



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: 27th March, 2025*
Pronounced on: 30th April, 2025

+ **CRL.A. 403/2025**

STATE

Through

Additional Public Prosecutor

Delhi High Court, New Delhi

.....Petitioner

Through: Ms. Rupali Bandhopadhya, Additional
Standing Counsel with Mr. Abhijeet
Kumar, Advocate

versus

1. NAND KUMAR @ NANDU

S/o Bhaiya Ram,

R/o G-332, Sunil Dairy,

Wazirpur, JJ Colony, New Delhi

.....Respondent No. 1

2. NARESH KUMAR

S/o Rai Singh,

R/o 16/286, Dakshinpuri

New Delhi

.....Respondent No. 2

Through: Mr. Gautam Khazanchi and Ms. Suruchi
Jaiswal, Advocates for Respondent No.2

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T



1. The Appellant/State has preferred an Appeal under Section 378(1) Cr.P.C being aggrieved by the acquittal of the Respondents/Accused in FIR No. 35/2010, under Sections 39/49/49B(1)/51/52 *Wildlife (Protection) Act, 1972*, P.S. Special Cell (Lodhi Colony), *vide* judgment dated 11.09.2019.
2. ***Briefly stated***, on the basis of secret information received by Inspector Vivek Tyagi about *illegal sale of animal skin*, a raiding Team of SI Vinay Tyagi, SI Abhinash, ASI Dinesh, HC Anil, HC Pradeep Kumar, Constable Sat Prakash, lead by him was formed.
3. The Raiding team along with the secret informer reached Birla Mandir Red light, Kali Bari Marg, New Delhi. The Respondents/Accused persons came in an Indica Car bearing no. HR-55 DT 6580, which was driven by Naresh Kumar, while the other two accused Ashok Kumar and Nand Kumar @ Nandu, were sitting inside the car.
4. Head Constable Pradeep Kumar posed as a decoy customer to negotiate the deal. Nand Kumar picked out a polythene bag from the car and handed it over to accused Ashok Kumar, who showed *one uncured baby leopard skin* having brown colour and black spots.
5. On getting the signal, the raiding party overpowered and apprehended the Respondents, who failed to produce any legal document or any authority to possess, keep or deal with the skin. The skin was seized *vide* Memo Ex. PW1/A dated 06.07.2010. *FIR No. 35/2010, under Sections 39/49/49B(1)/51/52 of Wildlife (Protection) Act, 1972 Police Station Special Cell Lodhi Colony, was registered.*



6. After investigation, the Complaint was filed in the Court of learned ACMM. Cognizance was taken and all the Respondents were summoned vide Order dated 20.08.2010.
7. Five witnesses, namely PW-1 HC Pradeep Kumar; PW-2 IO /Inspector Vivek Tyagi; PW-3/SI Yudhbeer Singh, PW-4/SI Vinay Tyagi and PW-5/WLI V.B. Dasan were examined in *pre-charge evidence*.
8. Thereafter, Charge under Section 39/49/49(B)(1)/52 read with Section 51 Wild Life Act was framed against the accused *Naresh Kumar* and under Section 49/49B (1)/52 against accused *Ashok Kumar and Nand Kumar* for being found in possession and dealing in baby leopard skin (uncured) without having any valid license or document.
9. All the five Complainant's witnesses were recalled in *post charge evidence* and were duly cross-examined by the Counsel for the Respondents. Thereafter, their Statements under Section 313 Cr.P.C. read with 281 Cr.P.C. was recorded, in which they took the plea of false implication.
10. The learned ACMM *vide* Judgment dated 12.04.2017 convicted the respondents. However, on challenge, the learned ASJ set aside the judgment and remanded it to ld. MM for reconsideration.
11. The learned ACMM again convicted the Respondents vide Judgment dated 11.04.2018, the second time. This was followed by *challenge* before the learned ASJ, wherein the matter was again remanded back for re-appreciation of the evidence by the learned ACMM.



12. This third time, the Respondents were successful and accused Naresh and Nand Kumar @ Nandu were acquitted by Ld. MM. vide Judgment dated 11.09.2019.

13. *Aggrieved by the acquittal vide Judgment dated 11.09.2019, the present Appeal under Section 378(1) Cr.P.C. has been filed by the State.*

14. ***Essentially, the ground on which the acquittal has been challenged*** is that learned ACMM has failed to appreciate the testimony of PW-5 V.B. Dasan, Wild Life Inspector, who is competent to identify the wild animal skin by virtue of his training and experience being Wild Life Expert. Reliance has been placed on *State of U.P. Vs. Pyare Lal* AIR 1995 SC 1159.

