



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JUNE, 2023

BEFORE

THE HON'BLE MR JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION NO. 245 OF 2020

BETWEEN:

1. BOOTHAPPA,
S/O MOTAPPA,
AGED ABOUT 62 YEARS,
OCC: AGRICULTURIST,
R/O BADADA BYLU VILLAGE,
CHANDRAGUTTI HOBLI,
SORAB TALUK,
SHIVAMOGGA DISTRICT-577 429.
2. RAMESH,
S/O SHIVAJI,
AGED ABOUT 54 YEARS,
OCC: AGRICULTURIST,
R/O BADADA BYLU VILLAGE,
CHANDRAGUTTI HOBLI,
SORAB TALUK,
SHIVAMOGGA DISTRICT-577 429.
(NOW IN JUDICIAL CUSTODY)
3. CHOWDAPPA,
S/O THIMMAPPA,
AGED ABOUT 67 YEARS,
OCC: AGRICULTURIST,
R/O BADADA BYLU VILLAGE,
CHANDRAGUTTI HOBLI,





SORAB TALUK,
SHIVAMOGGA DISTRICT-577 429.

4. KRISHNAPPA,
S/O BASAPPA,
AGED ABOUT 72 YEARS,
OCC: AGRICULTURIST,
R/O BADADA BYLU VILLAGE,
CHANDRAGUTTI HOBLI,
SORAB TALUK,
SHIVAMOGGA DISTRICT-577 429.

...PETITIONERS

(BY SRI. P.B. UMESH, ADVOCATE FOR
SRI. R.B. DESHPANDE, ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY RFO SORABA,
SHIVAMOGGA DISTRICT-577 429.

REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS,
BENGALURU-560 001.

...RESPONDENT

(BY SRI. K. NAGESHWARAPPA, HCGP)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W 401 OF CR.P.C BY THE ADVOCATE FOR THE PETITIONERS PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 02.03.2018 PASSED BY THE C/c PRINCIPAL CIVIL JUDGE AND JMFC, SORABA (COURT OF SENIOR CIVIL JUDGE AND JMFC, SORABA) IN C.C.NO.335/2013 AND THE JUDGMENT AND ORDER DATED 30.12.2019 PASSED BY THE V ADDITIONAL DISTRICT AND



SESSIONS JUDGE, SHIVAMOGGA SITTING AT SAGAR IN CRL.A.NO.10011/2018 (CONVICTED FOR THE OFFENCES P/U/S.2(16)(b),(c),35,36 R/W SEC.9,39,50 P/U/S.51 OF WILD LIFE (PROTECTION) ACT 1972 AND ACQUIT THE PETITIONERS OF THE CHARGE LEVELED AGAINST THEM AND ETC.,

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Though the matter is set-down for admission, with consent, taken up for final disposal.

Heard Sri P.B.Umesh, learned counsel appearing on behalf of Sri R.B.Deshpande, learned counsel for Revision Petitioners, and Sri K.Nageshwarappa, learned High Court Government Pleader for the State.

2. This Criminal Revision Petition under section 397 of the Code of Criminal Procedure is filed assailing the Order passed in C.C.No.335/2013 whereby the learned Trial Magistrate convicted the Revision Petitioners and sentenced as under:

"Accused 1 to 4 are convicted under Section 248
(2) Cr.P.C. for the offense under sections
2(16)(b), (c), (35)(36) r/w Sections 9, 39, 50



punishable under Section 51 of Wildlife (Protection) Act, 1972.

The accused No.1 to 4 are sentenced to simple imprisonment for three years for the said offences."

3. The said conviction was confirmed in Criminal Appeal No.10011/2018 on the file of the V Additional District and Sessions Judge, Shivamogga, sitting at Sagar, dated 30.12.2019.

4. Brief facts of the case are as under:

The Revision Petitioners were charge sheeted for the offences under Sections 2(16)(b),(c), (35)(36) r/w Sections 9, 39, 50 punishable under Section 51 of the Wildlife (Protection) Act, 1972. The gist of the charge sheet material would reveal that Forest Officials on credible information came to know that some people near farm land of Harsha of Badada Bylu village, on 07.09.2008 had already butchered an animal and peeled its skin and were in preparation of cooking the meat of the said animal



by using lanterns and camp fire. Immediately, he along with other officials and panchas raided the place and recovered half cooked/ baked meat of the animal, head of the said animal and bones found at the spot and materials used for baking the said animal in the open fire.

5. Accused persons were secured before the Trial Court and charge was framed for the aforesaid offences. Accused pleaded not guilty and therefore, trial was held. Prosecution, in order to prove its case, examined 9 witnesses as P.Ws.1 to 9 and relied upon as many as 18 documents which were exhibited and marked as Exs.P.1 to 18 and 4 material objects. On conclusion of recording of prosecution evidence, accused's statement as contemplated under Section 313 of the Code of Criminal Procedure was recorded, wherein, accused persons denied all incriminating materials. They did not plead any defence evidence nor gave any explanation with regard to incident in writing as contemplated under Section 313(5) of the Code of Criminal Procedure. Thereafter, learned



Trial Magistrate heard the parties in detail and convicted the accused and sentenced them as aforesaid.

6. Being aggrieved by the Order of conviction and sentence, Revision Petitioners approached the District Court in Criminal Appeal No.10011/2018. The learned District Judge, after securing the records from the Trial Court and in the light of arguments putforth on behalf of the parties, re-appreciated the material evidence on record and dismissed the Appeal of the Revision Petitioners by the Order dated 30.12.2019. Thereby, Revision Petitioners are before this Court.

