Procedure are excluded.

In this view of the matter, there is no substance in the contention raised by the learned counsel for the appellant that Section 50 of the Wild Life Act is complete code and, therefore, CBI would have no jurisdiction to investigate the offences under the said Act. Hence, it cannot be said that the judgment and order passed by the High Court rejecting the petition filed by the appellant is in any way illegal or erroneous.