15. Furthermore, as per Section 57 of Wild Life Act, the prosecution has to prove that accused must be found in possession / custody or control of any part or animal,) and unless contrary is proved, the custody of such animal has to be treated as unlawful custody. The respondents have failed to bring anything to rebut this assumption against them in the cross-examination of the prosecution witnesses.

16. Furthermore, in the case *Jugendra Singh Vs. State of UP* AIR 2012 SC 2254, the Apex Court while observing the principles for appreciation of evidence, had observed that *minor discrepancies which do not change the basic version of the prosecution case, may be discarded. The errors due to lapse of memory or different perceptions by the witnesses must not be given due reliance.*



17. The learned ACMM has overlooked these principles for appreciation of the prosecution evidence and has wrongly given the benefit of doubt to the respondents. It is, therefore, submitted that the impugned judgment is liable to be set aside.

18. ***Submissions heard and record perused.***

19. The prosecution to support its case of recovery of baby leopard skin from the possession of the respondents had examined four witnesses. PW-1 HC Pradeep Kumar; PW-2 IO /Inspector Vivek Tyagi; PW-3 SI Yudhbeer Singh, PW-4 SI Vinay Tyagi are the members of the raiding team.

20. PW-1 HC Pradeep Kumar as Decoy customer had struck the deal of purchase of baby leopard skin, with the respondents. The raiding team apprehended the Respondents for selling the baby leopard skin and the same was seized vide Seizure Memo Ex. PW1/A dated 06.07.2010, in accordance with the procedure.

21. The three recovery witnesses have been consistent in their testimony and there are no material contradictions. As has been held by the Apex in the case of Jugendra Singh (Supra), minor discrepancies and variations are bound to happen due to lapse of time and also on account of difference of perceptions of each individual/ witness. So long as the contradictions are minor, the same must be overlooked while appreciating the evidence. *The factum of raid and recovery of the leopard skin has been proved by the testimony of PW-1, PW-2 and PW-4.*



22. **The main challenge is whether the skin EX. P-1 was infact the natural skin of baby leopard.** The first aspect which glares on record is the contradiction in the testimony of Prosecution witnesses in describing the Leopard skin recovered by them. PW-2/Insp. Vivek Tyagi and PW-4/ SI Vinay Tyagi who have given different description with regard to the colour of the skin of baby leopard recovered from the accused persons.

23. The first witness recorded by the Prosecution was PW-1, HC Pradeep Kumar, who was the decoy customer. He while deposing about the case of the Prosecution, as narrated above, stated that the Accused Ashok, had told him that they were having three leopard's skin but had brought only one skin today while remaining two were with Rajesh and Sameer. Accused Ashok Kumar told the price of the skin to be Rs.8,00,000/-. Nand Kumar @ Nandu took out one polythene from his vehicle and handed over the same to Accused Ashok Kumar. Accused Ashok Kumar and Naresh opened the polythene bag and took out "*one brown colour skin bearing black colour spots*", which was sealed in a pulanda with the seal of VKT and was seized by SI Vinay Tyagi *vide* Seizure Memo, Ex.PW-1/A. He identified the skin as Ex.P-1. Pertinently, he in his cross-examination admitted that the leopard skin was not sealed at the spot or the seizure and documentation was done at the Police Station Special Cell NDR. No sample seal impression was taken separately on a paper while conducting proceedings as Police Station Special Cell. Seal after use was handed over to Inspector Vivek Tyagi. He further admitted that Inspector Vivek Tyagi and the Investigating Officer worked in the same Department. No



separate memo was prepared of handing over of the seal to Inspector Vivek Tyagi.

24. Pertinent fact which emerges from the testimony of PW-1 is that firstly, the seizure of the skin was done on the spot but memo was prepared at the Police Station, moreover there was no proper handing over of the seal by the Investigating Officer to SI Vivek Tyagi neither the sample of the seal was taken on the Seizure Memo.

25. The second material witness is PW-2, Inspector Vivek Tyagi, who on the basis of secret information, had prepared the raiding team and the raid was conducted. Pertinently, this witness in his cross-examination on 07.09.2010 stated that the recovered articles i.e. the leopard's skin was measured but no identification mark was put on the same. He also reaffirmed that the case property was sealed in the Police Station in his presence but admitted that it was not deposited in the malkhana in his presence.

