



GAHC010087112021

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**THE GAUHATI HIGH COURT AT GUWAHATI**  
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

**PRINCIPAL SEAT AT GUWAHATI**

**(1) Criminal Petition No.344/2021**

Navnath Tukaram Dhaigude,  
Son of Tukaram Dhaigude, Resident of  
A/P-Balu Patil Chiwadi, Lonand, Tal-  
Khandala, PIN – 415821,  
District – Satara, Mumbai.

..... Petitioner.

-Versus-

1. Union of India,  
Represented by Additional Commissioner  
of Customs, NER, Shillong,  
110. M.G. Road, Shillong, Meghalaya.
2. The Range Forest Officer,  
Hawaithang Range,  
Dholai, Cachar, Assam.
3. The Director,  
Guwahati Zoo, Guwahati,



Assam.

..... Respondents.

**(2) Criminal Petition No.63/2021**

Navnath Tukaram Dhaigude,  
Son of Tukaram Dhaigude, Resident of  
A/P-Balu Patil Chiwadi, Lonand, Tal-  
Khandala, PIN – 415821,  
District – Satara, Mumbai.

..... Petitioner.

-Versus-

1. The State of Assam, Represented  
by the Public Prosecutor, Assam.
2. The Principal Chief Conservator of Forest,  
Forest and Environment Deptt., Assam.
3. The Range Forest Officer,  
Hawaithang Range,  
Dholai Cachar, Assam.
4. Uttam Kumar Das,  
Fr-1, I/C Lailapur Sub-Beat,  
Lailapur, Dholai, Dist- Cachar, Assam.  
Pin- 788120.

..... Respondents.

Advocates for the Petitioner

:Mr. T. Chezhiyan and  
Mr. T. Thakuria.



Advocate for Union of India :Mr. S.C. Keyal, S.C.,  
Customs.

Advocate for rest of Respondents : Mr. P.N. Goswami,  
Addl. Advocate General, Assam.

**:: BEFORE ::**

**HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN**

Dates of Hearing : 24.08.2021, 03.09.2021  
& 16.09.2021.

Date of Judgment : 08.10.2021.

**JUDGEMENT AND ORDER (CAV)**

Heard Mr. T. Chezhiyan, learned counsel for the petitioner as well as Mr. S.C. Keyal, learned Standing Counsel, Customs. Also heard Mr. P.N. Goswami, learned Addl. Advocate General, Assam representing rest of respondents.

2. On 28.07.2020 at around 11.00 PM while performing regular night patrolling duty with other staff of the Lailapur Sub-Beat on NH 54 Highway nearby Lailapur Forest Sub-Beat Office Check Point area where each and every vehicle coming from the Mizoram State towards Assam was checked jointly with the police personnel of Dholai Police Station, Dholai, a vehicle bearing Regd. No.TS-08-UB-1622 was stopped then suddenly an unpleasant odour was smelled from the well packed carton/container kept inside the said vehicle. The patrolling team decided to physically check all the well packed cartons. On physical inspection, they found 8 nos. of cartons and on opening the cartons, live wild animals like – (1) Kangaroo – 01(One) No.; (2) Tortoise – 03(Three) Nos.; (3) Blue Macaws – 06(Six) Nos. and (4) Exotic Monkey – 02(Two) Nos. were found inside the iron cage/*pinjira* without valid license or legal documents. The driver of the vehicle No.TS-08-UB-1622 was asked to furnish valid permit but



he failed to produce proper documents against the transportation of the wild animals which was suspected wild life offence under Section 44, 48A, 51 of the Wild Life (Protection) Act, 1972 and hence, they (police personnel/forest officials) detained 2 persons i.e. the driver and one another person were arrested and seized the live wild animals along with the vehicle. Thereafter, both the seized animals and the said vehicle were taken to the Range HQcampus, Dholai for safe custody and for drawing wildlife offence case under Wild Life (Protection) Act, 1972 as per departmental procedure and registered as DH/WL/01 of 2020-2021. On the next day on 29.07.2020, the petitioner and other person were produced before the learned Chief Judicial Magistrate, Cachar, Silchar along with a Forwarding Report dated 31.07.2020 and accordingly C.R. Case No.111/2020 was registered under Section 44/48A/51 of Wildlife (Protection) Act, 1972 and as there was no rescue-cum-rehabilitation facilities available at Range Head Quarter, Dholai, the said animals were transferred to Assam State Zoo-cum-Botanical Garden for proper care and custody. In the Forwarding Letter dated 31.07.2020, the Forest Range Officer, Dholai while forwarding the seizure list, accused statement, arrest memo and all other relevant documents, it is mentioned that all rescued animals are exotic and some falls under the category of CITES' Schedule-I animal and none of the animals fall under the Wild Life (Protection) Act, 1972 and the offence was registered as suspected under WPA Act.

