

**IN THE COURT OF SH. AJAY GUPTA, ADDITIONAL CHIEF  
METROPOLITAN MAGISTRATE(SPL. ACTS):CENTRAL:TIS  
HAZARI COURTS, DELHI**

**State (Wildlife) vs Mohd. Mursalin etc  
U/s 55 Of Wildlife (Protection) Act, 1972**

**JUDGEMENT**

- (a) Serial no. of the case : 02401R0027191993
- (b) Date of commission of offence : 25.06.93
- (c) Name of complainant : V.B. Dasan, Wildlife Inspector  
O/o. Chief Wildlife Warden,  
A-Block, Vikas Bhawan, IP  
Estate, New Delhi.
- (d) Name, parentage, residence. 1)Mohd. Mursalin ( Expired)  
2)Abdullah (Expired)  
3)Abdul Rehman  
4)Moinuddin (Expired)  
5)All Partners of M/s Mursalin  
Ivory Art, 1939, Bara Dari,  
Khwaja Mirdard, Kucha  
Challan Darya Ganj, Delhi
- (e) Offence complained of/ proved : U/s 49(b)(1) of Wild Life  
(Protection) Act, 1972
- (f) Plea of accused : Pleaded not guilty
- (g) Final order : Convicted.
- (h) Date of such order: 11.03.11

**Arguments heard/order reserved: 05.03.11**

**Date of pronouncement of Judgment:11.03.11**

**Brief statement of the reasons for the decision:-**

1. Present complaint was filed by the Wildlife Inspector in terms of Section 55 of Wildlife (Protection) Act, 1972 r/w rule 49 of the Wildlife Protection Rules, 1973. The complaint is filed against aforesaid four accused persons. During the course of trial accused no.1 Mohd. Mursalin, no.2 Abdullah and no.4 Moinuddin have expired and accordingly proceedings against these accused persons were directed to be dropped. Now only accused no.3 Abdul Rehman is facing trial.
  
2. Brief facts as stated in the complaint are that 25.06.93 the business premises of M/s Mursalin Ivory Art was inspected vide inspection memo dt. 25.06.03 and on a thorough search stock of (i) Solid imported ivory/articels 9.917 kgs and (ii) Imported ivory articles fitted with wood, wire, silver and metal 3.832 kgs was found. The excess stock could not be seized as there was apprehension of manhandiing as a mob had gathered at the spot. On 28.06.93 the stock of articles made of ivory held by M/s Mursalin Ivory Art was physically verified vide inspection/seizure memo dt. 28.06.93 with the assistance of police and following articles were found:-

<i>Sl. No.</i>	<i>Articles Name</i>	<i>Quantity as per physically verification</i>	<i>Quantity as per record</i>	<i>Remarks</i>
1	Solid ivory articles	6.650 kgs	6.650 kgs	Correct
2	Ivory articles imported	1.550 kgs	1.550 kgs	Correct
3	Indian Ivory Articles	3.267 kgs	Nil	
4	Indian Ivory articles fitted with metals, wood and wires etc	2.282 kgs	Nil	

3. It is stated that at the time of said inspection one of the partner i.e. accused Mohd. Mursalin was present at the spot. Accused Mohd. Mursalin was asked to produce any legal source of procurement or an authority to keep the above excess stock at serial no. 3&4 but he could not produce any document. Hence these articles were seized vide inspection/seizure memo dt. 28.06.93. It is further stated that accused no.1 to 4 are partners of accused no.5 and are jointly responsible for conducting the day to day business of the accused no.5, the partnership firm. Thus, it is alleged that accused have committed the offence u/s 9 & 49(b)(1) of Wild Life (Protection) Act and hence they be punished u/s 51 of the Wild Life (Protection) Act, 1972.



4. Thereafter, a complaint u/s.55 of Wildlife (Protection) Act, 1972 was filed in the Court by the Wildlife Inspector. After summoning of accused persons, pre-charge evidence was recorded being a warrant trial case. After recording of pre-charge evidence, a charge was framed against the accused Abdul Rehman to which he pleaded not guilty and claimed trial.

5. In order to substantiate the aforesaid allegations the prosecution examined three witnesses ie. complainant Sh. V.B. Dasan, WLI, examined as PW1, Sh. RR Meena, WLI as PW2 and Sh. SS Negi WLI as PW3.

6. After completion of complainant's evidence, statement of accused Abdul Rehman recorded u/s.313 r/w 281 Cr.P.C. In his statement accused has denied the allegations made in the complaint and stated that he has been falsely implicated in this case. Accused further stated that his father used to deal with the business of this firm and he had no concern with the same. The accused did not come up with any explanation or reason for his false implication, if any. There is not even a single word mentioned in his statement as to why he

would be falsely implicated by the complainant in this case. The accused did not opt to lead any defence evidence in his favour.

