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IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS
MALKAPUR AT : SHAHUWADI.
(Presided over by A.A.Walujkar)

REG.CRI.CASE NO.37/2015

EXH. NO. 54 /B

The State of Maharashtra
[Through- R.F.O.[Wild Life] ... **Informant**
Chandoli.

V e r s u s

01. Dagadu Gangaram Bodake, Age-30 Yrs.,
Occup.Farmer, R/o.Bhendavade,
Tal.Hatkanangale, Dist.Kolhapur. ... **Accused**
03. Dhondiba Gangaram Bodake, Age-35 Yrs.,
Occup.Farmer, R/o.Bhendavade,
Tal.Hatkanangale, Dist.Kolhapur.

Advocates Appearing-
Shri.V.R.Gaikwad, A.P.P., for the State.
Sou.A.A.Patil, advocate for the Accused.

J U D G M E N T

(Delivered on 30/11/2017)

Accused are prosecuted for the offences punishable U/s.
27, 30, 34(a), 35 made punishable U/s. 51 of the Wild Life
[Protection] Act, 1972.

02. The case of the prosecution in nutshell is that, on 16/09/1985 State of Maharashtra by notification created Chandoli Wild Life Sanctuary. It consisted of 19 villages from Sangli district, 9 villages from Kolhapur district, 3 villages from Satara district and 1 village from Ratnagiri district. In all 32 villages and area of about 308.97 Sq.meters was included in Chandoli Wild Life Sanctuary. It also included village Dhakale, Tal.Shahuwadi, Dist.Kolhapur. On 14/05/2004 the State Government added Amboli village to the Chandoli Wild Life Sanctuary and established Chandoli National Park. On 05/01/2010 the State Government amalgamated Chandoli National Park and Koyana Wild Life Sanctuary and found Sahyadri Tiger Reserve admeasuring 741.22 Sq.meters of area. On 21/08/2012 the State Government by its notification declared some area in the Sahyadri Tiger Reserve as the core and buffer area. The village Dhakale, Tal.Shahuwadi, Dist.Kolhapur was declared a core area.

03. On 31/03/1998 all 156 villagers/stake holders of village Dhakale were rehabilitated by the State Government. Out of 156 stake holders 68 families were rehabilitated at Pargaon, Tal.Hatkanangale and remaining 88 families were rehabilitated at village Bhendavade, Tal.Hatkanangle. Accused were also rehabilitated at village Bhendavade and they have received various benefits under the scheme.

04. In spite of receiving various benefits from State Government the accused were alternatively and illegally staying in the core zone of Sahyadri Tiger Reserve in an unauthorized hut at village Dhakale. Accused during their stay in core zone of Sahyadri

Tiger Zone have illegally cut the trees and used it's wood for the hut and cooking food. Accused had with them 27 buffaloes and they allowed the buffaloes to graze in the Sahyadri Tiger Reserve.

05. Every year Dhakale and adjoining places such as Nivale, Chandel, Bhogiv, Tanali, Sonarli, Durgewadi and Wadihudumb are set to fire which ultimately caused endanger to the habitat of wild animals and damage of national park and environment. All the accused during their illegal stay in Sahyadri Tiger Reserve and in spite of being bound U/s.27(2) of the Wild Life [Protection] Act to inform the official about fire had never discharged their duty. Per contra on the assumption that if fire is caused it would result into growing of more grass set forest on fire.

06. On 03/05/2013 Arvind Bhanu Mandavkar forest guard was on patrolling duty along with Ramchandra Ganpati Chougule in compartment No.33 at village Dhakale. He noticed the encroachment and lodged Preliminary Offence Report [P.O.R]. He then lodged First Information Report[F.I.R.]. On 03/05/2013 Range Forest Officer, Chandoli prepared the spot panchnama. On 21/04/2013 Range Forest Officer issued a notice to the accused. On 05/05/2013 Range Forest Officer, Chandoli informed about encroachment to Assistant Conservator of Forest (Wild Life) Islampur.