**3.** On 30.07.2020, after receipt of the wild animals, the Divisional Forest Officer, Assam State Zoo Division wrote to the Divisional Forest Officer, Cachar Forest Division, stating that some of the animals may perhaps have been misidentified and recommended that proper scientific investigation should be conducted to identify their complete family/species/sub-species. He also expressed an apprehension that it was very likely that these animals were being subjected to illegal smuggling and trade. It was also stated that until the animals could be properly classified, they may be dealt with under the provisions of the Act of 1972.

**4.** On further investigation that is on 03.08.2020, several more animals and animal articles (including Tiger Claws) was recovered, which were restricted Schedule-I animals and another seizure list was prepared and placed before the learned CJM, Cachar. The said tiger claw has



been sent to the FSL for examination.

**5.** The Range Forest Officer, Hawaithang Range, Dholai in the accused forwarding report given to the learned CJM, Cachar it is submitted that all the rescued animals are exotic hence fall under the category of CITES and none of the seized animals come under the provision of the WLP Act and requested the court to hand over the case to custom authorities. On the basis of the Forwarding Report, custom authorities took cognizance of the case in C.NO.1/CL/IMP/SIL/PREV dated 2020-21 and served a show cause notice upon the petitioner as to why seized animals shall not be confiscated, to which the petitioner replied. The petitioner also filed a application before custom officials for provisional release of the seized animals and birds on 12.03.2021 and thereafter, the custom authorities by order dated 04.05.2021 granted provisional release of the seized animals and birds on condition that the petitioner will execute a bond for 100% value of those animals and to deposit 25% cash deposit of the value of animals. Although the petitioner complied with the condition and approached to the Range Forest Officer, Dholai for release of the animals in terms of the above order but same was refused.

**6.** The petitioner has filed the Criminal Petition No.344/2021 under Section 482 of the CrPC seeking release of exotic animals and birds as directed by the Additional Commissioner of Customs, NER, Shillong, Meghalaya dated 04.05.2020 challenging that the Forest Range Officer has no jurisdiction and authority to deal with exotic animals and birds, which do not come within the purview of WLP Act inasmuch as, denial of the release of seized animals and birds despite the direction of the Custom Department, is illegal.

**7.** The petitioner also filed another Criminal Petition No.63/2021 U/s. 482 CrPC for quashing the proceeding pertaining to C.R. Case No.111/2020 as regard the petitioner pending before the learned CJM, Cachar, on similar ground contending that since exotic animals do not come within the purview of Schedule of WLP Act, which has also been mentioned in the forwarding report by the Forest Range Officer and hence the charges under the WLP Act is not sustainable. It is submitted that even as per the own document of the respondents



(Forwarding Report dated 31.07.2020), no case is made out against the petitioner to attract the offence under the WLP Act. This Court on the basis of the aforesaid Forwarding Report was also of view that the detention of the petitioner under the Wild Life Act will not be proper as the petitioner cannot be said to have committed any offence and granted the bail.

**8.** Further he contends that even the Customs Act, 1962, in the event of handing over the case to the Custom Department, it never constitute an offence in view of amnesty scheme. Relying on judgments of various High Courts, it is submitted that the Central Government, Ministry of Environment, Forest and Climate Change, Wildlife Division has introduced the Voluntary Disclosure Scheme on 11.06.2020 titled as "Advisory for dealing with Import of Exotic Live Species in India and declaration of Stock". Through the said scheme the Government has given an option to citizens to voluntarily declare their stock of exotic species with them within six months from 16.06.2020 to 15.12.2020 which subsequently extended till 15.03.2021. The challenge to the validity of the immunity promised under the disclosure scheme was dismissed by the Allahabad High Court and was affirmed by the Supreme Court of India holding that there is no requirement to maintain any statutory record for possession, acquisition , storage of captive breeding for domestic trade of wild animals/birds under WLP Act. Referring to the decision of the High Courts, it contends that that any inquiry or action against possession, breeding or transportation of exotic species within India would be wholly illegal and would defeat the purpose of Voluntary Disclosure Scheme.

