

Sansar Vs. State

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Court : Delhi

Decided On : Dec-14-1993

Reported in : 1994IAD(Delhi)13; 1994(28)DRJ281

Judge : S.C. Jain, J.

Acts : Wild Life (Protection) Act, 1972 - Sections 57

Appeal No. : Criminal Revision Appeal Nos. 116 and 206 of 1982

Appellant : Sansar

Respondent : State

Advocate for Pet/Ap. : K.K. Luthra,; O.P. Malviya,; A. Malviya,;

Judgement :

S.C. Jain, J.

(1) This order of mine will dispose of two revision petitions i.e. Cr.R. No. 116 of 1982 and Cr. R. No. 206 of 1982 which have arisen out of the same order dated 17.2.1992 passed by Mr.P.S. Sharma, the then Additional Sessions Judge whereby appeals being Criminal Appeal No. 50 of 1981 and Criminal Appeal No.56 of 1981 filed by Sansar, the petitioner herein, against his conviction and sentence dated 1.8.1981 and 3.8.1981 under Section 44,49 and 51 of the Wild Life (Protection) Act, 1972 passed by Mr. H.P. Sharma, Additional Chief Metropolitan

Magistrate, were dismissed.

(2) The facts which are apparent on record are that on 11th September, 1974 the premises No. 2101, 1st floor, Sadar Nala and premises No. 1260 Gali No. 11 Sadar Bazar within the jurisdiction of P.S. Sadar Bazar, Delhi which was in possession and occupation of Sansar, the petitioner herein, were searched and as a result of which trophies/uncured trophies of the animals specified in Schedule I and part II of Schedule II and also trophies/uncured trophies covered under Section 49 of the Wild Life (Protection) Act were recovered and for that offence which act was in contravention of Section 40(2) and 49 of the Wild Life (Protection) Act and on 28.11.1974 that account this petitioner was charged to face trial under sub-section II of Section 51 of the Wild Life (Protection) Act and also under 1st proviso to sub-section [1] of Section 51 of the Wild Life (Protection) Act.

(3) It is stated that on 20.11.1974 the residential premises of Sansar, the petitioner, being House No. 1166, Gali No. II, Sadar Bazar, Delhi was also searched and as a result 104 uncured skins of Red Fox and 435 uncured skins of Agra Monitor Lizard were allegedly recovered from those premises which were in occupation and control of the petitioner and as such he was also charged to face trial for an offence under Section 51(1) of the Wild Life (Protection) Act.

(5) In Criminal Case No. 20/3 which arose out of the incident dated 11.9.1974 the petitioner was found guilty of contravention of the provisions of Section 40(2) and 49 of the Wild Life (Protection) Act and was convicted under Section 51 of the Wild Life (Protection) Act and sentenced to undergo R.I. for a period of 1-1/2 years and also to pay a fine of Rs. 5,000 and in default of payment of fine, to further undergo S.I. for nine months under the first proviso of Section 51(1) of the Act. In the other Criminal Case being No. 110/3 which arose out of the incident dated 20.11.1974 the petitioner was found guilty of contravention of the provisions of Section 44 and 49 of the Wild Life (Protection) Act and was convicted for the said offence and sentenced only to pay a fine of Rs. 2,000 and in default of payment of fine to undergo S.I. for six months.

(6) Against both these judgments the petitioner filed two separate appeals before the Additional Sessions Judge which was disposed of by a single judgment, which

is the impugned judgment before this Court.

(7) Mr. K.K. Luthra, learned Senior Counsel appearing, for the petitioner took a legal objection that two separate appeals cannot be disposed of by a single order. According to him, though these two offences have taken place during the period of one year, i.e. in the year 1974 itself, but both the cases were tried separately and the evidence was recorded separately and that they were disposed of by two separate judgments. According to the learned counsel, the disposing of two criminals appeals by a single judgment of the learned Additional Sessions Judge is contrary to the provisions as laid down under the Cr.P.C. He relied upon the provisions of Section 381 and 385 Cr.P.C. which provides the procedure for appeal to the Court of Sessions. According to him, if there is an error in the procedure adopted in the trial, the conviction and sentence become void. He put reliance upon a decision of the Supreme Court in *Bashira vs . State of Uttar Pradesh* : [1969]1SCR32 in support of his contention. 283

