20. CASE LAW AND COMMETARIES

1. : Batan Singh vs. Emperor

(29 Cr. L.J.238 Lah)

: The accused Batan Singh was discovered on 13th July, 1927 wandering around the reserved nursery of Phillaur with a loaded gun. The accused pleaded guilty; he was convicted by the Magistrate.

It was held by the Court of Session that under the Wild Birds & Animals Protection Act, 1912, it was necessary to prove that the accused had either killed or attempted to kill one of the animals or birds mentioned in the Schedule. There was no evidence to show that he actually fired at any bird or animal, much less than one mentioned in the Schedule of the Act. It is no offence for a person holding a licence to go about with a loaded gun in his possession. The conviction of the accused of under section 4 of Wild Birds & Animals Protection Act, 1912 was set aside by the High Court of Lahore on the recommendation of the Court of the Session.

2. : Nabin Chandra Gogoi Vs State of Assam

AIR 1961 Assam 18, ILR (1958) 10 Assam 124

1961(1) Cril.L.J.226

: The accused was sent up for trial u/s-25(g) of the Assam Forest Regulation, 1891 and Sec-429, IPC, for having shot and killed a Rhino. He was convicted by the court of Magistrate u/s-429, IPC which was upheld by Sessions Court, Sec-25(g) of the Assam Forest Regulation, 1891 was not applicable because the killing took place outside the game sanctuary. Conviction was set aside by the High Court. It was observed that there is nothing to show in this case that there was any such notification by the Government declaring the offence, if any was committed in a "closed season" as prohibited by law.

3 : Nath Mall Vaid (Appellant) Vs State of Tamil Nadu represented by Collector of Nilgris Outacamund & Ors. AIR 1979 Mad. 218.

: On 16th June 1969 a tusker elephant was found dead in the patta land bearing No. 207 of Masinagudi village belonging to Nath Mall Vaid and next day he informed the Forest Department of his intention to bury the caracas in his estate. The Forest Department took custody of the two tusks of the dead elephant from Mr. Nath Mall Vaid against acknowledgment. When the appellant asked the Department to return the tusk he was informed that his claim for return of the tusks was rejected whereupon plaintiff appellant filed a suit for recovery of sum of Rs.7000/-. The trial court held that neither Sction 3 of the Wild Birds and Animals Protection Act nor the Govt. order G.O.HS No.2152 dated 21st February 1960 relied upon by Government was applicable to the facts of this case and under the general law, the tusker which is a wild animal having been found dead in the plaintiff's Patta, he is entitled to the ownership of the tusks. It was also held that Wild Birds and Animal Protection Act is applicable only in respect of animals and birds which are specified in the schedule and not to an elephant which is not an animal specified in the schedule to that Act. The appellate court dismissed the plaintiff's suit in view of another G.O.HS NO.3440 dated 15th November 1954 as the elephant had been pursued by the Department and therefore the tusks vest in Govt. The High Court on appeal by the plaintiff held that the evidence does not indicate that the Forest Department at any

time pursued the animal. The mere keeping watch over animal, which is moving in the forest, does not amount to actual pursuit by the Forest Department. Therefore the said order No.GO MS 3440 of 15th November is not applicable.

4 : Jaladhar Chakma Vs Deputy Commissioner, Aizwal, Mizoram, AIR 1983 Gau, 18

: Declaration of Sanctuary u/s-18 of the Wildlife Protection Act was made by the Development Commissioner, Ex-Officio Secretary to Government but declaration was not published in official gazette and thus no notification as defined by Sec-2 (22) of Wildlife Protection Act, 1972 was made and as such compliance of provisions of chapter IV of the Wildlife Protection Act 1972 was not made. The orders of eviction of villagers from the area falling within declared sanctuary was based on purported declaration but notification was not published in official gazette hence the said order of eviction were not sustainable and the petition was allowed.

5 : Sansar Chand Vs. State 1994 (28) DRJ 281; 1 (1994) Ad 13 (Delhi)

: Premises of the accused in Sadar Bazar Delhi were searched on 11-09-1974 and trophies/uncured trophies of Scheduled animal were recovered.

Another premises of accused were searched and 104 uncured skins of Red Fox and 435 uncured skins of Agra Monitor Lizard were recovered.

The accused was convicted and he was sentenced to undergo R.I for a period of 1½ years and a fine of Rs.5000/-. In the second case the accused was sentenced to pay a fine of Rs.2000. Accused filed two separate appeals and these two appeals were disposed off by a single judgment. The accused filed a revison petition. The contention of accused was that two separate appeals cannot be disposed by a single judgment. His second contention was that the complaint was filed by a Wildlife Inspector while according to section 55 of the Act complaint could be filed by the Chief Wildlife Warden or an officer authorised on his behalf. The third contention of the accused was that he was not in conscious possession or control of recovered articles. It was held that two appeals pertaining to the same accused raising a common question can be decided by a single judgment. Relating to the second point the court upheld the finding of the courts below that the person who had filed the complaint was competent to do so and the contention that the complaint filed by Wildlife Inspector in place of Chief Wildlife Warden was incompetent, was rejected.

Relating to the third point it was held that when the possession, custody and control of the accused over the animal articles has been established by the prosecution the presumption is that the accused is guilty unless and until he disproves the same. It was held that the accused was in conscious possession, custody and control of the animal articles. The conviction of the accused was maintained and the revisions were rejected by the High Court.

The Hon'ble Supreme Court in Criminal Appeal Nos.336 and 337 of 1994 decided on 13th May, 1994, maintained the conviction of the accused.

6 : Jagdish Singh & others Vs. State of Bihar 1985 Cr.L.J.1314-Patna High Court (Ranchi Bench)

: On 28.12.74, Wildlife Warden and his staff heard a gun shot and found a Bison lying dead at Junction 2+5 of Betla Reserved Forest. They saw the petitioner No.4 standing with a gun whereas the other petitioners were skinning the dead animal. The petitioner No.4, however, managed to escape. On filing the complaint, judicial magistrate took cognizance of the offence under section 51

of the Wildlife (Protection) Act 1972 and convicted the accused to rigorous imprisonment of three months. The appeal before the sessions Judge was dismissed. The accused challenged the decision before the High Court. It was held that under Rule 31 of Bihar Wildlife Protection Rules, besides Chief Wildlife Warden, the Divisional Forest Officer or the Deputy Conservator of Forests, are also entitled to file the complaint and section 5(2) of the Act gives powers to the authorities concerned to delegate powers to subordinate officer.

The High Court did not interfere with the findings of the lower court on facts. The high court maintained the finding of conviction but altered the sentence from three months R.I. to a fine of Rs.50 only.