**9.** Accordingly, the learned counsel for the petitioner contends that the respondent herein cannot investigate the ownership, possession, transportation etc. etc. of such exotic animals/birds, and petitioner being declarer not required to produce any documentation. Thus contending that initiation of criminal proceeding against the petitioner would be against the very purpose of amnesty scheme and denial of the opportunity to avail such beneficial scheme amounts, to denial of fundamental rights under Article 14 of the Constitution of India, petitioner has sought for quashing of entire proceeding pertaining to C.R. Case No.111/2020.

**10.** The respondents herein have opposed the contentions raised in both the petitions and



one of the respondents i.e. the respondent no.3, Director, Guwahati Zoo (who is DFO) has filed the affidavit-in-opposition. It is submitted that the DFO, Assam State Zoo where the animals/birds were kept for safe custody, they had communicated to Deptt. that some of the animals may perhaps have been misidentified and recommended that proper scientific investigation should be conducted to identify their complete family/species/sub-species. He also expressed an apprehension that it was very likely that these animals were being subjected to illegal smuggling and trade. It was also stated that until the animals could be properly classified, they may be dealt with under the provisions of the Wild Life (Protection) Act of 1972. It is also submitted that meanwhile, on 03.08.2020, upon further investigation of the case, several more animals and animals articles [including Tiger Claws is recovered from the possession of vehicle – which is a scheduled article under the provisions of the Wildlife (Protection) Act, 1972] and a seizure list was prepared and placed before the learned Chief Judicial Magistrate, Cachar. As the second seizure list could not be placed before this Court at the time of preferring bail, the petitioner was granted bail holding that no offence under WLP Act was made out. However, it is contended that observation made in a bail order has no bearing in the subsequent proceeding including trial.

**11.** It is submitted further that the provisions of Section 48 of the WLP Act, 1972 prohibits the purchase, custody, possession, transportation etc. of animals specified in Schedule I or Part-II of Schedule, later on Section 48A was specifically inserted by Parliament in 1991 which inter alia restricts any person from transporting any wild animal or animal article, except after ascertaining that permission from the Chief Wildlife Warden or any other officer authorized by the State Government, has been obtained. In the present case, without obtaining any such permission, the petitioner has admittedly indulged in transportation of the animals mentioned above, without any document. In fact, animal like- tortoises, turtles, monkeys etc. are mentioned in the Schedule of the Wildlife (Protection) Act, 1972 and as such they are covered under the provisions of both Section 48 as well as 48A of the Act. While the Kangaroo is not specifically mentioned in the Schedule, since it is admittedly a wild animal, it clearly comes under the purview of Section 48A of the Act. Moreover, a Tiger claws which is a restricted article cannot be sold, possessed or transported under the provisions of the Act of 1972 was

also seized from the custody of the petitioner, and the same clearly amounts to an offence under the Act of 1972. Section 48 further entails that if such animal or animal article is to be transported from one state to another, it is mandatory to obtain the previous permission in writing of the Director or any other officer authorized by him in this behalf. Therefore, the possession and transportation of the animals/animal articles by the petitioner amounts to a gross and clear violation of the provisions of Section 48 and 48A of the WLP Act, 1972.

**12.** Further it contends that Section 50(c) specifically empowers the Director or any other officer authorized by him on this behalf of the Chief Wildlife Warden or the Authorized Officer or any Forest Officer to seize any captive animal, wild animal, animal article, etc. in respect of which an offence under the act appears to have been committed. Section 51 (2) specifically provides that when a person is convicted of an offence under the Act, any captive animal, wild animal, animal article etc. in respect of which that offence had been committed shall stand forfeited to the State Government. The objective of the legislature behind vesting the said power with the Forest Department was because unlike other offences, any illegal animal/animal article seized under the Act is not merely an article involved in committing an offence but is the object of the offence itself. Handing over custody of this animal/animal article to the person accused of having committed the offence will result in the said illegal article being released into the market and/or otherwise disposed of and will defeat the provisions of the Act itself. Therefore, if custody of the seized animals/animal articles are handed over the petitioner at this preliminary stage of the investigation, then there is every likelihood that the petitioner will transfer/dispose of the said animals/animal articles, which will completely frustrate the provisions of sections 50 and 51 of the Act of 1972. Moreover, the investigation is still at a very preliminary stage and there is every likelihood that these animals/animal articles have been subjected to illegal trade and smuggling.