07. On 11/05/2013 Assistant Conservator of Forest, Islampur issued notice calling explanation of the accused. On 17/05/2013 statement of Gangaram Dhau Bodake was recorded before Assistant Conservator of Forest Wild Life, Islampur. Accused were heard by the

A.C.F.Shri.Mane and given opportunity to put forth their side. On 21/05/2013 Range Forest Officer Wild Life Chandoli while on patrolling noticed encroachment of accused as it is and hence he filed report about the same to A.C.F.Wild Life, Chandoli. On dated 23/05/2013 as per Section 34(A) the Assistant Conservator of Forest issued an order directing the removal of encroachment by the accused. Accused were directed to remove their encroachment till 03/06/2013. In spite of the same accused did not remove their encroachment and hence on 08/06/2013 forest officers made the accused to remove the encroachment and vacate the Sahyadri Tiger Reserve. A.C.F. Wild Life, Islampur then recorded statements of the witnesses and lodged complaint along with notification and other relevant documents.

08. My learned predecessor took cognizance of the offence and issued process. My learned predecessor framed charge against accused for offence under Section 27, 30, 34(1) and 35 made punishable U/s.51 of the Wild Life [Protection] Act, 1972 at Exh.15. Contents of the charge were read over and explained to the accused in vernacular. They adjured not guilty and claimed to be tried. Their plea is recorded at Exh.16 to 18.

09. Prosecution to substantiate its case has examined four witnesses. The defence of the accused as it appears from the mode of cross-examination and statement of accused recorded u/s.313 of Code of Criminal Procedure is that of total denial and false implication. Accused have not examined any witness in their defence.

10. Considering the evidence on record and the submissions advanced at the bar following points arise for my determination and I have recorded my findings against them for the reasons mentioned there under.

SR. NO.	<u>POINTS</u>	<u>FINDINGS</u>
1	Does prosecution prove that before on 08/06/2013 at village Dhakale, Tal. Shahuwadi, Dist. Kolhapur accused contravened the provisions of section 27 i.e. restriction on entry in sanctuary of the Wild Life [Protection] Act, 1972 and thereby committed an offence punishable U/s.51 of the Wild Life [Protection] Act, 1972?In the Affirmative..
2	Does prosecution prove that on the aforesaid date and place accused encroachment in Chandoli National Park and contravened the provisions of Section 34(A) of the Wild Life [Protection] Act, 1972 and thereby committed an offence punishable U/s.51 of the Wild Life [Protection] Act, 1972?In the Affirmative..
3	Does prosecution prove that on the aforesaid date and place accused destroyed exploit or remove any Wild Life including forest produce or grazing of any live-stock in National Park and contravened the provisions of Section 35 (6) and (7) of the Wild Life [Protection] Act,1972 and thereby committed an offence punishable U/s.51 of the Wild Life [Protection] Act, 1972 ?In the Negative..
4	Does prosecution prove that on the aforesaid date and place accused set fire to sanctuary and contravened the provisions of Section 30 of the Wild Life [Protection] Act, 1972 and thereby committed an offence punishable U/s.51 of the Wild Life [Protection] Act, 1972 ?	In the Negative..

5.	What Order ?	Accused are convicted for the offence U/s. 27 and 34 (A) made punishable U/s.51(C) of the Wild Life [Protection] Act, 1972.
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REASONS

11. Prosecution unfurled its case by examining following witnesses.

Sr. No.	Name of witness	Exh.No.
P.W.1	Arvind Bhanu Mandavkar, Forest Guard	22
P.W.2	Kiran Prabhakar Naik, panch to the spot panchnama	32
P.W.3	Bharat Vishnu Mane, Range Forest Officer	35
P.W.4	Sitaram Laxman Zore, A.C.F.	43