7 : Trilok Bahadur Rai Vs State of Arunachal Pradesh 1979 Cr. L.J1404 at 1419.

: A tiger was shot dead by Sepoy Trilok Bahadur Rai at Changlai Camp while on sentry duty. The accused prior to shooting, informed the Guard Commander about the presence of the tiger and the Commander instructed that 2/3 round might be fired into the air to scare it away. While this was being done, the tiger instead of fleeing away charged at the accused who fired two shots at it which killed the tiger.

The accused was tried under Section 9 (1) of the Act and he was convicted and sentenced to 6 months simple imprisonment under Section 51(1) of Wildlife Protection Act.

The accused went up in Revision and it was held that it was clearly a case of killing a the tiger in good faith in defence of one slef and it can not be said that the accused was committing any offence prior to shooting the tiger that had attacked him. Therefore, he will be completely protected under sub-section 2 of section 11.

It was observed that to decide whether the shooting was an act of self-defence or not, the nature and ferocity of the animal will be relevant. A tiger is what the Romans called a "Ferae naturae" by nature of dangerous veracity as distinguished from a 'Mansuatae naturae' e.g. a dog or a horse which have in individual cases given indication of a vicious or dangerous disposition. In the case of attack by a 'ferae naturae' the inference that he was acting in defence of his own life will be more easily drawn, while no such inference may be drawn in cases of harmless wildlife like birds.

On the basis of facts and circumstances of the case, there can be no doubt that the accused acted in self-defence. The conviction and sentence ordered by the Deputy Commissioner was set aside.

8 : L.R. Coelho (deceased) & Ors. Vs State of Tamil Nadu.

1992 F.L.T. 150

The petitioners challenged the Wildlife (Protection) Act, 1972 and Wildlife (Protection) State of Tamil Nadu Rules, 1975 various contentions raised by petitioners are as under:-

a) There is violation of Article 19 (1)(g) of Constitution of India.

b) There is violation of Article 14 of Constitution of India.

c) There is violation of Article 19 (1)(f) of the Constitution of India.

d) There is lack of legislative competence.

e) There is excessive delegation under Section 61 of Wildlife (Protection) Act.

The High Court referred to various judgments delivered by Supreme Court in the matter of Charanjit Lal Vs. Union of India (AIR 1951 SC 41) and Maneka Gandhi Vs. U.O.I. (AIR 1978 SC 597), wherein it was held that Article 19(1) can be invoked only when law is made directly infringing a fundamental right. The possible indirect or remote or collateral effect of legislation upon any fundamental right cannot be said to constitute a restriction upon that right. It was further held that the test is to see whether the right of which breach is complained of is integral part of a named fundamental right or partakes of the same basic nature and character of that fundamental right.

The High Court referred to the statement of objects and reasons of the Wildlife (Protection) Act, 1972 which stipulates that there has been rapid decline of Indian wild animals and birds and the existing state laws are not only outdated and mainly relate to control of hunting and do not emphasize the other factors which are also prime reasons for the decline of India's Wildlife.

The High Court further noted that a person could not obtain permission ot hunt animal specified in schedule I even if it becomes dangerous to property including standing crops. The High Court however, held that it could not be said that without hunting the wild animals specified in Schedule I of the Act, even if they prove dangerous to property, it is not possible to protect the property from wild animals by other means. The Act, therefore, has not deprived the right of the owner of the property to hold, to enjoy and to protect his property. Relying on judgments of Supreme Court, the High Court rejected the contention that the right to hunt a wild animal even when it proves dangerous to property is an integral part of fundamental right to hold property or partakes of the same basic nature and character as that fundamental right.

The High Court also rejected the contention that the Act was violative of Article 14 of the Constitution of India on the ground that a person can be permitted to hunt wild animals specified in Schedule II, III of the Act if it is dangerous to human life, but the person cannot be permitted to hunt the wild animals specified in Schedule I when they become dangerous to property. The court held that a person in danger of life is not an equal to a person facing danger to his property. The court also held that since the grievance under Article 19(1)(f) is not maintainable the violation of Article 19(1)(g) loses its basis.

The court also rejected the contention that there is an excessive delegation of legislative power when Section 61 empowers the Govt. to add any animal to any of the Schedules of the Act. The petitions were rejected.

9 : Babu Lal and another Vs State (Delhi Administration)

20(1981) Delhi Law Times 354, 1982 Cri. L.J. 41 (45,46), (1981) CC Cases Delhi 150

On October 18, 1978 Chief Wildlife Warden's office was informed that a person was dealing in leopard skins in a house at, Kasav Pura, Delhi. Shri Babu Lal and his two sons admitted that the leopard skins and one leopard cat skin were recovered from a room in their brush factory. Mangal Sain, an employee, was also present at that time. After inquiry a complaint was lodged against the accused under Section 55 of Wildlife (Protection) Act, 1972 read with Sections 40 and 44. All the accused pleaded an alibi at the time of trial. The learned Additional Chief Metropolitan Magistrate vide his judgment dated October 4, 1980 sentenced Babu Lal, Sohan Pal and Din Dayal to rigorous imprisonment of 3 years and a fine of Rs.2,000/-. Mangal Sai was sentenced to six months rigorous imprisonment and a fine of Rs.500/-. On appeal the Learned Additional Sessions Judge acquitted Sohan Pal and Din Dayal and reduced the punishment of Babu Lal to one year while maintaining the punishment of Mangal Sain.

It was held by the High Court of Delhi that under Section 57 where it is established that a person is in possession, custody or control of trophy it shall be presumed that such person is in unlawful possession, custody or control of such trophy unless the contrary is proved by the accused which they have failed to do.

Under Section 58 of Wildlife (Protection) Act, 1972 with regard to offence by a firm, it was held that the firm as well as person-in-charge of and responsible for affairs of firm are liable. That the offence has been committed by a firm is a not a pre condition but a circumstance giving rise to a statutory liability on the part of the person in charge of the affairs of the firm. Also held that preservation of wildlife is vital for the animals themselves but also for ecological balance and survival of the human race.

The High Court dismissed the revision filed by Babu Lal and Mangal Sain and set aside the acquittal of Sohan Pal and Din Dayal with directions for their retrial by the Trial Court.

10 : Rafique Ramzan Vs. A.A. Jalgaokar & another 1984 Cr. L.J. 1460(2) (Bombay High Court).

On 5.8.81 respondent accompanied by Assistant Conservator of Forests raided the shop - namely 'Jooti' at Hotel Sea Rock, Bandra which was found exhibiting, for sale articles made of lizard and snake skins. Certain articles were seized and the petitioner made a written statement admitting his guilt. On filing of the complaint under Sections 40(1), 39(3), 40(2), 44, 44(1), 44(2) read with section 51 of the Wildlife (Protection) Act, 1972, the Additional Chief Metropolitan Magistrate, Esplanade convicted the petitioner and sentenced him.