**13.** It is apprehended that the petitioner is involved in the illegal smuggling of animals/animal articles into India from across the border and custody of the said animals are being sought to legalize the same by taking undue and illegal advantage of the "Advisory for Dealing with Import of Exotic Live Species in India and Declaration of Stock" which was





issued by the Ministry of Environment, Forest and Climate Change, Wildlife Division on 11.06.2020. As per the said advisory, all citizens were given the option of voluntarily disclosing any stock of exotic species in their possession within a period of 6 months and the said advisory/circular only deals with exotic species and not with captive wild animals already found in India. Moreover, such Advisory does not authorize transportation of animals, which is regulated as per the provisions of the Wildlife (Protection) Act, 1972.

**14.** In the present case, the origin and species/sub-species of the said animals are yet to be finally determined. Moreover, from the sequence of events, manner in which animals carried and the place etc., the apprehension that petitioner is a part of an illegal racket dealing in the illegal trade, smuggling and transportation of wild animals cannot be denuded. He is admittedly a resident of Mumbai and was apprehend with wild animals, while transporting from Aizwal to Guwahati. Further, in his statement before the Investigating Authorities, the petitioner had clearly stated that he was transporting onions from Siliguri to Aizawl where these cartons were handed over to him by an unknown person and asked him to deliver them to Guwahati against payment of Rs.15,000/-. In fact, he could not produce a single document to show that he was in legal custody of the said animals. Now the same petitioner is claiming to be the owner of these animals. The conduct of the petitioner is extremely doubtful and the entire criminal network can only be exposed after a thorough investigation. Therefore, at this stage, it is not a fit case for handing over custody of the seized animals to the petitioner.

**15.** It is further contended that custody of the seized animals/articles cannot be unilaterally handed over by the Customs Department to the petitioner. The Customs Act, 1962 (for short, referred to as the "Act of 1962") specifically envisages a situation where an action might constitute an offence under the Act of 1962 as well as the Act of 1972. As per Section 137 of the Act of 1962, even the power of compounding of offences is available to the officers of the Customs Department when offence under the Customs Act but still it constitutes, an offence under the Act of 1972. Moreover, the power of provisional release (provided under Section 111 of the Customs Act, 1962) as has been sought to be exercised by the Assistant Commissioner, Customs Division, Karimganj can only be exercised in cases where a seizure

has been done under Section 110 of the Act. In the present case, the seizure was effected by the Forest Department under the provisions of Section 50 of the Wildlife Act, 1972 and therefore, the Assistant Commissioner, Customs Division, Karimganj is not authorized to issue orders for provisional release of the seized animals/articles, who apparently does not have custody.

**16.** The petitioner filed another affidavit-in-reply to the affidavit-in-opposition filed by the respondent no.3, contending that the respondent no.3 has no authority to swear an affidavit, he being not the seizing authority and has no direct knowledge about the seizure but he is a mere custodian of the seized articles on behalf of custom authorities. Further, it contends that the petitioner participated in the adjudication proceeding before the Custom Department and duly replied to the show cause notice and after the custom authority took cognizance of the case, the respondent authority as 2<sup>nd</sup> respondent (Forest Department) as well as the 3<sup>rd</sup> respondent Assam State Zoo has no power and jurisdiction on the subject and cannot allege the violation of the provision of the Act. So far as the provision of Section 48/48A of the Wildlife Act, it contends that same is applicable only to the scheduled animals of the Act as envisaged in Section 2(36) of the Act and the wild animal specified in Schedule I to IV and seized exotic species are captive in nature as mentioned in Section 2(5) of the Act does not found in the Schedule. Similarly, it submits that Section 50(c) and 51 of the Act is not applicable as against the petitioner as he has not committed any offence under the said Act. Referring to the various decisions of different courts it has been submitted that the "Advisory for dealing with an import and export of live species" clearly ousted the jurisdiction of the wildlife authorities.

**17.** Based on the pleadings above, learned counsel for both the parties has advanced their argument at length.

**18.** Broadly on two prime contentions, the leaned counsel for the petitioner Mr. T. Chezhiyan submitted that as the Forest Range Officer has already mentioned in his forwarding report that the rescued animals are exotic and none of the seized animals come within the purview

of Wild Life (Protection) Act, so the seizure of the animals and continuance of the proceeding before the learned trial court is illegal. On the next, in view of the Advisory issued by the Central Government (supra), no inquiry can be conducted as regard the captive/exotic animals for domestic/internal trade, by the wildlife authority and the status of petitioner is that of declarant under the aforesaid Act. On the basis of the possession of the seized animals/birds the petitioner intends to assert his claim under the declaration scheme.