(8) Another point raised by the learned counsel for the petitioner is that Section 55 of the Wild Life (Protection) Act provides that no court shall take cognizance of an offence against this Act except on the complaint of the Chief Wild Life Warden or such other officer as the State Government may authorise in this behalf. According to the learned counsel for the petitioner, the complainant was not an authorised officer to file a complaint under the aforesaid provisions of the Act and therefore, the complaint was incompetent and was liable to be dismissed on this short ground alone. He submitted that the holding by the Court below that Mr. S.L. Nagrath was a Wild Life Inspector and was competent to file the complaint is against the facts and law. The court, therefore, has erred in law in presuming that the complainant was a person authorised under the rules framed under sections 63 and 64 of the Wild Life (Protection) Act. He also urged that the Lower Court has wrongly held that the provisions of Section 57 of the Wild Life (Protection) Act permit the courts to shift the burden of proof on the petitioner in absence of proving conscious possession or control or custody. He further submitted that the presumption on, the part of the petitioner was in actual and conscious control or possession of the impugned goods seized in his absence is against the facts and law. He submitted that no link has been proved between the impugned goods and

the petitioner as the petitioner has not been shown to be in control of the rooms in premises No. 1260 and 2101 which have many rooms and are big premises.

(9) Learned counsel for the petitioner has also raised the point that at the time of alleged commission of the offences the petitioner was of a tender age and the benefit of provisions of Section 360 Cr.P.C. or the provisions of Probation of Offenders Act should have been granted to the petitioner and by not doing so, the Lower Court has committed an error of law.

(10) Learned State counsel strongly opposed the arguments advanced by the learned counsel for the petitioner. Relying upon the decision of the Supreme Court in Chittaranjan Das vs . State of West Bengal : [1964]3SCR237 , the learned State counsel argued that the requirements of procedure are generally intended to subserve the ends of justice and so, undue emphasis, on mere technicalities in respect of matters which are not of vital or important significance in a criminal trial, may sometimes frustrate the ends of justice. Where the provisions prescribed by the law of procedure are intended to be mandatory, the legislature indicates its intention in that behalf clearly and contravention of such mandatory provisions may introduce a serious infirmity in the proceedings themselves; but where the provisions made by the law of procedure are not of vital importance, but are, nevertheless, intended to be observed, their breach may not necessarily vitiate the trial unless it is shown that the contravention in question has caused prejudice to the accused. According to the learned counsel in this case the appeal court after notice and after hearing both the sides as laid down in Section 385 Cr.P.C. decided the two appeals in conformity with Section 386 Cr.P.C. and gave a judgment in terms of Section 354 Cr.P.C. i.e. it is written in the language of the court, and it contains the points for determination, the decision thereon and the reasons for the decision. He submitted that the trial court has appreciated and discussed the evidence of each case separately and has not mixed the evidence of both the cases in the judgment. Both the appeals were decided by a single judgment by the learned Additional Sessions Judge keeping in view the fact that the appellant in both the cases was the same; the section under which the appellant was charged was the same i.e. Section 51 of the Wild Life (Protection) Act and the points for determination involved in both the appeals were the same.

According to the learned counsel, the appellate court has dealt with separately the question of search and evidence in support thereof in both the appeals. The common question of law of conscious possession in respect of the articles seized being the same was discussed thoroughly in the appellate order. According to the learned State counsel, the appellate court has dealt with the entire evidence in both appeals separately and also all the grounds raised by the appellant. Thus, the appellate court has complied with all the provisions of Sections 353 and 354 Cr.P.C. According to the learned counsel, the Criminal Procedure Code does not lay down any procedure prescribing that two appeals pertaining to the same accused raising common questions cannot be decided by a composite judgment. If that be so, the legislature would have indicated its intentions clearly and made it mandatory. The last submission of the learned State counsel was that even if the appellate court was required to give two separate judgments in respect of two appeals and both the appeals were disposed off by a single composite judgment, the same would not vitiate that judgment unless it is shown that it has caused prejudice to the accused as laid down in Section 465 Cr.P.C. and the decision of the Supreme Court in : [1964]3SCR237 . According to the learned State counsel, this Court under Section 401 Cr.P.C. would not interfere unless it is shown that deciding the two appeals by one composite judgment is a glaring defect in procedure which has resulted in flagrant miscarriage of justice. Reliance has been placed on the Supreme Court decision reported in A.I.R. 1979 S.C. 666.

