

A TITTY ALIAS GEORGE KURIAN
v.
THE DEPUTY RANGE FOREST OFFICER
Review Petition (Criminal) No. 593 of 2018

B In
(Criminal Appeal No. 758 of 2018)

DECEMBER 09, 2020

[ASHOK BHUSHAN AND INDU MALHOTRA, JJ]

C *Wild Life (Protection) Act, 1972 – ss.2, 9, 11, 12, 39A, 49A, 51; Part II of Schedule I – Turtle seized from respondent – Criminal proceedings quashed by High Court – Held: Judgment dtd.16.05.18 recalled – s.9 prohibits hunting of any wild animal under Schedule I, II, III and IV except as provided u/ss.11 and 12 – On facts, Turtle seized is not included in Part II, Schedule I and it was already freed*
D *on the second day of its seizure thus, the High Court committed no error in quashing the criminal proceedings – Code of Criminal Procedure, 1973 – s.482.*

Allowing the review petition and dismissing the appeal, the Court

E **HELD: Section 9 of the Wild Life (Protection) Act, 1972 prohibits hunting of any wild animal under Schedule I, II, III and IV except as provided under Sections 11 and 12. In case a person hunts any of the wild animals which are included in Schedule I to IV, it becomes an offence inviting the penalty under Section 51 of the Act, 1972. A perusal of the letter given by the Veterinary Surgeon indicates that Veterinary Surgeon has identified the Turtle as ‘Indian Flap Shell (Lissemys punctata)’ whereas the Turtle which is included in Part II of Schedule I of the Act, 1972 is “Indian Soft-shelled Turtle (Lissemys punctata punctata).”**
F **Lissemys punctata is a species of which Lissemys punctata is infraspecies. Although Lissemys punctata is included in Part II of Schedule I of the Act, however, the Turtle which has been seized is not that which is included in Part II of Schedule I. In the facts of the present case, on the face of it, the Turtle seized is not included in Schedule I Part II and the Turtle having already been**
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freed on the second day of its seizure, the High Court did not commit any error in quashing the criminal proceedings registered for Wild Life offences. No good ground found to interfere with the order of the High Court. [Paras 12-14][1233-H; 1234-A-D] A

CRIMINAL APPELLATE JURISDICTION: Review Petition (Criminal) No. 593 of 2018 in Criminal Appeal No. 758 of 2018. B

From the Judgment and Order dated 16.05.2018 of the Supreme Court of India in Criminal Appeal No. 758 of 2018.

Abhilash M.R., Mohammed Sadique T.A., Nishe Rajen Shonker, Advs. for the appearing parties. C

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

1. We have heard Shri Abhilash M.R., learned counsel appearing for the petitioner and Shri Nishe Rajen Shonker, learned counsel for the respondent. D

2. We find sufficient ground to review the judgment dated 16.05.2018. The order of this Court dated 16.05.2018 is recalled. The review petition is allowed.

This appeal has been filed against the judgment dated 16.11.2017 of the Kerala High Court by which the High Court has allowed Criminal M.C. No.2720 of 2017 filed by the respondent by quashing proceedings in C.C.No.706 of 2016. The Deputy Range Forest Officer aggrieved by judgment of the High Court has come up in this appeal. E

4. The facts of the case briefly are:

On 25.07.2016 from the respondent, Titty alias George Kurian a Turtle was seized by Rani Forest Flying Squared Range Staff at Karumbanakulam. The offence under Section 2, 9, 39A, 49A and 51 of the Wild Life (Protection) Act, 1972 was registered. A charge-sheet was submitted by the Forest Officer. After seizure of the Turtle, the same was sent for identification to Veterinary Surgeon who by its letter dated 26.07.2016 identified the Turtle on inspection as "Indian Flap Shell", the scientific name is "Lissemys Punctata". The Court on 27.07.2016 directed the Turtle to be freed. G

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A 5. The respondent-accused filed an application before the High Court for quashing the criminal proceedings. It was submitted before the High Court that Indian Flap Shell Turtle which was seized was not found included in Schedule I of Part II of the Wild Life (Protection) Act, 1972, hence, such possession of the Turtle of that species will not invite the offences alleged against the accused. The High Court being

B satisfied that Turtle seized was not that species of Turtle which is included in Part II of Schedule I of the Act, 1972, allowed the application and quashed the criminal proceedings. Aggrieved by the judgment of the High Court this appeal has been filed by the Deputy Range Forest Officer.