12. Prosecution has tendered in evidence following documents -

Sr. No.	Name of Document	Exh.No.
1	P.O.R.	24
2	First Information Report	25
3	Spot Panchnama	26
4	Statement of Arvind Bhanu Mandavkar	27
5	7/12 extracts of the block No.248/1 at village Bhendavade the place of rehabilitation of accused	28
6	7/12 extracts of the block No.248/1 at village Khochi.	29
7	Assessment extract of the accused at Khochi, the	30

	place of rehabilitation of accused.	
8	Panchnama of removal of encroachment by the forest officer.	41
9	Notices by Range Forest officer dated 21/04/2013 to remove the encroachment to the accused.	36
10	Forest map	30
11	Letter written by Range Forest Officer dated 07.05.13 forwarding in the report to A.C.F along with panchnama.	37
12	Notices dated 11.5.2013 sent to accused by A.C.F. asking to accused to submit their say	38
13	Report of R.F.O. Shri.Mane dated 21/05/2013 that the accused have not removed the encroachment.	39
14	Statement of the accused dated 17/05/2013 give before A.C.F.	47
15	Order dated 23.05.2013 by A.C.F. U/s.34[A] for removal of encroachment.	40
16	Letter of irrigation department dated 31/07/2013.	48
17	Rehabilitation details of accused.	49

As to point Nos. 1 to 5 :-

13. P.W.3 Bharat Vishnu Mane, Range Forest Officer (R.F.O.) deposed that in the year 2013 he was working as Range Forest Officer in Chandoli National Park. He was on patrolling duty in compartment no.33 at Dhakale and he had noticed encroachment. He had on several occasions given oral and written notices to the accused who caused encroachment in Chandoli National Park at

Dhakale to remove the same. He had issued notice (Exh.36) dated 21/04/2013 to the accused about an illegal encroachment and grazing of live-stock i.e., buffaloes.

14. On 03/05/2013 at about 5.00 p.m., while on patrolling duty he again noticed the same encroachment. He then came to his office took two panch witnesses namely Kiran Naik and Dilip Shingane and along with staff members reached Dhakale. He showed the map (Exh.30) of Chandoli National Park to the panchas and brought to their notice that Dhakale compartment no.33 was the part of the National Park. Thereafter in presence of panch witnesses from 8.00 a.m., to 9.00 p.m., he prepared spot panchnama (Exh.26). He also told that they were rehabilitated village Bhadole, Tal.Hatkanangale, Dist.Kolhapur. There were two huts at the spot in one hut there were 20 buffaloes and behind it there were cloths and cooking utensils. To the East of the hut there was haystack. Near the hut towards North there were some pieces of wood. They had taken photographs of the said hut (article 'A').

15. He further deposed that forest guard Dhakale had forwarded P.O.R., (Exh.24) and F.I.R. (Exh.25) to him. He informed about the encroachment by accused to A.C.F. Islampur by letter dated 05/05/2013 (Exh.37) along with P.O.R and F.I.R. On 11/05/2013 A.C.F. Islampur issued notice (Exh.38) to the accused persons giving reference of report dated 05/05/2013 asking the accused to remain present at Mandur office, Tal.Shirala, Dist.Sangli on 17/05/2013 and put forth their side. He deposed that he served the notice (Exh.38) dated 11/05/2013 upon the accused.

16. He further deposed that on 21/05/2013 he was again on patrolling duty and found that accused had not removed the encroachment. He made report of the said fact to A.C.F. Islampur by his letter dated 21/05/2013 (Exh.39). On 23/05/2013 A.C.F. Islampur issued an order (Ex.40) of removal of encroachment of the accused from the core zone at Chandoli National Park. He deposed that he had served the order (Ex.40) on the accused. In the said notice accused were directed to vacate the Dhakale area in the core zone by 03/06/2013. If they failed to vacate the area the animals and utensils of accused were to be seized and the encroachment was to be removed.