**19.** The learned counsel Mr. Goswami appearing for the respondents has vehemently opposed the contention of the petitioner's side that solely on the basis of such possession the petitioner is not entitled to get any relief unless he asserts any legal claim over the seized animals/birds. Referring to the admitted documents on record, like show cause notice issued by the Custom Department and the reply of the petitioner, it has been contended that there is absolutely no any basis to claim the seized animals by the petitioner, who miserably failed to establish his status as well as the legal claim to the seized animals. It has been pointed out that in the show cause notice it has been mentioned by the Custom Department that the present accused petitioner stated before the said authority that he was a driver of the vehicle where the seized cartons/containers were sent by another person, namely- Lala against some payment, whereas they simply carried onions in the vehicle. Such contention in the show cause notice was never resisted by the petitioner in his show cause reply, which amounts to admission to the aforesaid aspect. In view of above, as well as the manner in which the animals were carried in concealed design, it apparently indicates that neither the petitioner is the owner of the said seized animals/birds nor they carried the same in a legal manner.

**20.** So far as regard the "Advisory for dealing with Import of Exotic Live Species in India and declaration of Stock" under which the petitioner tried to assert his claim over the animals/birds, it has been submitted by the learned counsel for the respondents that the petitioner cannot take the shelter under the said scheme whereas the petitioner failed to prove any legal possession of the animals/birds for which he remained absolutely silent in the present two petitions as to the actual status.



**21.** By drawing attention to Section 110A of the Customs Act, Mr. Goswami, learned counsel for the respondents has submitted that the Custom Department can make order for provisional release of seized articles to the owner but in the present case, it is not established that the petitioner is the owner of seized articles. For ready reference, Section 110A is quoted below:

**“110A. Provisional release of goods, documents and things seized pending adjudication.** – Any goods, documents or things seized under section 110, may, pending the order of the <sup>3</sup>[adjudicating authority], be released to the owner on taking a bond from him in the proper form with such security and conditions as the <sup>4</sup>[adjudicating authority] may require.”

Further, it contends by the learned counsel for the respondent that in terms of Section 137 of the Customs Act, even if an offence is compounded on payment by the accused person as per Section 137(3) but as per Section (3), (b) (iv), the same will not affect any proceeding pertaining to Wild Life Act. For ready reference, relevant provision is reproduced below:

**“137. Cognizance of offences –**

- (1) .....
- (2) .....

<sup>5</sup>[(3) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the <sup>6</sup>[Principal Chief Commissioner of Customs or Chief Commissioner of Customs] on payment, by the person accused of the offence to the Central Government, of <sup>7</sup>[such compounding amount and in such manner of compounding] as may be specified by rules].

<sup>8</sup>[Provided that nothing contained in this sub-section shall apply to –

- (a) a person who has been allowed to compound once in respect of any offence under sections 135 and 135A;



(b) a person who has been accused of committing an offence under this Act which is also an offence under any of the following Acts, namely:-

(c)

(i) .....

(ii) .....

(iii) .....

(iv) the Wild Life (Protection) Act, 1972 (53 of 1972);"

**22.** Accordingly, it contends that provisional release of seized articles to the petitioner is itself bad in law and hence cannot be enforced in the court of law and as the Schedule (I) article under the Wild Life Act has been recovered by subsequent seizure list and the animals seized by the first seizure list is yet to be ascertained as to whether it exclusively falls under the Wild Life Act, so the quashing of proceeding before trial court does not arise.

Relevant portion of the "Advisory for dealing with import of exotic live species in India and declaration of stock", is quoted hereinbelow:

**"1. Developing an inventory of exotic live species in India through Voluntary Disclosure Scheme.**

a) The phrases "exotic live species" used in this advisory shall be construed to mean only "the animals named under the Appendices, I, II and III of the Convention of International Trade in Endangered Species (CITES) of Wild Fauna and Flora" for the purpose of this advisory and does not include species from the Schedule of the Wild Life (Protection) Act 1972.

b).....

c) A period of 6 months (from the date of the order) may be given for voluntary disclosure for those who are in possession of exotic live species in the country.

d) All exotic live species shall be declared by the owner/holder (stock, as on 1 January 2020) to the Chief Wildlife Warden (CWLW) of the concerned State or



UT in a format at Annexure-I of this Advisory.”