7. I have heard the Ld. APP for the State as well as Ld. Counsel for the accused and gone through the record of the case. PW1 V.B. Dasan, PW2 RR Meena and PW3 Sh. SS Negi reiterated the facts of the complaint and have well supported the prosecution case. All these witnesses have deposed that on 25.06.93 a raid was conducted in the premises of M/s Mursalin Ivory Art and during inspection excess ivory stocks as mentioned in inspection memo found, however, those articles could not be seized on that date and only inspection memo ex. PW1/A was prepared as mob collected at the spot. It is stated that at the time of aforesaid inspection, accused Mohd. Mursalin and Abdul Rehman were present at the spot. Thereafter, again on 28.06.93 inspection of the premises of accused was conducted and those articles were seized vide seizure memo ex. PW1/B and same were produced before the court vide application ex. PW1/C on dt. 29.06.93. All these witnesses were cross examined on behalf of accused, however nothing contradictory material has come on record favouring the accused. Neither in the cross examination of

prosecution witnesses nor in the statement of accused, any reason is put-forth by the accused as to why these witnesses would falsely depose against him. There is no previous enmity reported between the witnesses and the accused. There was no reason for the prosecution witnesses to have falsely implicated the accused or for deposing against him.

8. The main stand taken by the accused in his statement recorded u/s 313 Cr.P.C that he was not present at the time of inspection nor he is dealing with the business of accused firm, however, accused stated that his father is looking after the business of accused firm. This court does not find any substance in the plea of accused. Accused has not disputed that M/s Mursalin Ivory Art is a partnership firm but denied that he is one of its partners. PW1 has proved on record the application which was filed by accused no.5 (firm) vide ex. PX for obtaining the licence for dealing in the ivory articles. This document clearly describes that accused no.5 is the partnership firm and accused no.1 to 4 including accused Abdul Rehman who is facing trial, is a partner. Thus, prosecution has clearly established on record that accused Abdul Rehman is one of the partners of M/s Mursalin



Ivory Arts. It is further clear from the statement of PWs as well as ex.PW1/A, the inspection memo that accused Abdul Rehman was very well present at the premises of the firm when the first inspection was carried out. As per prosecution witnesses this inspection memo bears the signatures of accused Abdul Rehman. Accused has not denied his signature over this inspection memo. The accused only tried to establish during cross examination of PW1 that his signatures were obtained on blank papers. Thus, from this very cross examination it is clear that this inspection memo bears the signatures of the accused. As per statement of accused he was not present at the spot on 25.06.93 when first inspection was carried out and his signatures have been obtained on blank papers later on. Accused has failed to establish on record that there is any enmity between him and the witnesses. Nothing has come on record to show that there was any enmity which had prompted the complainant to file false complaint against him. It is beyond comprehension that a person would remain silent, if his signatures are obtained by somebody on blank papers. If the signatures of accused Abdul Rehman would have been obtained by the complainant on blank papers, he must not remain silent and would have taken appropriate legal action against

the complainant immediately. Thus, plea of the accused certainly implies one thing that the accused was present when the inspection was carried out on 25.06.93 and the proceedings mentioned in this inspection memo were very well conducted on that date and his signatures were obtained after the inspection was carried out.

9. All the prosecution witnesses have further proved on record that the premises of the accused firm was again inspected on 28.06.93 and accused no.5 M/s Mursalin Ivory Arts was found in possession of excess ivory articles as reflected in seized memo ex. PW1/B. PW3 has deposed that in the month of February, 1993, the partnership firm had submitted its report regarding the ivory stocks which has been proved on record as ex. PW3/A. It is clear that as per this statement, stock of ivory articles was 9.300 kgs. and during second inspection on 28.06.93 excess Indian ivory articles weighing 3.267 kgs and Indian ivory articles fitted with metals, wood and wires etc weighing 2.282 kgs were found. It is clear from the comparison of ex. PW3/A and ex. PW1/B that the partnership firm was found in excess possession of the ivory articles on 28.06.93 which was seized vide seizure memo ex. PW1/B. PW3 has also correctly identified the case



property i.e seized excess ivory articles as ex. P1 and ex. P2 collectively.

10. In view of the above discussion, the prosecution has succeeded in proving its case that from the possession of partnership firm, the above mentioned animal articles were recovered on the said date, time and place, without any licence or authority. Once possession of the animal articles is proved against an accused beyond reasonable doubt, as per Sec 57 of The Wildlife (Protection) Act a presumption is to be drawn against the accused. Section 57 of the Wild Life (Protection) Act contemplates that if somebody is found in possession, custody or control of any prohibited animal articles, it is always to be presumed that he is in unlawful possession and the onus is always on the accused to prove the contrary. In this regard this court is supported with case law reported as "**Sansar vs. State 1994 ! AD Delhi 13**", that when the possession, custody and control of the accused over the animal articles, cured and uncured trophies has been established by the prosecution, the presumption is that the accused is guilty unless and until the accused disproves the same. In this matter nothing has contrary has been proved by the accused.