17. He further deposed that on 08/06/2013 he called two panch witnesses and again visited the spot of encroachment in compartment no.33 at Dhakale. Accused had not vacated the area. They help the accused to take animals and utensils out of the National Park. They made sure that no one was present in the hut and nothing was left behind and then demolished the hut. He prepared spot panchnama of the destruction of hut and removal of encroachment (Exh.29) in presence of panch witnesses.

18. He further deposed that he then went to village Bhadole, Tal.Hatkanangale, Dist.Kolhapur the place of rehabilitation of accused. Collected the 7/12 extracts and assessment extract (Exh.28 & 29) standing in the name of accused at village Bhadole. He took photographs of house of accused at village Bhadole.

19. P.W.4 Sitaram Laxman Zore, Assistant Conservator of Forest (A.C.F) Islampur has placed on record the notification issued by Government of Maharashtra dated 14/05/2004 whereby Chandoli National Park was established. Notification dated 05/01/2010 whereby Sahyadri Tiger Reserve was established and notification dated 21/08/2012 whereby core and buffer zone was declared by the State Government. He also deposed that Dhakale was included in the core zone. He deposed that he received report dated 05/05/2013 of R.F.O. Chandoli along with P.O.R., F.I.R., Map and photo. On 11/05/2013 he issued notice (Exh.38) to the accused calling them on 17/05/2013 to put up their side. The said notice was served by R.F.O.Mane. He has corroborated the testimony of R.F.O.Mane.

20. He further deposed that on 17/05/2013 Gangaram Dhau Bodake in his presence gave his written say. Gangaram Bodake wrote his say in his handwriting and signed it. Gangaram Bodake admitted that they were rehabilitated at village Bhadole and in spite of the same Dagadu was residing at Dhakale in Chandoli National Park along with his family members and animals. Gangaram Bodake sought further permission to stay in Chandoli National Park to enable him to sale out his livestock. A.C.F proved the statement of Gangaram Bodake (Exh.47).

21. He further deposed that on 21/05/2013 he received another report of R.F.O. Mane, that the accused have not removed the encroachment (Exh.39). He then given an order dated 23/05/2013 as authorized U/s.34(A) of the Wild Life [Protection] Act, 1972 to remove encroachment. He proved his order (Exh.40). He

further deposed that said order was served by forest officials. He deposed that on 08/06/2013 R.F.O. Mane went to spot and then accused removed the encroachment. R.F.O., demolished the hut prepared panchnama (Exh.41) and submitted the same to him.

22. He further deposed that on 09/07/2013 letter communication was made with irrigation department in respect of the rehabilitated persons and compensation given to them. He proved the letter dated 31/07/13 received from irrigation department (Exh.48). He also proved the extract of compensation amount received by the accused (Exh.49).

23. Learned advocate for the accused in the cross-examination of P.W.3, Range Forest Officer Bharat Vishnu Mane and P.W.4 Assistant Conservator of Forest (A.C.F.) S.L.Zore has brought on record that the daily diary of the forest officer is not placed on record. She has also brought on record that the letter and orders in this case do not bear the seal of the forest department. She has also brought on record that the buffaloes/livestock, the haystacks, wooden pieces are not seized by the forest department in this case. She has also brought on record that the notices sent to the accused were not sent by post. She has also brought on record that there is no fencing to the Chandoli National Park and the animals of the adjoining village enter the National Park. It is the defence taken by the learned advocate of accused that to show that some action is taken by forest department about animals of adjoining village coming in the national park this false case is filed.

24. P.W.1 Arvind Mandavkar, Forest Guard of Dhakale, Tal.Shahuwadi, Dist.Kolhapur deposed that on 03/05/2013 he was on patrolling duty along with the Ramchandra Ganpati Chougule. He himself noticed the encroachment and hence lodged P.O.R. (Exh.24). He also lodged first information report (Exh.25) against accused in respect of encroachment and grazing of animals and residing in core area of Sahyadri Tiger Reserve at night. He deposed that he was present at the time of preparing spot panchnama (Exh.26) and also while removing the encroachment and preparing panchnama (Exh.41). In his cross-examination he admitted that prior to rehabilitation people were residing at Nivale, Sonarli and other villages which were later acquired by State Government. He also admitted that there is no compound to the forest area and the animals/ live stocks of adjoining villages enter the Chandoli National Park.