In the Revision Petition, it was contended on behalf of the petitioner that the Act extended only to those species of lizard and snakes, which are specified in the Schedule, and not to all species of lizard or snakes numbering 2,500 and 3,000 respectively. Further, nowhere in the complaint it was stated that the seized articles were made out of the skins of lizard or snakes specified in any of the Schedules, I, II, III, IV or V and if the complaint did not make out this case, no offence was disclosed.

The admission statement of the accused can never mean that the accepted the position that the articles seized from him required any certification or permission from Wildlife Protection Authorities or that the articles were made up of skins of lizards or snakes covered under one or other schedule.

While observing that the provisions of Wildlife (Protection) Act are designed to prevent discrimination and commercial exploitation of rare species of animals and reptiles, the court rejected the contention of the State-Respondent and held that the prosecution has failed to adduce any evidence that the articles seized were made up of skins of such lizards or snakes, as were enumerated in one or the other schedule. The conviction and punishment was set aside, the charge was quashed and the petitioner-accused was discharged.

11 : Forest Range Officer Vs. Aboobacker and another 1990 F.L.T. 22 Ker. High Court.

In Feb 1985 three accused persons who were brothers went into the vested forest at Munderi (in Nilambur range) and sighted a bison and shot it down. They extracted its meat and sold in open bazar. The remaining carcass was buried in the ground. On interrogation they admitted that the bison was shot dead by them and its flesh was sold in open market. The respondents pointed out the spot where they buried the carcass of animal, which included its skull and horns. The trial court convicted the accused persons for hunting and killing a wild animal (a bison) in a forest area.

In the appeal filed by the accused persons the Sessions Court set aside the conviction and sentence, and acquitted the accused persons on the following grounds:

1. The prosecution has not been instituted by a person authorised by the State Govt. as required in Sec. 55 of the Act.
2. Confessional statements cannot be relied upon.
3. Evidence of Forest officers alone cannot be made the basis of conviction without corroboration by independent witnesses.
4. There is no attesting witness to the statements signed by the witnesses.

The Forest Range Officer filed an appeal in the Kerala High Court.

The High Court held that the view of the sessions judge regarding the competence of the complainant to file the complaint cannot be sustained.

Regarding the confession it was held that such confession is not open to doubt since embargo contained in the section 25 of the Evidence Act is not applicable. It was also held that rule of corroboration is a principle of prudence, which cannot be applied rigidly and it would be pedantic to insist on the rule of corroboraton by independent evidence to prove offence relating to forests and wildlife. There is no rule of law that no evidence should be relied unless there is corroboration. It was also held that there is no legal requirement, whenever a confession is made in writing, that another witness must also attest it. It further observed that one of the circumstances, which ensured confidence in the confessional statement was recovery of the skull and horns from the place spotted out by the accused persons.

The order of acquittal passed by the sessions court was set aside and convicton and sentence passed by the Trial Magistrate was restored by the Kerala High Court in the appeal made by the Forest Range Officer.

12 : Forest Range Officer, Choler vs. Pathrose and another,

1990 F.L.T.60.

Prosecution case was that respondents stayed in Ambalappara Inspection Bungalow belonging to the Kerala State Electricity Board on 31.7.85 and that during such time first accused shot dead a Nilgiri Langur *(Presbytis johni)* with the gun belonging to the 2nd accused. Accused was alleged to have made confession to the effect that they killed the animal.

The Trial Court acquitted the respondents on the ground that the prosecution was incompetent as no notification under section 55 of Wildlife Protection Act was produced. By S.R.O. 227/75 dt. 1.2.1975 Govt. of Kerala had delegated the authority to file complaint before the various courts in the State through officers in the Forest Deptt. not below the rank of Range Officers and Assistant Wildlife Preservaton Officers.

In appeal against the order of the learned Magistrate it was observed by the Kerala High Court that wildlife preservation and preservation of ecology and environment have moved into areas of national priority. It was observed that incompetence on the part of officials of Forest Departments and the lapses on the part of the prosecuting agencies should not lead to acquittal. It was further

observed that wanton killings and destruction of wildlife and environment pose a great threat and it must be dealt with effectively and purposefully. The order of acquittal was set aside and the case was remitted to the trial court to proceed further with the evidence.

13 : G.R. Simon and others Vs. Union of India and Ors. AIR 1997 Delhi 301

Nineteen writ petitions were filed by the manufacturers, wholesalers and dealers engaged in retail trade of tanned, cured and finished skins of the animals. Petitioners also were engaged in retail trade of articles made of skin defined as animal articles.

The petitioners challenged the introduction of the provisions of chapter VA in the Wildlife (Protection) Act 1972 by Wildlife (Protection) Amendment Act 1986. These writ petitions were decided by a common judgement.

The contention of the petitioners was that the provisions of Chapter VA as introduced by the Amending Act of 1986 infringes on their Fundamental Right to trade and business under Article 19(1)(g). Also these provisions do not constitute reasonable restriction as envisaged under Article 19(6). The court held that the protection and preservation of wildlife was in the public interest and hence comes within the ambit of reasonable restriction under Article 19(6). The court held that the provisions of Chapter VA introduced by amending act of 1986 to the wildlife (protection) Act, 1972 are valid and intra vires and all the writ petitions were dismissed.

14 : Mysore Super Reptile Corporation Vs. Union of India SLP (Civil) No. 11004/97 From the Judgement and Order dated 20/3/97 in C.W.P No. 3586/87.

The petitioners were dealers in fur and skins of wild animals specified in Schedule of the Wildlife Protection Act and challenged the introduction of Chapter V-A in the Wildlife Protection Act by the Wildlife Protection (Amendment) Act 1986.

In this SLP the Hon'ble Supreme Court held that the The High Court has rightly upheld the validity and constitutionality of the Amendment introduced by the amending Act of 1986 to Wildlife (Protection) Act. 1972 the SLP was dismissed.

15 : M/s Ivory Traders and Manufacturers Association and others Vs. Union of India, I and others AIR 1997 Delhi 267; 67 (1997) DLT 145

These were two sets of writ petitions. In one set of four writ petitions the petitioners challenged certain amendments carried out in the Wildlife (Protection) Act, 1972 by Amendment Act 44 of 1991, whereby trade in imported ivory and made articles made therefrom had been banned. In another set of two writ petitions the grievance of the petitioners was that though they are not covered by the Wildlife (Protection) Act, 1972 and Amendment Act 44 of 1991 the authorities are taking action against them for their being in possession of mammoth ivory and articles made therefrom and these petitioners also challenged the provisions Amendment Act 44 of 1991.