C 6. Learned counsel for the appellant contends that whether Indian Soft-shelled Turtle (*Lissemys punctata punctata*) and Indian Flap Shell Turtle (*Lissemys punctata*) are two different species or part of single species or a subspecies of the latter are matters of expert evidence and ought to have been decided only under trial and the High Court committed error in allowing the application under Section 482 Cr.P.C.

D 7. Learned counsel for the respondent supporting the order of the High Court contends that when the Turtle seized does not find mention in the Schedule of the Wild Life (Protection) Act, 1972, there is no occasion for registering any offence, and the registration of offences has rightly been quashed by the High Court with which no interference is called for. He further submits that Turtle was seized on 25.07.2016 and was freed on 27.07.2016 and being not available for further examination the report of the Veterinary Surgeon is only material to look into and scientific name which was given by the Veterinary Surgeon does not find place in the Schedule of the Act, 1972.

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F 8. We have considered the submissions of the learned counsel for the parties and have perused the records.

9. The following reasons have been given by the High Court for allowing the Criminal M.C. of the respondent:

G “4. On a perusal of Part II of Schedule I of the Act, it seems that Item No.8 is Indian Soft Shell Turtle (*Lissemys Punctata Punctata*). The certificate issued by the Senior Veterinary Surgeon to the Range Officer, Erumely in this case shows that the Turtle seized in this case is Indian Flap Shell Turtle (*Lissemys Punctata*). The above said Schedule does not contain the species named Indian

H Flap Shell Turtle. When the Turtle in question is not one belongs to

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Indian Soft Shell Turtle, the capture or its possession cannot be treated as an offence within the meaning of the Wild Life Protection Act. Matters being so, all further proceedings in C.C.No.706/2016 of the Judicial First Class Magistrate's Court-II, Kanjirappally, based on OR No.5/2016 of the Erumely Forest Range as against the petitioner are liable to be quashed." A B

10. After seizure of the Turtle on 25.07.2016 on next day the reference was made by the Deputy Range Officer to Veterinary Surgeon for identification of the Turtle. The Veterinary Surgeon after inspection wrote a letter on 26.07.2016 to the Range Officer to the following effect:

"From, C
Dr. Anil Kumar T Senior Veterinary Surgeon
B.V. Sc & A.H. Veterinary Hospital Reg. No.1329,
Erumely.

To D
Range Officer Erumely,
Erumely.

Subject: Species identification E
Reference: Deputy Range Officer on 26.07.2016.

As per the above reference on 26.07.2016 a turtle belonging to a turtle family was brought for identification, and on inspection it is found that the turtle is Indian Flap Shel and the scientific name is "Lissemy's Punctata" and therefore it is certified. F

26-07-2016
Erumely"

11. The Veterinary Surgeon identified the Turtle as 'Indian Flap Shell' and the scientific name "Lissemy's Punctata". Item No.8, Schedule I Part II is to the following effect: G

"8. Indian Soft-shelled Turtle (Lissemys punctata punctata)."

12. Section 9 of the Act, 1972 prohibits hunting of any wild animal under Schedule I, II, III and IV except as provided under Sections 11 H

A and 12. Sections 11 and 12 are the provisions where hunting is permitted by the permission of Chief Wild Life Warden. In case a person hunts any of the wild animals which are included in Schedule I to IV, it becomes an offence inviting the penalty under Section 51 of the Act, 1972.

B 13. A perusal of the letter given by the Veterinary Surgeon as extracted above indicates that Veterinary Surgeon has identified the Turtle as ‘Indian Flap Shell (Lissemys punctata)’ whereas the Turtle which is included in Part II of Schedule I of the Act, 1972 is “Indian Soft-shelled Turtle (Lissemys punctata punctata).” Lissemys punctata is a species of which Lissemys punctata is infraspecies. Although Lissemys punctata is included in Part II of Schedule I of the Act, however, the Turtle which
C has been seized is not that which is included in Part II of Schedule I. In the facts of the present case, on the face of it, the Turtle seized is not included in Schedule I Part II and the Turtle having already been freed on the second day of its seizure, the High Court did not commit any error in quashing the criminal proceedings registered for Wild Life offences.

D 14. We do not find good ground to interfere with the order of the High Court by which the High Court has exercised its jurisdiction under Section 482 Cr.P.C. On the facts of the present case, the appeal is dismissed.