7. Sri Umesh, learned counsel representing the Revision Petitioners, reiterating the grounds urged in the petition, contended that the case of the prosecution suffers from hollowness in as much as framing of Charge in Court below itself is improper which goes to the very root of the matter and therefore, entire trial stood vitiated and sought for allowing the petition. Alternatively, he contended that taking note of the age of Revision Petitioners and they



being first time offenders, sentence needs modification and sought for allowing the Revision Petition to that extent.

8. Per contra, Sri Nageshwarappa, learned High Court Government Pleader, supported the impugned judgment by contending that oral evidence of veterinary doctor-P.W.8 is sufficient enough to establish that Revision Petitioners had killed two deers and they peeled off the skin and were baking it for consumption which *per se* attracts all ingredients of the offences charged against Revision Petitioners and material evidence on record is sufficient enough to record an order of conviction against Revision Petitioners and thus, sought for dismissal of the petition. He also pointed out that head of raid party or for that matter any of the prosecution witnesses did not nurture any enmity or animosity against Revision Petitioners to falsely implicate them in the case on hand. He also pointed out that seizure of half baked meat of the animals and other implements used in the place of incident



i.e., M.Os.1 to 4 clearly establish that Revision Petitioners had indulged in the process of baking the meat of the animal and therefore, sought for dismissal of the petition.

9. Insofar as alternative submission is concerned, learned High Court Government Pleader contended that poaching of animals including deer is a serious offence and if perpetrators of such crimes are allowed to have mercy of this Court, it would send a wrong message to the Society and there would be repetition of such incidents in future and sought for dismissal of the petition in toto.

10. Taking note of the rival contentions of the parties, the following points would arise for consideration:

- (i) Whether prosecution has established all ingredients to attract the offences under sections 2(16)(b), (c), (35)(36) r/w Sections 9, 39, 50 punishable under Section 51 of Wildlife (Protection) Act, 1972 beyond reasonable doubt and finding recorded by the learned Trial Magistrate and the learned Judge in the First Appellate Court suffers from jurisdictional error or perversity and thus calls for interference?



(ii) Whether sentence is excessive?

11. In the case on hand, in order to prove the case of prosecution, as many as 9 witnesses have been examined. All the witnesses except independent mahazar witnesses have supported the case of prosecution. Admittedly, there is seizure of half baked meat of animal from the spot on 07.09.2008, by the head of raid party, so also other implements used in the incident.

12. As rightly contended by the learned HCGP, head of raid party or any other prosecution witnesses did not nurture enmity or animosity so as to falsely implead the accused persons in the incident. No doubt, Sri Umesh, learned counsel for Revision Petitioners pointed out that case was initially registered against 7 persons, but only 4 were charge sheeted. Just because 3 persons shown in the FIR were not charge sheeted, *ipso facto* does not falsify the offence as against Revision Petitioners. A feeble



attempt was made in the Trial Court to question the competency of P.W.8 in furnishing opinion stating that he is not authorized to issue any certificate in respect of animal which is always found in the forest. The witness answered in his cross-examination that he is also competent enough to issue certificate. By suggesting the same, the incident is accepted by the accused/Revision Petitioners. Only with regard to seized half baked meat, there is some dispute. If it is a meat of a sheep, there was no necessity for the Revision Petitioners to bake it in a lonely place that too with the help of lantern and camp fire. Be what it may, it is for the Revision Petitioners to establish that half baked meat is not that of deer as it is their defence. In the absence of any such evidence being placed on record on behalf of Revision Petitioners nor furnished any written explanation as is contemplated under Section 313(5) of the Code of Criminal Procedure, the learned Trial Magistrate rightly convicted the accused for the aforesaid offences which has been re-appreciated



by the learned Judge in the First Appellate Court while confirming the conviction of Revision Petitioners.

13. With the limited Revisional jurisdiction, this Court reconsidered the material evidence on record in the light of grounds urged on behalf of Revision Petitioners, but on such reconsideration, this Court does not find any perversity or illegality in recording such finding by learned Trial Magistrate confirmed by the learned Judge in the First Appellate Court. Accordingly, the point No.1 is answered in the negative.

Regarding Point No.2:-

14. Admittedly, age of Revision Petitioners are either early 60's or late 70's or mid 70's. They are first time offenders and there are no criminal antecedents. Revision Petitioners were in custody for a period of 07 days. Taking note of this aspect of the matter, and also the fact that material evidence on record does not indicate that they are habitual, this Court is of the considered opinion that imposing fine of Rs.25,000/- (Rupees twenty five thousand



only) each, which is the maximum fine for the aforesaid offences, with default clause, would meet the ends of justice, by considering the custody period already undergone as the period of sentence. Hence, point No.2 is answered partly in the affirmative.

15. In view of the finding of this Court on point Nos.1 and 2, the following:

ORDER

The Criminal Revision Petition is ***allowed in part.*** While maintaining the conviction of the Revision Petitioners for the offences under Sections 2(16)(b), (c), (35) (36) r/w Sections 9, 39, 50 punishable under Section 51 of Wildlife (Protection) Act, 1972, sentence ordered by the learned Trial Magistrate and confirmed by the learned Sessions Judge is modified as under:

- (i) The period of imprisonment for 07 (seven) days already undergone by the Revision Petitioners during the trial is hereby treated as period of imprisonment and ordered to pay fine of Rs.25,000/- each (Rupees twenty five



thousand only) with default sentence of simple imprisonment for a period of one year.

(ii) Time is granted for the Revision Petitioners to pay fine amount on or before 07th July 2023.

(iii) Operative portion of the Order be made available to the learned counsel for Revision Petitioners and the learned High Court Government Pleader, and a copy be communicated to the learned Trial Magistrate, forthwith.

(iv) Office is directed to return the Trial Court records, with a copy of this Order, forthwith.

Sd/-
JUDGE

kcm

List No.: 1 SI No.: 23