

(2012) 07 RAJ CK 0037

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 633 of 2006 alongwith Criminal Revision Petition No"s. 905 of 2006, 906 of 2006 and 907 of 2006

State of Rajasthan

APPELLANT

Vs

Salman Khan and others

RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 109, 110, 112, 114, 115
Penal Code, 1860 (IPC) — Section 141, 144, 146, 147, 148
Wild Life (Protection) Act, 1972 — Section 51, 52

Citation : (2012) 2 EFLT 825 : (2012) 4 RLW 3733

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : R.L. Jangid, A.A.G. assisted with Mehpal Bishnoi, for the Appellant; Shrikant Shivde, K.K. Vyas, H.M. Saraswat and Manish Chitara and Sanjeet Purohit for the Wild Life Trust of India, for the Respondent

Judgement

Sandeep Mehta, J.—Heard learned Counsel for the parties. The instant four revision petitions have been preferred by the State of Rajasthan assailing the order dated 4.5.2006 passed by learned Additional Sessions Judge No. 3, Jodhpur whereby four revision petitions filed by the accused respondents herein against the order dated 20.2.2006 passed by the learned Judicial Magistrate, First Class, Jodhpur District, Jodhpur were partly allowed.

2. Succinctly stated the facts of the case are that upon a complaint being filed by the State of Rajasthan through the Assistant Conservator of Forest, Wild Life, Jodhpur, the learned Trial Judge i.e., the Judicial Magistrate, First Class, Jodhpur District, Jodhpur by his order dated 20.2.2006 proceeded to record pre-charge evidence and then directed framing of charges against the respondents herein for the offences as stated below:

3. The respondents herein approached the learned Revisional Court by filing four revision petitions being Revision No. 15/06 (Saif Ali), Revision No. 16/06

(Neelam), Revision No. 18/06 (Salman Khan, Tabbasum and Sonali) and Revision No. 20/06 (Dushyant Singh). All the revisions were heard and decided by the learned Additional Sessions Judge No. 3, Jodhpur by common order dated 4.5.2006 and the learned Revisional Court accepted the revisions and directed the respondents herein to be discharged from the offences under sections 147, 148 and 149, I.P.C. as well as section 27 of the Arms Act whilst direction to frame charges under sections 51 and 52 of the Wild Life Protection Act was affirmed. The State of Rajasthan has challenged the said order dated 4.5.2006 passed by the learned Revisional Court by way of these filing four separate revision petitions.

4. Assailing the order passed by the learned Revisional Court, Mr. R.L. Jangid, learned Senior Counsel-cum-Addl. Advocate General appearing for the State submitted that the Revisional Court has committed a serious error of law and facts in discharging the accused persons from the offences under sections 147, 148 and 149, I.P.C. It is submitted that the view taken by the Revisional Court that the provisions of Chapter VIII of the Indian Penal Code apply only in relation to the offences committed against the human body, is absolutely erroneous. Laying stress on the definition of the term "offence" u/s 40, I.P.C, it was submitted that "offence" as defined in the said section also covers within its ambit, the "offence" referred to in section 141, I.P.C., particularly, when the same is to be considered in reference to any special or local law. It was thus urged that the Revisional Court's order discharging the respondents from the offences under sections 147, 148 and 149, I.P.C. as well as u/s 27 of the Arms Act was absolutely illegal. In support of his contentions, learned Addl. Advocate General placed reliance on the decisions of Hon'ble Apex Court rendered in the cases of:

- (1) State of Bihar Vs. Murad Ali Khan and Others,
- (2) Standard Chartered Bank and Others Vs. Directorate of Enforcement and Others,
- (3) S. Khushboo Vs. Kanniammal and Another,
- (4) Sansar Chand Vs. State of Rajasthan,
- (5) Abu Salem Abdul Qayoom Ansari Vs. State of Maharashtra and Another,

5. So far as the order passed by the learned Revisional Court regarding the discharge of Salman Khan from the offence u/s 27 of the Arms Act is concerned, learned Addl. Advocate General fairly conceded that another charge-sheet for the very same set of allegations and for the very same offence has already been filed against the accused in the competent Court and he is being tried for the same.

6. In the written submissions submitted on behalf of the State of Rajasthan, no challenge has been raised to the discharge of accused Salman Khan for the offence u/s 27 of the Arms Act.

7. Per contra, the learned Counsel appearing on behalf of the respondents vehemently opposed the arguments advanced on behalf of the petitioners and supported the order passed by the learned Revisional Court.