(11) Arguing on the point that the benefit of Section 360 Cr.P.C. or the Probation of Offenders Act has not been given to the petitioner, it has been pointed out that this petitioner is a habitual offender, who is dealing in such cases and for such type of offenders, the benefit of the provisions of Section 360 Cr.P.C. or the provisions of the Probation of Offenders Act can not be extended especially to the petitioner whose profession and business is to kill the innocent animals for the purpose of bids business.

(12) As far as the legal proposition is concerned, it is settled law as has been laid down by the Hon'ble Supreme Court in : [1964]3SCR237 that the requirements of procedure are generally intended to subserve the ends of justice and so, undue emphasis on mere technicalities in respect of matters which are not of vital or

important significance in a criminal trial, may sometimes frustrate the ends of justice. Where the provisions prescribed by the law of procedure are intended to be mandatory, the legislature indicates its intention in that behalf clearly and contravention of such mandatory provisions may introduce a serious infirmity in the proceedings themselves; 285 but where the provisions made by the law of procedure are not of vital importance, but are, nevertheless, intended to be observed, their breach may not necessarily vitiate the trial unless it is shown that the contravention in question has caused prejudice to the accused.

(13) The Criminal Procedure Code does not lay down any procedure p73 prescribing that two appeals filed by the same appellant concerning the same type of offences allegedly committed during the period of one year and where evidence has been appreciated separately cannot be disposed of by a composite judgment. However, it has not been alleged by the petitioner that the appellate 'court has not complied with Sections 381 and 385 of the Cr.P.C. Section 387 Cr.P.C. stipulates that the rules contained in Chapter XXVII as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment in appeal of a Court of Session or Chief Judicial Magistrate. Section 354 Cr.P.C. provides that the judgment shall be written in the language of the Court; and shall contain the point or points for determination, the decision thereon and the reasons for the decision. Section 385 Cr.P.C. provides the procedure for hearing appeals not dismissed summarily.

(14) In this case, the appellate court after giving notice to the parties and after hearing both the sides as laid down in Section 385 Cr.P.C. decided in conformity with Section 386 Cr.P.C. and gave a judgment as per the provisions of Section 354 Cr.P.C. No prejudice seems to have been caused to the petitioner in the present facts and the circumstances of the case. The appellate court has dealt with the entire evidence in both appeals separately and also all the grounds raised by the appellant. Thus, the appellate court has also complied with the provisions of Sections 353 and 354 Cr.P.C.

(15) Criminal Procedure Code does not lay down any procedure prescribing that two appeals pertaining to the same accused raising common questions cannot be

decided by a composite judgment. In view of this proposition of law, I find no merit in this contention raised by the learned counsel for the petitioner.

(16) On merits Section 57 of the Wild Life (Protection) Act provides that where, in any prosecution for an offence against this Act, it is established that a person is in possession, custody or control of any captive animal, animal article, meat trophy or uncured trophy, it shall be presumed, until the contrary is proved, the burden of proving which shall lie on the accused, that such person is in unlawful possession, custody or control of such captive animal, animal article, meat, trophy or uncured trophy. The recovered trophies/uncured trophies are covered under Section 49 of the Wild Life (Protection) Act.

(17) The Court below discussed and dealt with the evidence in both the cases separately and found that this petitioner was in conscious possession, custody and control of trophies, uncured trophies of the animals covered under Section. 49 of the Wild Life (Protection) Act. He has not proved the contrary though he was bound to rebutt 286 the presumption. I find .no ground to interfere in the concurrent and judicious findings of both the Courts below in both these cases. When the possession, custody and control of p73 the petitioner over the animal articles, cured and uncured trophies has been established by the prosecution, the presumption is that he is guilty unless and until the petitioner disproves the same. The evidence adduced by the petitioner has been rightly rejected by both the Courts below. The other points raised by the learned counsel for the petitioner have also been dealt with by the Courts below in an elaborate and detailed manner, which also needs no interference.

(18) Keeping in view the concurrent findings of both the Courts below, I find no justification to interfere in the impugned judgment and I,therefore, dismiss both these revision petitions as having no merits. With the dismissal of both these revision petitions, the order suspending the sentence shall automatically stand vacalud. ;

(19) Record of the Lower Court be sent back immediately along with a copy of this order.