26. PW-2 has deposed that the leopard skin was of light brownish with black spots. He stated that *"the said leopard skin was 101 cm in length and 35 cm in width. The said leopard skin was of - light - brownish with black spots."*

27. PW-4 in his testimony deposed that it was of *light brown colour (cream colour) with black spots* and this colour was present on one side of the case property and from the other side it was light brown, whereas in his pre-charge evidence he had deposed that one skin cub of leopard recovered from the possession of the accused persons was of *white colour with black dots*.



28. The other material witness, who is witnessed to the recovery, is PW4/SI Vinay Tyagi who in his pre-charge evidence recorded on 23.04.2012, had deposed that ...*“the police apprehended all three accused persons and from their possession one skin of white colour with black dots was recovered.”*

29. Interestingly, PW-4 in his post-charge evidence recorded on 14.10.2014, deposed that the uncured fresh leopard’s cub skin that was recovered from the possession of Accused Ashok Kumar and Nand Kumar @ Nandu, *“was of white and some light brown with black dots.”*

30. Interestingly, while PW2 and PW3 defined the skin to be of light brownish with black spots. By the time the testimony of PW4 SI Vinay Tyagi was recorded on 14.10.2014, the leopard skin changed its colour to white and some light brown with black dots.

31. Pertinently, PW4 Inspector Vinay Tyagi was further summoned on 22.02.2019, wherein in his cross-examination he stated that the *article was light brown colour (crème colour skin with black spots)*. However, the case property when produced in the Court revealed that the skin was having shaded strips and when questioned, **the witness explained that these strips were being referred to by him as spots in his statement. The Court made an observation that the case property is having golden and dark brown strips.**

32. Pertinently, the case of the Prosecution since beginning had been that the recovered young cub leopard skin having of brown colour bearing black colour spots while magically the exhibited skin had Strips. By no stretch of explanation, can the *spots be described as strips*. Clearly there is a doubt about



the skin that had been produced during the Prosecution evidence to be the same that was allegedly recovered from the Petitioners.

33. Further, in order to prove that the recovered skin was that of the fresh leopard cub skin, the sole Expert witness examined by the Prosecution was PW-5 WLI V.B. Dasan was examined, who identified the leopard skin as that of baby leopard and deposed that he had filed the Complaint EX.PW5/C. He in his cross examination explained that he was Post Graduate in Wild Life Biology and Zoology but admitted that *“I am not the Expert for identification of wild animal’s skin scientifically. I have not send the skin to CFSL for expert opinion.”*

34. The only witness, therefore, examined by the prosecution to prove that that the skin was recovered from the respondents was *natural leopard skin*, is PW-5 who admittedly is not an Expert in skin identification. The Prosecution has miserably failed to prove that the case property i.e. the leopard skin produced in the Court was the same as was allegedly seized from the Petitioners. This is significant in the light of the admissions made by the Prosecution witnesses that the seizure of the skin was not done at spot but was done subsequently at the Police Station. There is a serious doubt created about the alleged recovery of the leopard skin from the Petitioners.

35. In this context, it is also pertinent to refer to the testimony of two expert witnesses examined by the Petitioner. DW2A/Chander Prakash Sharma, Senior Technical Officer from Wild Life Institute, an expert in identification of wild life skin, to prove the methodology for establishing the authenticity and



genuineness of the leopard skin. *He* deposed that for identification of wild life skin and products, mainly the *morphological techniques* are applied. The Morphology means the visible characteristics which include stripe patterns, blotch patters, spots, colour, horns which are usually present in most of the skins. As the corroborative analysis, the *microscopic hair analysis* is also done in the Forensic Laboratory and the final results are compared with the samples. He stated that the fake leopard skin can be easily identified from the real leopard skins and **microscopic hair analysis of the fake skin is done to confirm the skin type.**

36. He has further deposed that Manual on Wildlife Species in trade has been published by the Wild Life Crime Control Bureau for identification of animals. He stated that as per the preface of the said manual *“the agencies may note that similar and near resemblance cannot be taken as confirmatory. Additional tests like morphological, microscopic analytical and forensic tests may have to be undertaken for legal action. Therefore, this manual may be used as a ready reference for prima facie recognition only.”*

37. He further deposed that at Wild Life Institute of India separate similar Manual is followed for day to day working. He explained that fake leopard skin can be easily identified because of unnatural blotching patterns which are different from the real leopard skins. He, in his experience, had examined only 2-3 fake leopard skins. The Respondents thus examined DW-2