8. It is contended that the term "offence" which is defined u/s 40 of the Indian Penal Code when read in context with the provisions of Chapter VIII of I.P.C. cannot be held to cover the offences except for those involving the offences against the human body or the offences involving breach of public peace. It is submitted that Clause (ii) of section 40, I.P.C. excludes from its operation the offences under sections 147, 148 and 149, I.P.C. in relation to a special Act and thus, these offences cannot be applied to any offence under a Special Act. It was argued that the provisions of a Criminal Statute had to be interpreted strictly and from the two possible interpretations, one which favours the accused must be adopted. In support of the contention that the provisions of sections 147, 148 and 149, I.P.C. cannot be invoked in respect to an offence under the Special Act, reliance has been placed on the following judgments :

- (1) In Re: Pavanur Athamu and Others,
- (2) Harinarain and Another Vs. The State,
- (3) In Re: Vasudeva Mudali and Others,
- (4) Mahanth Dukhan Das and Others Vs. Emperor,
- (5) Inder Sain v. Emperor 1920 CRI LJ 418.
- (6) Aydroos and Another Vs. Emperor, .

9. It is further submitted that section 141, I.P.C., which is referred to in Second Part of section 40, I.P.C., does not create an independent offence but only provides a definition of the term "unlawful assembly". It was further urged that the essential ingredient of the definition of "unlawful assembly" depicted that the unlawful assembly was to be formed against the public, persons or their property and not against the animals. Referring to section 44, I.P.C., it is submitted that the word "injury" in the said section specifically referred to an injury to a person. The word "life" as defined in section 45, I.P.C. also denotes life of a human being and the word "death" denotes death of a human being. Learned Counsel specially laid stress on the definition of "animal" as contained in section 47, I.P.C. and contended that the word "animal" has been defined as any living creature other than human being. It was thus submitted that as the provisions of Chapter VIII of the I.P.C. are limited in their application to the offences effecting the public tranquility, the same cannot be applied to an offence committed against animals. It was thus prayed that the revisions preferred by the State deserved to be rejected.

10. As regards the order passed by the learned Revisional Court discharging the respondent Salman Khan from the offence u/s 27 of the Arms Act, it is submitted that since Salman Khan is already facing a trial in relation to the very same

offence and for the very same incident, he cannot be tried twice for the same offence. It is submitted that for the incident which took place in the intervening night of 1st and 2nd October, 1998, the charge u/s 27 of the Arms Act for illegal use of the fire arms has already been framed against him in Case No. 321/2000 and the said case is at the final stage. It was, therefore, submitted that the proposed prosecution of respondent Salman Khan for the said offence in this case is nothing but a double jeopardy which was being imposed upon him. As such, it is submitted that this charge was rightly quashed by the Revisional Court.

11. On a consideration of the arguments advanced at bar and upon going through the material available on the record as well as the orders impugned, the short question which falls for the consideration of this Court is as to whether the provisions of Chapter VIII of the Indian Penal Code can be applied to the offences other than those affecting the human body or public peace. Section 40, I.P.C. reads as below :

40 "Offence".--Except in the Chapters and sections mentioned in Clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, Chapter VA and in the following sections, namely sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the words "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

12. The term "offence" is thus an act made punishable under the Indian Penal Code or a Special or Local Law, as the case may be. In the second para of the definition, a specific reference has been made to Chapters IV and VA of the I.P.C. and certain other sections of the Penal Code. In the third para, reference is made to offences under sections 141, 176, 177, 201, 202, 212, 216 and 441, I.P.C.

13. From the definition, reference to section 144, I.P.C. onwards has been conspicuously omitted. Section 146, I.P.C. which lays down the definition of "rioting" defines that whenever a force is used by an unlawful assembly or a member thereof, every member of such assembly is guilty of offence of rioting. Section 147, I.P.C. lays down punishment for rioting. Section 148, I.P.C. refers to rioting when the same is accompanied with deadly weapons.

14. Thus, the primary factors governing the offences defined in these three sections are use of force or violence. The term "Criminal Force" as defined in section 349, I.P.C. reads as under :

349. Force.--A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance

such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling :

Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

First.--By his own bodily power.

Secondly.--By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly.--By inducing any animal to move, to change its motion, or to cease to move.

15. The said definition clearly shows that criminal force can only be used by one person on another. The use of force on an animal or a thing, unless such use affects another person, is not an offence. Essentially the use of force should be intended to cause the other person to change motion or cause motion or cease motion. In the case at hand, there is no such allegation of the prosecution that by using criminal force upon the animals, any other person was made to change motion, cause motion or cease motion. As there is no such allegation that criminal force or violence was used by the unlawful assembly or by any member and thereby the offences under sections 349 or 350, I.P.C. was committed, therefore, the provision of section 147, I.P.C. cannot be applied to the facts of the case at hand.