It was contended on behalf of the petitioners that the ban on trade of imported ivory violates fundamental right to trade under article 19 (1)(g) of the Constitution of the India.

The court observed that the beauty of ivory and things created therefrom should not be the reason for destruction of its source. It was also observed that trade and business at the cost of disrupting life forms and linkages necessary for the preservation of biodiversity and ecology can not be permitted even once.

It was held that there is no fundamental right to trade in imported ivory, as it is pernicious and dangerous to the elephant. The trade in imported ivory has led to gradual decline of the African elephants. In order to fulfil its obligation to CITES to which India is a signatory Central Government introduced the Wildlife (Protection) Amendment Act, 1991 imposing a ban on the trade of imported ivory. Assuming trade in ivory to be fundamental right granted under Article 19(1)(g), the prohibition imposed thereon by the Act is in public interest, and in consonance with the moral claims embodied in Article 48A of the Constitution. The ban on the trade of imported ivory and articles made therefrom is not violative of Article 14 and does not suffer from unreasonableness or arbitrariness.

The court found that the state is under no obligation to buy the stocks of the petitioners in acceptance of the one time sale proposition propounded by the petitioners.

It was also observed that the words "Ivory imported into India" occuring in sec. 49-B(1)(a) (ia) of the Wildlife Protection Act include all descriptions of imported ivory whether elephant ivory or mammoth ivory.

The writ petitions were dismissed.

16 : State of Bihar Vs. Murad Ali Khan & others A.I.R. 1989 S.C.I

On 8.6.86 the accused is alleged to have shot and killed an elephant in Compartment No.13 of Kundurututu Range Forest and removed the ivory tusks of the elephant. The complaint was filed under Section 51 of Wildlife (Protection) Act, 1972 and Judicial Magistrate, Chaibasa took cognizance of the offence. Also, a case had been registered against the accused among others at Police Station, Sonna under sections 429, 379 I.P.C. read with section 54 and 39 of Wildlife (Protection) Act. On petition under Section 482 Cr. P.C. by the Respondents against cognizance of offence by the Magistrate under section 51 of Wildlife (Protection) Act, 1972 the High Court quashed the proceedings against the Respondents. The High Court took the view that the Magistrate acted contrary to the provision of Section 210, of Cr.P.C and also on merit the alleged facts do not constitute an offence.

After referring to the dangers of ecological imbalances caused on account of activities of men, the Supreme Court noted that section 9(1) of the Wild Life (Protection) Act prohibits the hunting of any wild animal specified in Schedules I, II, III, IV including Elephant which is specified in Schedule I and its violation is an offence under section 51(1) of the Act. Competent person under section 55 of the Act filed the complaint. It was held that even if the jurisdictional police purported to register a case under Wildlife Protection Act, 1972, Section 210(1) of Cr.P.C was not attracted having regard to the position that cognizance of such offence can only be taken on the complaint of an officer mentioned in Section 55. On merits also the Supreme Court did not agree with the view of the High Court. It held that it could not be said that the complaint does not spell out the ingredients of the offence alleged. The appeals were allowed. The orders of High Court were set aside and the order dated 1.7.86 of Magistrate taking cognizance of offence was restored.

17 : Rabindranath Mohanty Vs Govt. of India F.L.T.90 P. 268, Central Administrative Tribunal Cuttack Bench,

The applicant during the relevant period was holding the post of Chief Wildlife Warden in Orissa. On 12.9.86 an elephant named 'Bhola' died. Some adverse remarks were conveyed to the applicant who made representaton for expunction of the same but the representation was not

disposed of. While disposing off the application, the Tribunal had no doubt that the applicant ordered the hunting of the elephant Bhola on the ground that the animal had become dangerous to human life.

Some adverse entry was made in the applicant's Confidential Character Roll for his alleged negligence and was assessed as an average officer by the Minister who as accepting officer overruled the assessment of the Reporting Officer rating the applicant as outstanding officer. As regards the death of the wild Tusker on 30.11.86 at Sitalbasa the Tribunal found from records that the tusker had sustained some bullet injuries and in gradual process succumbed to the injuries. The Tribunal neither saw any merit in the allegation that the applicant did not visit the spot nor did he depute any veterinary Surgeon to cure the wild tusker. Relying on the expert opinion of the retired Director of Animal Husbandry and veterinary services who stated that the doctors of the Veterinary Department could only treat a tamed elephant and not wild tusker, the Tribunal held that the tusker would have died in any case. It further held that it would have been dangerous to the life of a person to approach a wild tusker, which had sustained bullet injury. The Tribunal referred to the Rule 10 of the All India Service (Confidential Rolls) Rules, 1970 which stipulates that any representation against adverse remark should be disposed of, as far as possible, within 3 months. The Tribunal, therefore, held that apart from non-disclosure of the details in the counter, the accepting authority has no specifically stated as to how due to the negligence of the applicant both the elephants died. It cannot be said that there were negligence on the part of the applicant while discharging his official duties.

The application was allowed.

18 : Mohammad Zahoor & Ors. Vs. State of West Bengal, Calcutta High Court, Forest Law Times 1990 P. 344

On 1.7.87 respondents raided the Rath Jatra Festival (Mela) in Moulali area, Calcutta seizing a large number of birds and arrested the petitioners under Section 50 of the Act. Complaint was lodged under Section 51 of the Act alleging that the accused were carrying on business/trade without licence as stipulated under Section 44 of the Act after collecting the same illegally.

The petitioner contended that no proper inventory of birds was made and in particular there was deliberate and motivated attempt to mislead the court on the type of birds seized. The birds were not scheduled birds as given in the Act for which license was required. It was held that the birds allegedly seized from the petitioners were handed over to the authorities of Zoological Garden, Alipore without any identification marks and the same cannot be made available before the criminal court. The prosecution has failed to discharge the onus of proving that the accused had committed offence. It was further held that under Article 19 (1)(g) of the Constitution they had a right to carry on trade/business and the same could not be denied. The respondents were directed to grant licence on adhoc basis for two months pending application by petitioner for issue of licence.

19 : Badri Lal Vs. State of Rajastan (1990 F.L.T. 26)

The FIR was filed on 22.12.88 and since the time of such filing, no action was taken against the petitioner. No recovery was made regarding his involvement in the selling of skins and bones etc. till the filing of present application for anticipatory bail. It was argued by the Public Prosecutor while opposing the bail application that from the statements of eyewitnesses, it is clear that the petitioner was in collusion with a gang which does business in illegal sale of skins and bones.