## II. Import of exotic live species and stock maintenance

1. An application for grant of a license for import of exotic live species may be made in the prescribed form to the Director General of Foreign Trade (DGFT) -along with the No Objection Certificate (NOC) of the CWLW of the state/UT concerned, online on the DGFT Portal.
2. The application for No Objection Certificate (NOC) from the Chief Wildlife Warden shall be made online as per format at Annexure-III.
4. The stockholder/importer shall observe the following for maintenance of the stock of exotic live species:
  - (a) .....
  - (b) .....
  - (c) All importers must register themselves one time, before the respective Chief Wildlife Wardens (CWLWs), prior to the import of exotic live species and provide details of facilities for housing for the exotic live species.”

**23.** Learned counsel for the respondents has referred to the decisions of the Hon’ble Supreme Court- *1990 (Supp) SCC 667 – State through CBI New Delhi v. K.K. Jajodia and Anr. and (2007) 7 SCC 344 – Central Bureau of Investigation v. Pradeep Bhalchandra Sawant and Anr.*, wherein it has been held that the observation of the High Court or Supreme Court while granting bail is not binding upon the trial court and such observations cannot control the decision taken by the trial court. Thus, it has been submitted that granting of bail to the petitioner by this Court with certain observation as has been submitted by the learned counsel for the petitioner cannot control the proceeding of the trial court. The trial will proceed on its own merit on the basis of documents on record and the entire case cannot be brushed aside only on the basis of the observation of the Court.

**24.** Various other decisions of the Hon’ble Supreme Court *(2003) 7 SCC 628 – Balram Kumawat v. Union of India and Ors.; (2003) 7 SCC 589 – Indian Handicrafts Emporium and Ors. v. Union of India and Ors.; 2008 (12) SCC 481 – K.D. Sharma v. Steel Authority of India*



*Limited and Ors.*, has been referred to submit that the clauses of a statute should be construed with reference to context *vis-à-vis* the other provisions as to need the consistent enactment of the whole statute regarding the subject-matter. The petitioner who has not come forward with clean hands rather has suppressed the truth from the court, is stated to be not entitled to get any equitable relief, as sought for.

**25.** Various other provisions of the Wildlife Act as well as Customs Act that have been referred by both the parties also taken note of. The decisions referred by the petitioner relates to the implementation of the "Advisory" (as mentioned above) which also gone through. I have also perused the LCR as well as the impugned order passed by the custom officer.

**26.** Coming to the show cause notice issued by the Custom Department vide Annexure-3, it is found that the Department has taken note of various facts, that there is reason to believe that the said exotic animals/birds were illegally imported into India through a route other than the route specified under Section 7(c) of the Customs Act, 1962, which is— "the routes by which alone goods or any class of goods specified in the notification may pass by land or inland water into or out of India, or to or from any land customs station from or to any land frontier". The estimated value of the animals/birds were approx Rs.22,69,400/- (including the seized vehicle bearing Registration No.TS-08-UB-1622/Model: Eicher E2/Plus) and there is no authentic information about the origin of animals, the accused petitioner Navnath stated himself to be a driver by profession and the other person accompanied him namely- Narsimha Reddy is the owner of the vehicle and they were carrying some cartons/containers on their return from Mizoram as loaded by other persons and they knowingly carrying/transporting of smuggled exotic species of animals and birds without any valid documents by violating legal provisions.

**27.** It is to be noted that the petitioner herein has not specifically denied any of above contention made by the Custom Department in its show cause reply, rather it has been challenged that customs has no jurisdiction for the seizure or issuance of show cause notice



for confiscation. As it appears on the show cause reply that the petitioner only relied on the above "Advisory" whereby the Government has given option to all citizens to declare their stock of exotic species and has referred to various decisions of the court on the said subject as well as challenge has been made to the provision of the Customs Act that Section 111, 111(b) and 111(d) of Customs Act is not applicable to the petitioner.

**28.** In view of the above, it can be safely inferred that the petitioner nowhere disclosed his identity as well as the status of animals/birds as to how it was procured. The petitioner who hails from Mumbai was found in Assam, Cachar, Silchar while carrying such animals/birds in camouflage manner without explaining about the acquiring such animals/birds while in transportation. At the time of adjudication before the Customs Department, he disclosed his identity in a different manner as has been discussed above which he has not challenged till date which cast serious about his ownership upon the seized animals/birds.