38. The respondents examined *second Expert witness DW-2 S.P. Goyal, former Nodal Officer, Wild Life Institute of India*, who deposed that he was



working as Nodal Officer for last more than 30 years and had examined more than 1500 wild life species and submitted his Reports with the enforcement agency. Various methods have been used including morphological examination, hair characteristics and DNA methods in the cases where it is difficult to identify the skin on morphological features. He further deposed that based on visual examination, the variety of wild life skin can be identified by an Expert, including him. He explained that *morphological examination* means typical characteristics of that specie which commonly are deployed for species identification. These include stripe, patterns, blotch patterns, spots, colour, horns which are usually present in most of the skins. He also adopts further tests which includes *microscopic hair characteristics and reference samples along with the physical examination to confirm the identity of the animal skin*. For corroboration, the samples are also sent by the Enforcement Agencies to Wild Life Institutions.

39. He also stated that the skin which have typical characteristics like of tiger, leopard, jungle cat or any skin having any typical spot patterns can be identified with 100% certainty through visual examination only. He, however, admitted that leopard skins are being sent regularly for examination by some enforcement agencies.

40. He further explained that leopard has got typical blotch pattern where inner part of the blotch is *light yellow to dark yellow colour*. There is no change in the pattern and colour with respect to the age or the sex of the animal. He further explained that it is not possible to create fake skin having similar



pattern/characteristics of natural skin of a wild animal with artificial methods and this is due to the natural characteristics which are found in an animal.

41. He further deposed that the uniform practice is to *conduct corroborative test to confirm the 100% certainty about the nature of the item*. Based on the item, appropriate scientific approach is adopted for the identification. ***The microscopic characteristics and reference samples along with the physical examination is regularly and uniformly employed to confirm the identity of the leopard skin and other animal skins.***

42. From the testimony of these two witnesses, it is evident that while through *physical observations* some identification of the skin can be made, but for conformation, *microscopic analysis and examination by the Specialized Laborites, is done as a practice.*

43. In the present case, the learned ACMM has rightly observed that the only evidence led by the Complainant was of PW-5 Wild Life Inspector V.B. Dasan, who himself admitted that he was not an Expert for identification of the skin. His testimony, therefore, cannot be treated as that of an Expert under Section 45 of Indian Evidence Act.

44. In the case of *State of Himachal Pradesh Vs. Jai Lal & Ors.* AIR 1999 SC 3318, it was observed that scientific opinion evidence, if intelligible, convincing and tested, becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and materials furnished which form the basis of such conclusion.



45. The learned ACMM has also referred to an Article published on Forensic Science and Criminology, Volume 5, Issue 4 by Ajay Kumar, Nishant K and Vrijesh with the title *Wildlife Forensic: Current Techniques and their Limitations*, which reads as under:-

*“Wherein the authors have noted that the application of forensic science (application of science to the matter of law) in solving legal matters related to Wildlife Crimes. The identification of seized materials and the protected species are required to send to the forensic laboratories dealing with wildlife crimes or wildlife related research institutions. Some specific characteristics of species or seized materials are employed for wildlife species identification in forensic laboratories. **Currently the techniques being utilized for wildlife species identification are footprints analysis at the crime sites, morphological study of the species (includes microscopic examinations of the body parts, anatomic and histological studies). Serological methodology and molecular biology techniques. For the determination of geographical original of the organism most commonly employed techniques are inductively coupled plasma atomic emission spectroscopy (OCP) and radiotracer techniques in modern analysis of wildlife related evidence.**”*

46. This Article also corroborates the testimony of DW-2 S.P. Goyal and DW-2/A Chandra Prakash Sharma, who also have deposed that for conclusive determination of the nature of the product, in addition to the visual analysis, microscopic analysis and additional scientific means must also be adopted.



47. In the present case, the Complainant has not led any cogent scientific evidence or examined an Expert to conclusively establish that the skin recovered from the Respondent was natural baby leopard skin. Significantly, aside from not clearing the visual test, no microscopic analysis was done nor any scientific methods adopted to prove that the recovered skin was indeed the skin of a young Leopard. The prosecution has miserably failed to prove its case.

48. In view of the aforesaid discussion, it is hereby held that the respondents have been rightly given the benefit of doubt and acquitted for the offences under Sections 49/49(B) and 51 of the *Wild Life (Protection) Act, 1972*.

49. There is no merit in the present Appeal. The present Appeal and pending Application(s) are accordingly, dismissed.

**(NEENA BANSAL KRISHNA)
JUDGE**

APRIL 30, 2025

va/r