The learned Judge rejected this contention of the Public Prosecutor on the ground that there was no justification for not taking any action against the petitioner from 22.12.88 till 30.05.89 when this application was filed for grant of bail under the provisions of Sec. 438 Cr.P.C. Hence, bail was granted to the petitioner.

20 : Tarun Bharat Sangh, Alwar Vs Union of India & Ors AIR 1992 SC 514.

Tarun Bhagat Sangh, Alwar brought public interest action for enforcement of statutory notifications promulgated under Wildlife, Environmental Protection and Forest Conservation laws in Sariska Tiger Park declared as Reserved Forest in Rajasthan against illegal and arbitrary issuing of 400 mining privileges to various persons enabling them to carry on mining operations of lime and dolomite stones inside areas notified as sanctuary, National Park, Project Tiger area, Sariska and reserved and protected forests. Zila Khanizudyog Sangh was impleaded as additional party. Respondent challenged the statutory entitlement of the state to promulgate such notifications without an inquiry. The State of Rajasthan took the stand that grant of mining privileges was possible because of confusion as to the exact boundaries of the reserved forest and the National Park and the exact location of the areas of the mining operations. However, ultimately the State conceded the need of appropriate action to enforce the statutory notification. The Supreme Court held that the inquiry envisaged under sub section (3) of section 29 has nothing to do with mining privileges derived by them from the State.

The court made an interlocutory order that no mining operation of whatever nature shall be carried on within the protected area. It further directed that it was necessary to appoint a committee consisting of State officials and experts under the chairmanship of a retired judge. The Committee, inter-alia will ensure the obedience and implementation of interlocutory order and prepare a list of mining leases involved in the prescribed area and may recommend to the State Govt. to grant elsewhere in the State alternative mining areas for the unexpired period of the leases.

21 : Sukhdev Singh Roy Vs. U.O.I & others 50 (3) 1992 Delhi Law Times - 319 Delhi High Court (D.B)

The petitioner, an agriculturist challenged some provisions of Wildlife (Protection) Act, 1972 as amended by Act 44 of 1991 on the ground that the Parliament has encroached upon the legislative field reserved for the State. It was argued on his behalf that under Section 62 of the unamended Act, the States had been given power to declare and wild animal other than those specified in Schedule I, Part II of Schedule II to be vermin for any specified period but under the amending Act this power had been taken over by the Centre. The attention of the court was also drawn to Schedule V of the Act under which common crow, fruit bats, mice and rats has been shown as vermin. He relied upon Notification dated 26th November 1990 by State of Uttar Pradesh under the unamended Act whereby wild bear was declared as vermin. It was contended that these matters pertain to agriculture falling in Entry 14 of List II of the 7th Schedule of the Constitution.

The High Court relied on Entry 17-B of List III of 7th Schedule, which reads as under:- "17-B. Protection of Wild Animals & Birds".

Referring to the preamble of the Act stating that the Act is meant to protect the biodiversity which is so very essential for survival of human race, the court held that section 62 deals with wild animals, a subject which squarely falls in Entry 17-B of List III, concurrent list of the 7th Schedule and the Parliament has legislative competence to enact/amend law.

Negating the contents of the petitioner that the Act infringes upon field reserved for states and that the provisions of the amended Act are vague and suffer from non-application of mind by the Parliament, the High Court dismissed the writ petition *in limine.*

22 : Shyam Sunder Sharma Vs. UOI 1996 IV AD (DELHI) 668

Petitioners were manufacturers and dealers of ivory articles. They sold three ivory articles during the period when the ban on trade of ivory articles was in force.

The High court of Delhi while dealing with the writ petition filed by M/s Ivory Traders and Manufacturers Association had prima facie found that the provisions of Chapter VA would become applicable only w.e.f 7th July 1992. Though, the petitioners were not parties to the writ petition filed by M/s Ivory Traders and Manufacturers Association, however, claiming themselves to be members of the said Association, they had continued to carry on business by virtue of the stay granted by the Court in the aforesaid writ petition and it was their contention that the stay would be applicable to them as well.

It was observed that even the Government had interpreted the order dated 26th March 1992 to mean that the ivory traders should continue their business upto 4th May 1992.

It was further observed if a party has been misled by a notification of the Government which has also been prima facie interpreted in the same manner in which the petitioners are interpreting, it could not be said that the petitioners have willfully or deliberately violated any of the provisions of the Act by making three sales in the month of April, 1992. Though the words "willfully and deliberately" are absent in Section 55 of the Act. However, it will not mean that in case a person has been bona fide misled by the governent's own notification, he must face prosecution for violation of the provisions of Section 49 of the Act. Even assuming that the petitioners were not members of the Association, there cannot be two sets of guidelines for two different traders dealing in the same trade. A trader who was a member of the Association could not be prosecuted because of the stay granted by this court.

23 : Mohd Khaleque & Others Vs. State of West Bengal

The accused persons were found in possession of a tiger skin in a gunny bag on 1.3.93 near Sundarban Tiger Reserve. Charge under Section 51(1) of Wildlife (Protection) Act 1972 was framed against the accused persons who pleaded not guilty. On examination of prosecution evidence the Chief Judicial Magistrate. J.M. 24 Parganas Alipore convicted the accused persons and sentenced them to imprisonment of 5 years and to pay fine of Rs. 10,000/-.

Appeal was filed on behalf of Mohd. Khaleque in the Court of Additional Sessions Judge Alipore. The accused pleaded that the complaint was not maintainable as Deputy Wildlife Warden was not empowered to lodge complaint under Section-55 of the Act. It was also pleaded that there was error in framing the charge against the accused. On the question of framing of charges the court said that the prosecution witness have proved that the seized skin was of *Panthera tigris* and this constitutes violation of Section-40(2) of the Act. As to the question of cognizance of the offence it has been proved by the prosecution that the Deputy Wildlife Warden was legally competent to file the said complaint against the accused person.

Court held that the prosecution has proved beyond reasonable doubt the guilt of the accused person and ordered rigorous imprisonment of 4 years and fine of Rs.7250/-.

24 : Consumer Education Research Centre & Centre For Environmental Law, Vs. Union of India. AIR 1995 Gujarat 133

The Narayan Sarovar Sanctuary (NSS) was declared on April 14, 1981 vide Sec.18(1) of the Wildlife (Protection) Act, 1972 covering an area of 765.79 sq.km.

The Wildlife Protection (Amendment) Act, 1991 was passed on October 2, 1991.

Subsequently in 1993 the Government of Gujarat started giving mining leases to various industrial groups, in particular to Sanghi Cements, to explore the mineral reserves of Kutch region. The Narayan Sarovar Sanctuary was quashed by a notification on July 27,1993 under S.21 of the General Clauses Act, 1897 and simultaneously another notification was issued under S-26-A (1) (b) of the Wildlife Protection Act, 1972 as amended upto 1991, declaring an area comprising only of reserve forets, as the "Chinkara Wildlife Sanctuary". The area was reduced to a mere 94.87 sq.km.