25. P.W.2 Kiran Prabhakar Naik the panch to the spot panchnama deposed that on 03/05/2013 he was asked to act as panch by Range Forest Officer Shri.Mane at Chandoli National Park. He was accompanied by Dilip Shingane, R.F.O.Mane and his staff. He has supported the testimony of R.F.O.Mane and deposed that spot panchnama (Ex.26) was prepared of the place where the accused resided in core zone at Dhakale. In his cross-examination he admitted that they went to the spot by the forest vehicle but this fact is not mentioned in the panchnama. He admitted that many spot panchnamas were prepared in his presence. However, he was unable to state if all the spot panchnamas were prepared on the same day. He admitted that he had not stayed at Chandoli National Park for three days.

26. Learned advocate for accused vehemently argued that the witnesses are interested witnesses, no independent witnesses are examined. She also argued that prior to lodging F.I.R., permission of superior is necessary. In this case no such permission is taken and hence the trial is vitiated. She also argued that there is delay in filing complaint.

27. Learned A.P.P., argued that the accused were rehabilitated on 31/03/1998. Accused were resident of village Dhakale. The stay of accused at village Dhakale after rehabilitation is unauthorized and amounts to encroachment in the forest land. Accused resided in the Chandoli National Park, cut the trees and used its wood for cooking food. Accused had buffaloes with them, accused grazed their buffaloes in the Chandoli National Park. Accused have endangered the habitat of wild animals in the National Park. Accused alone were residing in the National Park and hence only they could have caused fire to the National Park. The forest official have performed their duties, gave notice to the accused persons to vacate the national park. Accused were given a opportunity to put up their side. The said order was not obeyed and hence order was issued by A.C.F. He also argued that the letters written by the forest officers bearing their signature and designation. It is also bears outward number. Hence the letters and orders of forest officer cannot be doubted. He argued that postal services is not permitted and available in the forest area. Forest officials have served the notices and question cannot be raised about the same. Any forest officer can lodged report and taking permission of the superior is not necessary. He therefore argued that prosecution has established its case beyond reasonable doubt.

28. Learned advocate for accused argued that the map (Exh.30) placed on record by the forest department is not an original map and hence it cannot be read in evidence. The said map is not produced on record from the office of land records. On the other hand learned A.P.P., argued that the map (Exh.30) is placed on record by the seal and signature of A.C.F. Islampur. They have prepared the copy of the map which was received by their department. He therefore argued that the said map can be read in evidence.

29. Prosecution has tendered in evidence the notification of Government of Maharashtra dated 14/05/2004, 05/01/2010 and 21/08/2012 at Exh.43 to 45 respectively. Judicial note of these notifications can be taken. These notifications specifically depict that village Dhakale is acquired by the Government of Maharashtra and is a part of Chandoli National Park and included in core zone of Sahyadri Tiger Reserve. Hence, there does not remain any dispute of the fact that Government of Maharashtra acquired 09 villages from Kolhapur district out of which village Dhakale, Tal.Shahuwadi, Dist.Kolhapur was also acquired. Hence, it is established that compartment no.33 and village Dhakale is part and parcel of core zone of Sahyadri Tiger Reserve. The question of proof of map (Ex.30) therefore lose its significance.