**29.** The petitioner heavily relied upon the decision of Allahabad High Court in *Dinesh Chandra vs. Union of India* in *P.I.L. Civil No.12032/2020* dated 30.07.2020 wherein it has been held that wildlife authorities has no jurisdiction to deal with exotic species. Paragraph 14 of the judgment is quoted where the honorable court held that Central Government has consciously kept the exotic animals/exotic birds out of the purview of Wild Life (Protection) Act, 1972 by not including them in the Schedule and has thus permitted there domestic trading, possession and captive breeding in India. It further states that exotic birds /animals do not come under the purview of Wild Life Act and there is no provision under Wild Life Act to issue license or permission for dealing with exotic birds. The challenge to the aforesaid findings before the Supreme Court was summarily rejected in SLP (C) No.11659/2020 dated 13.10.2020 affirming the orders.

**30.** Several decisions of other High Courts, like judgment of the Rajasthan High Court in Civil Writ Petition No.7491/2020 and the decision of Delhi High Court in WP(C) 6372/2020 dated 23.10.2020 have reiterated the same view that Wildlife Authority has no power, authority or jurisdiction to deal with the exotic species. On the basis of the aforesaid decision the





petitioner tends to submit that the seized animals and birds being exotics animals which were carried for internal trade, there is no need for obtaining any permission from Forest Department and/or he being a declarant under the "Advisory", he is under the immunity as he is a declarer, need not to produce any documentation in relation to exotic live species.

**31.** Now, the petitioner herein has not availed the "Voluntary Disclosure Scheme". The scheme provides that at the time of availing the scheme within the statutory period of six months, one need not to produce any document but the same cannot be a plea before the court of law while facing criminal prosecution. As per the judgment referred above [para 16, 17 in WP(C) 6372/2020], the declarer need not require to produce any documentation in relation to exotic species if the same has been declared within six months from date of issuance of "Advisory" under Voluntary Disclosure Scheme but after the six months period is over, declarer shall be required to comply with documentation requirement under the extent of laws and regulations. In *Hira Lal Hari Lal Bhagawati vs. CBI*, reported in (2003) 5 SCC 257, Hon'ble Supreme Court held that once there is a Voluntary Disclosure Scheme is availed, then directing the declarant chasing him in other proceeding is highly unreasonable, arbitrary. In the instant case, the petitioner herein has not produced anything (no declaration, no registration) to show that he intended to be a declarant under the said scheme and on the contrary he has not stated anything about the same in his statement (already recorded) at the time of his apprehension. On a new plea, the present petition has been preferred to resist the proceeding initiated against him, which appears to be not *bona fide*.

**32.** The petitioner has also not challenged the subsequent seizure of animals from their vehicles, that is the one tiger claw, two Indian Soft-Shelled Turtles and Red Eared Slider Turtle, which is enlisted in Schedule-I animal of WLP Act, in view of which the offence will come under the Wild Life (Protection) Act. Moreover, as per letter issued from Divisional Forest Officer, Assam State Zoo Garden, until complete identity of the species, the seized primates and birds may be dealt with another provision of Wild Life (Protection) Act. Section 2 (36) provides that "wild animal" means any animal specified in Schedule I to IV and found wild in nature. The seized animals in the present case, like, turtles and monkeys are

mentioned in the Schedule of the WLP Act (as wild animal) and difficulty is only, as regard the first seizure list where genesis of animals is not mentioned, in absence of which it is also not conclusively proved that animals in first seizure list, is only exotic one.

**33.** As per Section 48 (a)(b) of the Act, no licensee under the Act shall keep in his control, custody or possession or capture any animal, animal article, trophy except in accordance with such rules and the proviso to the said Section envisaged that no such transfer and transport of such animal shall be effected except with previous permission in writing from the Director or any other officer authorized by him. Further, it provides that no such permission is necessary when it is shown that article has been lawfully acquired. The provision of Section 48A imposes restriction on transportation of wild life and provides that no person shall accept any wild animal (other than vermin), or any animal article, or any specified plant or part or derivative thereof, for transportation except after exercising due care to ascertain that permission from the Chief Wild Life Warden or any other officer authorised by the State Government in this behalf has been obtained for such transportation.