Aggrieved by the Act of the Gujarat Government the petitioners, Consumer Education Research Centre and Centre for Environmental Law, WWF-India moved the Hon'ble High Court of Gujarat challenging the above said notifications.

The Hon'ble Court in its order dated March 24, 1995 held that the petitioners had locus standi as there was no personal gain on their behalf.

Also the case was fit to be of public interest as environment is a concern for all and right to life is a fundamental right and so is the right to pollution free atmosphere and water. (Subash Kumar V. State of Bihar, (1991) ISCC 598, at page 604). Thus anything that causes to impair the quality of environment is fit to be of public interest.

The Court also held that S.21 of the General Clauses Act could not be invoked to quash a notification regarding a Sanctuary. The only authority to alter the boundaries of the Sanctuary is the State Legislature. The court thus quashed the notifications of July 27, 1993 and restored the Sanctuary to its original state.

25 : Pradeep Krishen Vs Union of India AIR 1996 SG 2040

This writ petition was filed challenging the legality and constitutional validity of an order issued by the state of Madhya Pradesh, Department of Forest permitting collection of Tendu leaves from Sanctuaries and National Parks by villagers living around the boundaries thereof with the object of maintenance of their traditional rights. The court laid down that the only reason to permit entry and collection of tendu leaves is that the state government has not acquired the rights of the villagers/tribals. The court also observed that the total forest cover in our country is far less than the ideal minimum of 1/3rd of the total land. If one of the reason for this shrinkage is the entry of villagers and tribals living in and around the sanctuaries and the National Parks, there can be no doubt that urgent steps must be taken to prevent any destruction or damage to the environment, flora and fauna and wildlife in those areas. The state government is, therefore, expected to act with a sense of urgency in matters enjoined by Art. 48A of the Constitution keeping in mind the duty enshrined in Art 51A (g). The state government is therefore directed to expeditiously issue the final notification under S. 35 (4) of the Wildlife (Protection) Act, 1972.

26 : Indian Council for Enviro-Legal Defence Vs Union of India, 1996(3) Scale 579

The Central Government in exercise of the powers conferred on it by Rule 5 of the Environment Protection Rules, 1986 issued a notification dated 19.2.1991. By this notification, it declared the coastal stretches of seas, bays, estuaries, creeks, river and backwaters which were influenced by tidal action (in the landward side) upto 500m from the high tide line and the land between low tide line as Regulation Zones. With regrd to this area it imposed various restrictions on the setting up and expansion of industries, operation etc. in the said Regulation Zones. To the main notification of 1991 Annexure I dealing with classification of coastal area and development regulations are given, Annexure II concerned with guidelines for development of beach resorts in the designated areas.

The coastal stretch within 500 m of High Tide Line are classified as (a) Category I (CRZ I) includes the areas that are ecological sensitive and important such as national parks and sanctuaries. In this area no new construction is permitted upto 500 m of the High Tide Line. (b) Category II (CRZ II) contains areas that have already been developed upto or close to the shoreline. As regards to this area reconstruction of the already existing buildings is allowed. (c) Category III (CRZ III) includes coastal zone in the rural areas (developed or undeveloped). As regards to this category area upto 200 m from the High Tide Line is to be designated as "No Development Zone".

Court analyzed all the amendments of the notificaton (1994) and came to the conclusion that the one dealing with area of No-development zone (an area of 500m from the High Tide Line) where construction could be carried out with the prior permission of the central Government was arbitrary and excessive and violates the provision of 1991 notification. The amendment (1994 notification) concerning putting of green fencing around private structures was held to be reasonable.

27 : Animal and Environment Legal Defence Fund Vs Union of India and others AIR 1997 SC 1071

The petitioner filed the present writ in public interest challenging the order of the Chief Wildlife Warden granting 305 fishing permits to the tribals formerly residing in the Pench National Park for fishing in the Totladoh reservoir situated in the heart of the Pench National Park Tiger Reserve.

The petitioner contended that issuance of fishing permit will affect the biodiversity and ecology of the area as it would lead to illegal poaching and felling of trees.

All the formalities under the Wildlife (Protection) Act, 1972 have been taken care of and the Collector issued final order under Section 24 on 27.12.1986. But the final notificaton under Section 35 (4) had not been issued declaring the said area as a national park.

These fishing permits were issued in lieu of their traditional rights by the Government of Madhya Pradesh.

Supreme Court held that a balance between preserving environment and the rights of people in and around national parks who are dependent on the forests has to be taken care of. Court issued further directions for proper implementation of permit conditions. Court further directed the Government of Madhya Pradesh to issue the final notification under Section 35 (4) as expeditiously as possible.

28 : State of M.P. versus Subke Baboo, 1986 (2) Crimes 232 at pp.232, 233(M.P)

The respondents were charged for having illegally killed two tigers on 21/22nd March, 1978 by adminstering poison and de-skinned them which was punishable under 51 of the Act.

The prosecution case in brief was that the respondents had mixed aldrine into the water for drinking by animal which resulted in death of two tigers. Thereafter, they took away those tigers and de-skinned them. On receiving this information the Range Officer Henslal informed the police authorities. Later on, the tiger skin, nails and meat were seized from some of the respondents. During the trial first prosecution witness stated that the police did not interrogate the respondents in his presence. He also denied that nothing was seized in his presence. According to him, he was called at the police station where he saw tiger skin, etc. He did not know who had brought the tiger skin, etc. in police station. He aslo denied memorandums having been made in his presence though he admitted his signatures on the memorandums and seizure memos. The witness was therefore, declared hostile and was permitted to be cross-examined. The second witness also denied that any of the respondents was interrogated in his presence. He further denied any seizure from the respondents. Inspite of it, he accepted his signaures on memorandums and seizure memos. This witness was also declared hostile and cross-examined. In cross-examination, he admitted that the tiger skin was seized in his presence and signed the seizure-memo. He also admitted that the respondents were his relations and belong to the village. He admitted that the memorandum and seizure-memos were written in the Thana. Evidence of this witness is also not sufficient to hold that the respondents had given statements leading to discovery of seized articles. The third witness did not support the prosecution, he is not able to say how much of aldrin was sufficient to kill a tiger. He also did not know how much aldrin was found in the stomach of tigers. According to him, aldrin is an agricultural insecticide easily available in the market. Except for these, there is no other witness to connect the respondents with the crime. The aforesaid evidence, however, does not indicate that the respondent had either mixed aldrin or had given any statement leading to recovery at their instance. The evidence being insufficient, no fault can be found with the acquittal of the respondents.