30. Learned advocate for accused argued that the daily diary of the forest officers is not produced on record. She argued that the movement of the forest officers therefore is not established. The forest officers from all the cadre of forest department from forest

guard to R.F.O. and A.C.F., all have deposed that accused had encroached, grazed cattle's, cut the trees and used wood in compartment no.33 and Dhakale at Chandoli National Park. All of them are duty bound to patrol in the area. On several occasions they had noted the presence of accused and their hut in the Chandoli National Park. Accused were orally warned and also notices were issued to them. The notices are signed by accused as an acknowledgement of receipt of notices and accused have also appeared and given their statements in answer to the notice. Hence the non-production of daily diary is not fatal to the prosecution. One cannot reached to the conclusion that due to non-production of daily diary the officers were not on patrolling duty.

31. Another point vehemently argued by learned advocate of accused is that the notices given to the accused or the letter correspondence made to the superiors or the order issued by A.C.F., do not bear the stamp of forest department. She therefore argued that the issuance of notice to the accused and the official communication are doubtful. She also argued that the notices are not served through the postal department and hence service of notices to the accused is not proved.

32. The notice issued by P.W.3 R.F.O.Mane dated 21/04/2013. The notice issued by A.C.F. Islampur dated 11/05/2013. The order of A.C.F dated 23/05/2013 bears their designation and signature. It also bears outward number. Therefore it cannot be said that the same is not an official communication just because the notices or the order does not bear stamp of the forest

department. Accused were unauthorized resident in the forest area, no person even of the postal department is allowed to enter the forest without permission. The notices were served by the officers of forest department to the accused and the signature of accused were obtained and notices and order served. Accused in response to the notice had appeared before the A.C.F in forest office. Hence the service of notice by the forest officers is established and non service of notice by post does not adversely affect the case of prosecution.

33. Learned advocate for the accused also argued that the witnesses examined by the prosecution are interested witnesses. P.W.1 Arvind Mandavkar, forest guard, P.W.3 Bharat Mane, R.F.O., P.W.4 A.C.F. Zore are the Government servants and they were discharging their duties. Accused have not established that all the forest officers were interested to falsely prosecute the accused and see them behind bars. There is no question of enmity between the forest officers and the accused. P.W.2 Kiran Naik independent spot panch who had gone to visit the said National Park and was asked by R.F.O.Mane to act as panch cannot be said to be interested witness. Hence the theory of learned advocate of interested witnesses is not of much help to them.

34. Learned A.P.P., argued that statement given by accused in presence of A.C.F. is admissible in evidence as per Section 50 (9) of the Indian Forest Act. He also argued admissibility of the statement of accused that they were residing in Dhakale area of Chandoli National Park along with 20 buffaloes is a substantial piece of evidence and can be used against the accused. In counter learned advocate for

accused argued that statement of the accused cannot be used against the accused as it incriminates the accused. As per Section 25 of Indian Evidence Act no confession made to a police shall be proved as against a person accused of any offence. However forest officer is not a police officer. The Wild Life [Protection] Act 1972 is a special statute and Section 50(9) makes the statements/evidence recorded by Assistant Conservator of Forests (A.C.F) admissible in trial before Magistrate if taken in presence of accused. In the case at hand A.C.F. issued notice to the accused to put up their case, accused appeared before the A.C.F. and A.C.F recorded the say of accused in their own hand writing(Ex.47). Hence the statement of accused though incriminating is admissible in evidence.

35. Learned advocate for the accused intensely argued that prior to lodging F.I.R. under the provisions of The Wild Life[Protection] Act prior permission of superiors is required, a forest guard cannot lodged F.I.R. It is pertinent to note that Section 50 of the Act empowers any forest officer to lodge report and there is no condition precedent to obtain permission. She also argued that there is delay in lodging complaint. The punishment prescribed for the alleged offences are more than three years and hence there is no limitation or bar for taking cognizance of the complaint. Hence, the argument advanced by learned advocate of accused is not justifiable.