Accused has failed to establish on record that the firm of the accused had a licence to deal with the excess articles which were found in his shop.

11. Section 58 contemplates that wherever an offence under Wild Life Act has been committed by a Company or a Firm, every person who was Incharge or responsible for the conduct of the business of the Company/Firm is to be deemed guilty of the offence. Relevant provisions of section 58(1) of Wild Life Act reads as under:-

**58(1) Where an offence against this Act has been committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.**

However, this provision has one proviso which gives an opportunity to the person who is incharge of the Company/Firm to prove that the offence under Act was committed without his knowledge. In this particular case accused was a partner of the firm M/s Mursalin Ivory Art and on the date of first inspection he was very well found present when the excess articles were found available with the firm and after three days another inspection was carried out for the seizure of those articles during which he was not found

present but the excess unlicensed articles were recovered. Accused is a partner of this firm and the inspection memo dt. 25.06.93 clearly shows that he has been actively taking part in the business activity of this firm and as such, he is also responsible for the acts of the firm. Thus, it is to be assumed that it was well within the knowledge of the accused that partnership firm do possess the aforesaid excess/unlicensed articles. As such, in view of the settled provisions of Section 58 of Wild Life (Protection) Act, even if accused was not found present at the time of subsequent inspection, he is to be held guilty as it is already established on record that unlicensed articles were seized from the shop of the firm of which accused is a partner.

12. In the present case also the accused has failed to rebut the presumption the onus of which shifted upon him to clarify as to how he came into the possession of these animal articles. The presumption against the accused arises that he was in possession of these animal articles for commercial purposes only and nothing else. Accordingly, it is held that the prosecution has succeeded in proving its case against the accused.



10. Indian elephants are protected species in Schedule-I listed in Sl. No.12B. Section 49-B of Wildlife (Protection) Act, 1972 provides that no person shall commence or carry on business as a dealer in scheduled animal articles. Since, Indian elephant is covered in Schedule-I of the Wildlife (Protection) Act, 1972, the accused contravened section 49-B(1) of the Act as he was found in excess ivory articles. The said offence is punishable u/s 51 of Wild Life (Protection) Act, 1972. It may also be mentioned that section 49 of the Wild Life (Protection) Act, 1972 provides that no person shall purchase, receive, acquire any wild life animal article from a person other than authorised dealer, authorised to sell or transfer the same. Accordingly, accused is found guilty and is convicted for the offence u/s 49-B(1) of Wildlife (Protection) Act, 1972.

(AJAY GUPTA)  
ACMM(SPECIAL) ACTS, CENTRAL,  
TIS HAZARI COURTS DELHI

Announced in open  
court on 11.03.11

**IN THE COURT OF SH. AJAY GUPTA, ACMM, (SPL ACTS)**

**TIS HAZARI COURTS, DELHI**

**Wild Life vs. Mond. Mursalin etc**

**U/s 49(b)(1) R/w section 51 of**

**ORDER ON SENTENCE**

15.03.11

Present: WLI Sh. V.B. Dasan and RR Meena with Ld. APP for the state.  
Convict Abdul Rehman with counsel.

Arguments heard on the point of sentence.

Ld. APP requests for sever punishment. On the other hand Ld. defence counsel submits that accused is facing trial for the last seventeen years and he has a large family to support. He further submits that accused not a previous convict and requests for lenient view.

In this case accused was found guilty and convicted for the aforesaid offence for possessing excess unlicensed ivory articles. The Indian elephant is protected species in Schedule-I in sl. No.12B and u/s 51 of the Act and offence u/s 49(b)(1) read with section 51 of the Act is punishable with minimum sentence of one year and minimum fine of Rs.5000/-.

Despite best efforts put in by the Government of almost all the countries across the globe, wild life offences not coming down. Such case needs to be dealt with strictly to curb the wild life offences. Thus, keeping in view the facts and circumstances the case and nature of offence, accused is sentenced to undergo IS for two years along with a fine of

Rs.10,000/- in default SI for three months. Fine paid. Benefits u/s 428 Cr.P.C be given to the accused. Earlier bail bonds hereby stands cancelled and convict is taken into custody.

At this stage an application u/s 389 Cr.P.C filed on behalf of convict. Keeping in view the facts and circumstances, sentence is suspended and the convict is admitted to bail till statutory period of filing of appeal expires, on his furnishing PB/SB in the sum of Rs.10,000/-. PB/SB furnished and accepted till 14.04.11. A copy of the judgment and order on sentence be given to the accused free of costs. File be consigned to record room and bonds be put up on 14.04.11.

(AJAY GUPTA)

Addl. Chief Metropolitan Magistrate (Spl. Act)  
Central, Tis Hazari Courts, Delhi

Announced in open  
court on 15.03.11