29 : Wildlife Protection Society of India versus M/s. Art India, Narpat Chand Jain (Proprietor) and Chief Wildlife Warden, Govt. of Delhi, CW 4861/97 & CM 8981/97, In the High Court of Delhi.

Wildlife Protection Society of India filed this petition and sought quashing of the ownership certificate dated 12/11/1992 issued by Chief Wildlife Warden in favour M/s Art India, with respect to imported ivory articles. M/s. Art India filed an application before the Chief Wildlife Warden, Delhi, praying that 52.340 Kg. of imported ivory articles and 63.297 Kg of imported ivory articles with metal and wooden attachment be declared in his control, custody and possession. The Wildlife Officer, Delhi refered the matter to the Director, Wildlife Officer, Delhi referred the matter to the Director, Wildlife Preservation, Government of India, Ministry of Environment and Forests for approval. On 12.11.1992 the Wildlife Officer, Delhi for and on behalf of Chief Wildlife Warden of Delhi issued certificate declaring that 115.67 kg of ivory imported into India or articles made therefrom are in control, custody and possession of M/s. Art India.

The court observed that the person who seeks declaration is required to declare within 30 days from the specified date to the Chief Wildlife Warden, every article imported into India or article made therefrom, description of such articles, the place where such articles are kept and declaration that he desires to retain it for his bonafide personal use. On receipt of the rquisite declaration the certificate can be issued only when Chief Wildlife Warden is satisfied that the person is in lawful possession of the items and that the items are required for bonafide personal use by the conerned person. In this case these requirements were not complied with in the declaration and the very act of issuance of certificate is rendered bad in law. The Hon'ble Court allowed the petition of the Wildlife

Protection Society of India and quashed the certificate issued in favour of the M/s. Art India. Direction was issued that the declaration which Art India made to Chief Wildlife Warden, will have to be dealt with afresh.

30 : LPA No. 152 of 1996 State of Madhya Pradesh through Director Madhav National Park, Shivpuri Verus Asad Amin.

In this case a Rajdoot Motor Cycle of the respondent was seized. It was alleged that the said vehicle was used for committing an offence under the Wildlife Protection Act, 1972. The Director, Madhav National Park passed an order on 10/4/1995 that under Section 39 (d) of the Act, the said vehicle was property of the State Government. An application was moved for releasing the vehicle, before the Chief Judicial Magistrate, Shivpuri. The Chief Judicial Magistrate rejected the application holding that he had no power to release the property. The Additional Session Judge maintained the order of the Chief Judicial Magistrate in revision. After rejection of the revision, writ petition was filed by the respondent and single Judge of the High Court, directed delivery of the vehicle on furnishing surety to the sum of rupees 25,000 to the petitioner on supurdnama. This order was challenged by the State of Madhya Pradesh in the appeal no. 152 of 1996.

The contention of the appellant was that under Section 39 of the Act if any property used for committing an offence against the Act is seized it becomes property of the State Government and it can not, therefore be released. The contention of the respondent was that according to Sub Section (4) of Section 50 of the Act, the seized property is required to be produced before a Magistrate to be dealt with accordingto law. According to the respondent seized property could be released in accordance with the provisions of Sub Section (4) of Section 50.

It was held by the Hon'ble High Court in this appeal that since under Section 39 of the Act the property has become Government poperty, it cannot be released and no other meaning can be asigned to the phrasology "according to law" used in Sub Section 4 of Section 50. It was held that according to amended section 39, of the Act the seized property became Government property. It was also held as a consequence of amendment in Section 39, Section 50 of the Act has also been amended whereby power of returning the vehicle seized by the officials has been withdrawn and in such circumstnces, once the property has become the property of the State, no orders for delivery of the property could be passed. The appeal was allowed.

31 : The Wildlife Protection Society of India versus State of Uttar Pradesh & Ors. Writ Petition No. 2157 (MB) of 1999.

8,390 hectares of land was "temporarily" transferred in 1961 from Corbett National Park to the Irrigation Department of Uttar Pradesh for the construction of a dam on the Ramganga River, with the following conditions.

1. After the completion of the dam the areas used for infrastructural requiremets (802 ha) such as workshop, colony stores, would be handed back to the National Park authorities.
2. The land would continue to remain a reserved forest.

Despite the completion of the dam in 1970, the Irrigation Department did not hand back the land to the Corbett National Park authorities. The Wildlife Protection Society of India moved this petition before the High Court of Judicature, Allahabad, (Lucknow Bench). The writ petition is still pending. The Hon'ble High Court passed an interim order on 4.8.1999, on the basis of assurance given on

behalf of State. The Hon'ble Court passed the order ".....we hope and trust that needful shall be done within the time given by this court to clear the encorachments on the forest land and fulfill the conditions of agreement between the departments of handing over back the land which is no more required by the Irrigtion Department, to the Forest Department.....". Time upto 15.12.1999 was granted to clear the encroachments and to hand over back the land to Forest Department.

32 : Criminal Application No.262 of 1999 arising out of Crime No. 368/1/99 Anil alias Annu, Versus State of Maharashtra. In Criminal, application No. 265 of 1999 arising out of Crime No. 368/1/99 prayer of bail by Anil alias Annu who was accused in a case relating to hunting of panther, was rejected by the Hon'ble High Court of Bombay, Nagpur Bench, Nagpur.

33 : Gullamally Jaffarally versus Union of India and Ors. WP No. 2254 of 1998, decided by the High Court of Bombay on 13.01.1999.

In this case the petitioner challenged the notifcation dated 4th August, 1998 issued by the Deputy Director General of Foreign Trade, Government of India and letter dated 18th September, 1998 issued in pursuance of this notification was also challenged. By this notification Government of India banned export of shed antlers of Chital and Sambhar with immediate effect. In pursuance of this notification letter dated 18th September, 1998 was issued to the Chief Wildlife Warden of all States and Union territories directing that the necessary action may be taken to check the collection of Shed Antlers. It was stated in the said letter that there are large number of deer being killed by poachers for the sake of getting antlers and as a result the population of *herbivores* (mainly males) has been declining significantly in various protected areas. The contention of the petitioner was that the notification and letter issued in pursuance the notification are totally arbitrary and violate Article 14 of the Constitution of India.

Chital and Sambhar grow horns. The males shed the horns called antlers after the mating season. New antlers grow next year. Shed antlers are used for manufacutring various items, which are exported to various countries. In 1992, a ban was imposed on the export of naturally shed antlers. The ban was withdrawn but later on the ban was imposed again by the impugned notification. According to Government it is necessary to safeguard the declining population of deer in the country. It was found by the court that the notification issued was in public interest and in consonance with the directive principles embodied in Article 48 A of the Constitution of India and notification was issued to abate the decline of Chital and Sambhar. It was also observed that if it was the conception of the authority that the export of naturally shed antlers would encourage poaching and will lead to decline in the population of these animal species, it is not open for the court to question the wisdom of the authorities in prohibiting the export of antlers. The writ petition was summarily rejected.