36. P.W.3 R.F.O.Mane had seen the accused residing in Chandoli National Park with buffaloes grazing in the National Park. He had accordingly issued notice dated 21/04/2013 (Exh.36) to the accused for removal of encroachment. On 03/05/2013 P.W.1 Arvind

Mandavkar forest guard also saw the presence of accused in compartment No.33 at Dhakale, Tal.Shahuwadi within Chandoli National Park. He accordingly lodged P.O.R. (Exh.24) and F.I.R. (Exh.25). P.W.3 R.F.O. Mane went along with panch witness i.e., P.W.2 Kiran Naik and P.W.1 Arvind Mandavkar forest guard and other staff to the spot of occurrence and prepared spot panchnama (Exh.26). P.W.3 R.F.O. Mane on 05/05/2013 forwarded his report along with P.O.R., F.I.R., and spot panchnama to A.C.F. Islampur. On 11/05/2013 A.C.F. Islampur issued notice to the accused and asked them to put up their side on 17/05/2013. On 17/05/2013 accused appeared before A.C.F. Islampur and he recorded the statements of accused. Again on 21/05/2013 P.W.3 R.F.O. Mane while on patrolling found that accused had not vacated Dhakale area of Chandoli National Park. He sent report to A.C.F. Islampur dated 21/05/2013 (Exh.39) about the continuing encroachment. A.C.F., then issued order dated 23/05/2013 to remove the encroachment as per Section 34(A) of the Wild Life [Protection] Act (Exh.40). Accused were directed to remove the encroachment by 03/06/2013. Even then accused were adamant and continued their encroachment in Dhakale area of Chandoli National Park. On 08/06/2013 P.W.3 R.F.O. Mane reached the spot and found that the order dated 23/05/2013 was not complied with. He helped the accused to vacate the Chandoli National Park along with their utensils and animals/livestocks. The hut of the accused was vacated and destroyed, the detail panchnama (Exh.41) of removal of encroachment was accordingly prepared.

37. All the prosecution witnesses have narrated all these facts and they have stood their ground. Their testimony is not shattered in cross-examination. The evidence of prosecution witnesses is corroborated by the documentary evidence i.e., P.O.R., F.I.R., spot panchnama, notices, order to remove encroachment, encroachment removal panchnama. In addition to the oral testimony of the prosecution witnesses being corroborated by the documentary evidence the statement/evidence of accused recorded by A.C.F., is admissible in evidence and establish the case of encroachment by accused at Dhakale in Chandoli National Park and in core zone of Shyadri Tiger Reserve. Hence, I hold that accused had encroached the Dhakale area in the Chandoli National Park and hold them guilty for the offence U/s.27 and 34(A) made punishable under section 51 (C) of the Wild Life [Protection] Act, 1972. Hence, I answer point Nos.1 and 2 in affirmative.

38. Prosecution also alleged that the accused were grazing their 35 buffaloes in the area of Chandoli National Park and accused were cutting trees and using the wood in their day to day life and for cooking. All the prosecution witnesses have admitted that the cooking utensils and live stocks of accused was not seized. There is only oral evidence of prosecution witness that the accused were having buffaloes and that they were grazing it in the National park. There is also ocular evidence that accused used to cut trees and use the wood in their livelihood. If there were animals of accused which were grazing in the Chandoli National Park. The question remains as to why they were not seized. Similarly, if the accused were cutting the trees and using the wood for cooking and their livelihood the

question remains as to why the utensils used by the accused were not seized. Prosecution has failed to complete the chain of evidence to establish the ingredient of Section 35(6) and (7) and bring home the guilt of accused. Hence, I answer point No.3 in negative.

39. It is the case of prosecution that apart from accused no other person were residing in Chandoli National Park and hence accused are responsible for the fire caused in the National park. Prosecution has not laid substantial and cogent evidence in this regard. It is settled principle that on basis of mere suspicion accused cannot be convicted. There is no iota of evidence attacking the ingredients U/s.30 of the Act. Hence, I answer point no.4 in negative.