**34.** In the present case, the petitioner has failed to produce any document that such transportation of wild animals was made with required permission from the appropriate authority as indicated above.

Similarly, as per definition of Section 49A- "scheduled animals" and "scheduled animals article" means animal articles specified in Schedule-I or Part-II of Schedule-II and scheduled animal article means any article made from any scheduled animal or any part of such animal. Further, there is prohibitions of dealings in trophies, animal articles etc., derived from scheduled animals under Section 49B. It is to be noted that like the Voluntary Disclosure Scheme, as has been introduced by the Central Government (supra), similar provision is in existence in the WLP Act, as Section 49C provides that such a person carrying on business or occupation of such animals can make a declaration before the Chief Wildlife Warden or the authorized officer about any stock of scheduled animals, parts of animals etc. and on such declaration for *bona fide* use and lawful possession thereof, Chief Wildlife Warden can issue



certificate of ownership in due manner and such person who acquired ownership certificate can transfer such item by way of gift, sale or otherwise with due intimation to the Chief Wildlife Warden. Now, so far as the case of the petitioner is concerned, in absence of any valid documents for transportation of such wild animals/articles, there appears to be violation of the provision of the Act as lawful possession of the seized animals has not been shown. Recovery of the article of tiger claws (scheduled animal article) and scheduled animal has already been brought on record and as such the challenge to the proceeding under Wild Life (Protection) Act cannot be maintained.

**35.** On perusal of the LCR pertaining to C.R. 111/2020, it reveals that the learned trial court already held about *prima facie* materials against the accused persons under the WLP Act and the seized articles has been sent to Assam State Zoo for care and custody of the zoo authority. Only mentioning by one Forest Range Officer that some of the exotic animals falls under the category of CITES Schedule-I animal cannot brush aside all entirety of the matter that has been discussed above. The trial court is in a position to decide the matter at the time of framing charge. It is to be noted that at the time of forwarding the accused petitioner along with all other relevant documents statement of accused was also enclosed which is on record. In their statement both the accused persons have stated that they were drivers and carried onions and the seized animals were sent in their vehicle at the time of their return from Aizawl to Guwahati, by one person namely- Lala for which they were paid Rs.15,000/- each. The said person met them in a place 50 km. from Aizawl. Both of them disclosed to be drivers whereas the present petitioner was second driver and they had disowned the seized animals. Both the seizure lists dated 28.07.2020 and 03.08.2020 are on record. The trial court will decide the fate of the accused on the basis of documents on record and as per provision of the Act. Interference with such proceeding by way of exercising the provision of Section 482 CrPC will be unjustified.

**36.** As has been stated by the petitioner custom authority has adjudicated the matter on the basis of forwarding letter given by the Forest Range Officer and has passed such provisional release of the seized animals/birds but the case was not handed over by the trial court where



proceeding under the Wildlife (Protection Act) is pending. From the order dated 26.08.2020, in C.R. 111/2020, it reveals that Superintendent, Customs (A/S) Customs Preventive Force, Silchar filed a petition before the trial court that they have also registered a Custom Departmental Case No.1/CL/IMP/SIL/PREV/2020-21 dated 29.07.2020 against the accused persons and they also sought for permission to interrogate the accused persons inside custody and the same was allowed by the trial court but the order about provisional release of seized animals by Custom Department was never communicated to the trial court.

**37.** Pending trial before a competent court, provisional release of the seized article by the Custom Department, which was never produced before them, to a person whose ownership has not yet proved, have raised legal complicity. Interference of this Court has been sought for to execute such order of the Custom Department as if, this Court is an executing court, while the adjudication of such matter, itself, questionable.

**38.** The exercise of inherent power under Section 482 CrPC is an exception but not a rule. The same has to be exercised with extreme care and caution and with circumspection in rarest of rare cases, to prevent abuse of process of law and to prevent miscarriage of justice. Such a power cannot be exercised to stifle a legitimate prosecution and/or to execute an order of an authority which is under challenge on lawful ground.

**39.** In view of the discussions and findings, this Court is of the opinion that the petitioner has failed to brought anything on record to justify the invoking the inherent power of this Court. The petitioner did not approach the court by disclosing all the facts, as such this Court is not inclined to allow the petitions filed by the petitioner. Resultantly, both the petitions filed by the petitioner is hereby dismissed.

In terms of above, both cases are disposed of.

**JUDGE**

**Comparing Assistant**