34 : High Court of Jammu & Kashmir PIL (OWP) 293/98

The Wildlife Protection Society of India Versus The State of Jammu & Kashmir and others.

This writ petition was filed by the Wildlife Protection Society of India and the focus of attention was the threatened extinction of Tibetan Antelope which is commonly known as Chiru. It was pleaded that the underwool of this animal is used for manufacturing shahtoosh shawls, there have been startling seizures of shahtoosh shawls between 1992-98 and India accounts for most of the seizures. This is notwithstanding the fact that Tibetan antelope is a protected animal under the Central Wildlife (Protection) Act (central Act) and despite the fact that India is signatory to CITES under which

import and trade in animal articles made or derived from Appendix I is prohibited. According to the petitioner Chiru is included in Appendix I of the CITES but still manufacutring and trade of Shahtoosh is not regulated in the state of Jammu & Kashmir because it is not a protected animal under the J & K Wildlife (Protection) Act (State Act). The case of the petitioner was that there is a paradoxical contrast between the Central Act and State Act because while under the Central Act Chiru is a protected animal, it is not so under the State Act.

The petitioner prayed that respondents be directed to implement and initiate measures to prohibit/ regulate importation manufacture from and sale of raw underwool of Tibetan Antelope or any product made or derived therefrom in compliance of the provisions of CITES and enforce the export and import policy.

The state of Jammu & Kashmir pleaded that there has been no evidence of poaching of Chiru in the state and even though it is not a protected animal yet no licence for hunting was issued ever since 1978 when the State Act came into force. Further stand of the state was that Shahtoosh shawls are made from underwool shed by animal and collected by the locals which is sold in the market against which there is no prohibition. It was also pleaded by the state that seizures of shahtoosh shawls having been made outside the state, it does not follow that these were manufactured in the state.

The stand of Union of India was that they had been persuading the state government to bring the State Wildlife Act at par with the Central Wildlife Act. It was further pleaded that necessary steps have been taken to ensure that provisions of CITES are strictly complied and effectively implemented.

Handicrafts trader Association Srinagar pleaded that Shahtoosh shawl is made of wool which is not covered by the definition of animal article or trophy as defined under the State Wildlife Act, therefore no licence is required for manufacture of shahtoosh shawls. It was further pleaded that since his wool is shed by the animal which the locals of the area collect which is sold in the market, therefore no killing is involved and as such no licence is necessary.

It was held by the Hon'ble High Court that Convention on International Trade in Endangered Species of wild fauna and flora (CITES) is a treaty or an agreement with foreign countries and the Union Government alone is competent to enter into such agreements with foreign countries and it has the obligation to enforce it throughout India including the state of Jammu & Kashmir. What is the obligation of the state towards the implementation of CITES will depend upon whether shahtoosh is an animal article defined under the State Act and whether it is a property of the Government.

It was held by the Hon'ble High Court that underwool or hair of Chiru is part of such animal and it falls under the definition of animal article as defined under the State Act and that hair is also included in the definition of trophy under the State Act. It was further held that possession of "animal article" including "trophy" or "uncured trophy" is illegal under the State Act and consequently possession of shahtoosh will also be illegal and so also its trade. It was also held that shahtoosh cannot be obtained without killing the animal and it will be property of grovernment. It was further held that underwool or shatoosh irrespective of the fact how it is obtained by a dealer or manufacturer, is government property under this State Act. The Hon'ble High Court held that the underwool or shahtoosh is included in the definition of animal article as well as trophy as defined is the State Act and it is thus the obligation of the State to render all assistance to the Central Government to implement the provision of CITES.

The Hon'ble High Court further held, since the import and export of animal article is prohibited under import and export policy, the officials of the respondents have the obligation to enforce the ban.

It was also held that the Union Government is empowered to give direction to the State to ensure compliance of the provision of the CITES in exercise of its executive power.

It was also held that the prohibition against carrying on business or occupation in animal article is absolute except in accordance with licence issued under the provision of section 43 of the State Act and it is incomprensible how this trade is being carried on after the State Act was enacted and enforced. It was held that failure of State Government to implement the Act has defeated the purpose of the Act.

The Hon'ble High Court allowed the writ petition and the State Government was commanded to regulate the trade in shahtoosh and shahtoosh shawls and enforce the law against those who are carrying on trade in contravention of the provisions of section 43 of the State Wildlife Act and the provisions of the CITES.

35 : Pyarelal, Appellant versus The State (Delhi Admn.)

Criminal Appeal No.622 of 1988, AIR 1995 Supreme Court 1159

The appellant Pyarelal was owner of M/s Haryana Novelty Emporium, Delhi, On 1st September 1979, the Wildlife Inspector, PW-1 conducted a search of the premises and found lion shaped trophies of Chinkara Skins meant for sale. A complaint was lodged stating that the provisions of section 44 and 49, punishable under section 51, Wildlife (Protection) Act, 1972 have been contravened. Pleas of the accused was that those trophies were made out of goat skin, after being painted and that the skin were not that of wild animals mentioned in the schedule of the Act.

His appeal and further revisions were dismissed hence the present appeal was filed in the Hon'ble Supreme Court.

The Hon'ble Supreme Court found that contravention of provision of sections 44 and 49 of the Act had been made. The evidence of PW-1 established that the appellant was found in possession of trophies. Section 44 prohibits dealing in such trophies without a licence and section 49 of the Act lays down that no person shall purchase, receive or acquire any captive animal, wild animal other than vermin or any animal article, trophy, uncured trophy, or meat derived therefrom otherwise than from a dealer or from a person authorised to sell or otherwise transfer the same under this Act. PW-1 is an experienced and specially trained officer. His evidence establishes that the accused was in possession of those trophies. Finding of conviction was maintained by the Hon'ble Supreme Court.

On the question of sentence the Hon'ble Supreme Court was of the view that only the first part of Sub section (1) of Section 51 was attracted and not the provision. There was no evidence when the accused came into possession. It was clear from the evidence that there was only a contravention, namely that a declaration as required under section 40 was not made and that the act of dealing in the trophies by the appellant was without licence. Under the circumstances minimum sentence of six months as provided under the proviso was not attracted. The appellant remained in jail for two months. The Hon'ble Supreme Court held that ends of justice will be met if the sentence of imprisonment is reduced to the period already undergone. Sentence of fine and default clause were maintained.