40. The learned A.P.P. argued that the forest officials had made sincere efforts to remove encroachment. They had taken awareness camps, politicians were invited to perceive villagers to shift from the Chandoli National Park. Notices were issued to the accused and even order for removal of encroachment was passed by A.C.F, even then accused did not remove the encroachment. The offence is committed in core area of Tiger Reserve and is punishable with imprisonment which may extend to seven years and fine of two lakh rupees. He therefore argued that maximum punishment be awarded.

41. Heard the accused on the point of sentence. Accused submitted that this is their first offence. Their family members are dependent upon them. The learned advocate for the accused submitted that accused had removed the encroachment since 2013.

Since then there is no repetition of offence by the accused till date. Accused are poor farmers. Hence lenient view may be taken and accused be given benefit of Probation of Offenders Act.

42. Chandoli National Park is one of the 25 hotspot of biodiversity in the world, it is the second hotspot of biodiversity in India after East Himalaya. A biodiversity hotspot is a biogeographic region with significant levels of biodiversity that is threatened with destruction. The area has over 7,402 species of flowering plants, 1,814 species of non-flowering plants, 139 mammal species, 508 bird species, 179 amphibian species, 6,000 insects species and 290 freshwater fish species; it is likely that many undiscovered species live in the Western Ghats. At least 325 globally threatened species occur in the Western Ghats. Article 48 of the Constitution of India specifies that, "The state shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country" and Article 51-A states that "it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for living creatures.

43. Considering the importance of spot of the incidence and as the flora and fauna is adversely affected by the acts of the accused they are not entitled for benefit of Probation of Offenders Act. Reckoning the mitigating circumstances such as age of accused, dependents upon them lenient view may be taken. The offence is made punishable U/s.51 (1-C) with imprisonment for term which shall not be less than three years but may extend to seven years, and

also with fine which shall not be less than fifty thousand rupees but may extend to two lakh rupees. Hence a sentence of imprisonment of three years and fine would meet the ends of justice. Accordingly, in answer to point No.5 I pass following order.

ORDER

1. Accused are convicted for the offence under Section 27 made punishable U/s. 51 (1-C) of the Wild Life [Protection] Act, 1972, vide section 248(2) of the Code of Criminal Procedure and sentences to suffer rigorous imprisonment for three years and to pay fine of Rs. 50,000/-[Rupees Fifty Thousand Only] each in default to suffer simple imprisonment for three months.
2. Accused are convicted for the offence under Section 34(A) made punishable U/s. 51(1-C) of the Wild Life [Protection] Act, 1972, vide section 248(2) of the Code of Criminal Procedure and sentences to suffer rigorous imprisonment for three years and to pay fine of Rs. 50,000/-[Rupees Fifty Thousand Only] each in default to suffer simple imprisonment for three months.
3. Accused are acquitted of the offences under Sections 30 and 35 (6) & (7) made punishable U/s.51 of Wild Life[Protection] Act, 1972 vide Section 248[1] of Code of Criminal Procedure.
4. Accused to surrender their bail bonds.

5. Accused shall execute personal bond and solvent surety in sum of Rs.15,000/- [Fifteen Thousand only/-] each to appear before the Higher Court as and when such Court issues notice in respect of any appeal or revision vide Section 437-A of Code of Criminal Procedure.

6. The substantive sentences shall run concurrently.

7. Copy of this judgment be given to the accused free of costs.

[Pronounced in open Court]

Date : 30/11/2017
Shahuwadi.

Sd/-
(A.A.Walujkar)
Judicial Magistrate First Class,
Malkapur-Shahuwadi

CERTIFICATE

I affirm that the contents of this P.D.F. file judgment are same, word to word, as per the original Judgment

Name of the Stenographer : S.A.SHINDE

Name of the Court : A.A.Walujkar, C.J.J.D &
J.M.F.C. Malkapur-Shahuwadi,
Dist.Kolhapur

Date of judgment : 30/11/2017

Judgment signed by the presiding officer on : 30/11/2017

Judgment uploaded on : 03/12/2017