16. So far as offence u/s 149, I.P.C. is concerned, the said section is governed by section 141 which defines unlawful assembly. Section 141, I.P.C. reads as under :

141. Unlawful Assembly.--An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is :

First.--To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant ; or

Second.--To resist the execution of any law, or of any legal process ; or

Third.--To commit any mischief or criminal trespass, or other offence ; or

Fourth.--By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right ; or

Fifth.--By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.--An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

17. Five objectives have been defined in the said section which govern the application thereof. As the question involved in the matter is about the permissibility to apply section 149, I.P.C to the offence u/s 51 of the Wild Life Protection Act, the Objectives Firstly, Secondly, Fourthly and Fifthly obviously do not have any application to the case. Only Clause Thirdly of the section can be considered to be having a semblance of an applicability to the facts of the case. This clause states "to commit any mischief or criminal trespass, or other offence". Stress laid down by the State Counsel is on the term "other offence" and specially in context to section 40, I.P.C.

18. In the case of Dwarika Prosad and Others Vs. Dr. B.K. Roy Choudhury and Others, and relied upon by the Counsel for the respondents, the Division Bench of Hon"ble Calcutta High Court considering the import of the title of the Chapter observed as below :

We realise that the title of a Chapter is not a determining factor regarding the interpretation of the provisions of a section in the Chapter but the title certainly throws considerable light upon the meaning of the section and where it is not inconsistent with the section one should presume that the title correctly describes the object of the provisions of the Chapter.

19. But the question is as to whether the interpretation of a Statute can only be governed by the Title of the Chapter wherein the section is contained. In Clause Thirdly of section 141, I.P.C., offences of mischief and criminal trespass are referred to. The offence of mischief is defined in section 425, I.P.C. Ongoing sections i.e., Section 426 to section 440, I.P.C., define various kinds of mischief which have been made punishable. It was submitted by the defence Counsel that the mischief should result into damage to a property owned by a person or an animal of value owned by the person. The animals which are mentioned in section 429, I.P.C. are all domesticated animals and having value. Counsels appearing for the defence have tried to canvass before this Court that the loss essentially has to be to a domesticated animal or has to be rated in terms of financial loss as section 425, I.P.C. itself has an import of loss or damage to the public or any person or destruction of any property. Thus, it was urged that the essence of the section is that the Act of mischief should result into financial loss.

20. In the opinion of this Court, a damage caused to the wild life even if the same cannot be evaluated or calculated in terms of money is definitely a loss to the ecology and as a result thereof, it can be considered to be a loss to the public and society at large. The State is pumping huge sums of money for conservation and preservation of wild life and thus, the interpretation sought to be drawn by

the Counsel for the respondents that section 141, I.P.C. cannot be applied to the offence u/s 51 of the Wild Life Protection Act, cannot be accepted. It is the firm opinion of this Court that by the act of using fire arms for killing wild life, the accused committed the offence of mischief as defined in sections 425 and 429, I.P.C. Since the Clause Thirdly of section 141, I.P.C. covers in its ambit, mischief, criminal trespass or other offence. Therefore, the provision of section 141, I.P.C. can very well be applied to an offence of mischief when committed in relation to a wild animal also. Accordingly, the term "other offence" as mentioned in section 141 covers in its ambit, an offence under Wild Life Protection Act. Therefore, every member of the unlawful assembly which participates in the act of hunting is definitely liable for being prosecuted for the offence u/s 51 of the Wild Life Protection Act with the aid of section 149, I.P.C. However, as has already been discussed and observed above, the offence u/s 147, I.P.C. cannot be applied to the facts of the instant case. Since the act cannot be covered under the definition of noting. Resultantly, all these four revision petitions succeed in part and whilst the order dated 4.5.2006 passed by the learned Additional Sessions Judge No. 3, Jodhpur discharging the respondent Salman Khan from the offences u/s 148, I.P.C. and u/s 27 of the Arms Act and other accused respondents from the offences u/s 147, I.P.C. is concerned, the same is affirmed but is set aside to the extent whereby the accused respondents have been discharged from the offence u/s 52 of the Wild Life Protection Act read with section 149, I.P.C. and the order dated 20.2.2006 passed by the learned Judicial Magistrate, First Class, Jodhpur District, Jodhpur to this extent is restored.

Stay petitions also stand disposed of.

Record be sent back forthwith.