



2026:CGHC:14694



NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRR No. 543 of 2016

Judgment Reserved on :17/03/2026

Judgment Delivered on :30/03/2026

Rajesh Kumar Tiwari S/o Shivanarayan, Aged About 26 Years, R/o Village Pasa, P.S. Bhaiyathan, Distt. Surajpur, Chhattisgarh,

--- Applicant

versus

State of Chhattisgarh Through P.S. Surajpur, Distt. Surajpur, Chhattisgarh,

--- Respondent

AND

CRR No. 589 of 2016

1 -Sunil Singh S/o Rameshwar Singh, Aged About 22 Years, R/o Village Pasa P.S. Bhaiyathan District – Surajpur, Chhattisgarh,

2 - Ramchandra Khairwar S/o Late Dev Sharan Khairwar, Aged About 35 Years, R/o Village Bhanwarkhoh P.S. - Oodgi District – Surajpur, Chhattisgarh,

---Applicants

Versus

State of Chhattisgarh Through In Charge of Police Station - Surajpur, District - Surajpur Chhattisgarh,

--- Respondent

For Applicant in CRR :	Mr. Pawas Sharma, Advocate on behalf of Mr. Shakti Raj Sinha, Advocate
For Applicants in CRR :	Ms. Parvati Suryavanshi, Advocate on behalf of Mr. Bhupendra Singh, Advocate
For Respondent/State	Mr. Atanu Ghosh, Dy. G.A.



Hon'ble Shri Justice Radhakishan Agrawal,
CAV Judgment

1. The above captioned revisions arise out of same judgment dated 06.06.2016, therefore, they are being heard together and disposed of by this common judgment.
2. The present applicants have preferred these criminal revisions under Section 397 read with Section 401 of the Code of Criminal Procedure (Cr.P.C.) against the impugned order dated 06.06.2016 passed by the 2nd Additional Sessions Judge, District Surajpur, Chhattisgarh, in Criminal Appeal No.14/2015, arising out of judgment dated 30.09.2015, passed by the Chief Judicial Magistrate, District – Surajpur, Chhattisgarh in Criminal Case No.308/2014 wherein the accused-applicants have been convicted under Sections 51(1-A) of the Wild Life (Protection) Act, 1972 (in short 'the Act of 1972') and sentenced for R.I. for 3 years and fine of Rs.10,000/- each, in default of payment of fine, additional R.I. for 3 months each. The learned Appellate Court affirmed the conviction and sentence of the accused-applicants. Hence, these revisions.
3. Case of the prosecution, in brief, is that on 23.01.2014, upon receiving information from the Crime Branch, Surajpur the investigating officer prepared informant Panchnama (Ex.P-1). Acting upon the said information, he informed the forest department and the accused-applicants who were going on a motorcycle were stopped and on being searched they were found in possession of the trophy of endangered scheduled animal i.e. leopard (*panthera pardus*) to sell the same. The skin and other items were seized from the accused



persons in accordance with seizure report. Upon returning to the police station, a case was registered against the accused persons under the Wild Life (Protection) Act, 1972, and, thereafter, further investigation proceedings were initiated. Statements of the witnesses were recorded.

4. After completion of the investigation, charge-sheet was filed against the applicants, who abjured their charge and pleaded non-guilty.
5. Learned CJM and the Appellate Court, after appreciation of oral and documentary evidence, convicted and sentenced the applicants as mentioned in the opening paragraphs of this judgment. Hence, these revisions.
6. Learned counsel appearing for the applicants in both the revisions, jointly submits that the learned Trial Court as well as the Appellate Court have not properly appreciated the evidence available on record. They further submit that the two independent witnesses, namely, Nazir Hussain (PW-01) and Md. Syed (PW-02) have not supported the prosecution case and have turned hostile. Further, the alleged seized articles were not kept in safe custody and there is no sample seal affixed in the seizure memo (Ex.P-2 and Ex.P-3). This apart, there is no copy of malkhana register available on record. They further submit that there are material contradictions and omissions in the statement of the investigating officer Manak Ram Kashyap (PW-07), as such, his statement is not reliable. Statements of other prosecution witnesses do not corroborate with the statements of the investigating officer. On these premises, it is prayed that the applicants be acquitted of the charge leveled against them.



7. On the contrary, the learned State Counsel, while opposing the revisions, submits that on the basis of the statement of the Investigating Officer and the evidence available on record, the prosecution has successfully established that the applicants were found in possession of the skin of a leopard (*Panthera pardus*), which is classified as a mammal under Schedule-I of the Wild Life (Protection) Act, 1972. As such, the findings with respects to conviction of the applicants and the sentence imposed thereunder, are the findings being based on evidence and other material available on record, therefore, no interference is called for and the revisions are liable to be dismissed.
8. I have heard learned counsel appearing on behalf of the parties and perused the record.
9. To deal with the contentions made by the parties, it would be apt to discuss the evidence available on record, particularly, the statement of the investigating officer of the case, namely, Manak Ram Kashyap (PW-07). In his examination-in-chief, this witness stated that on 23.01.2014, he received secret information and conducted a raid along with police personnel and independent witnesses, namely, Md. Syed (PW-02) and Nazir Hussain (PW-01). He deposed that a black-coloured Bajaj Platina motorcycle without a registration number was intercepted near Sirsi Gobari Pool and upon inquiry, the driver disclosed his name as Sunil Singh, resident of village Pasal; the second person disclosed his name as Rajesh Tiwari, resident of village Pasal; and the third person disclosed his name as Ramchandra Khairwar, resident of village Bhanwarkhoh. He further stated that after informing them of the received information and on suspicion, a plastic



sack kept on the motorcycle was examined at the spot, from which one leopard skin was allegedly recovered. He further deposed that the same was seized and sealed at the spot in the presence of witnesses, and the seizure memo has been exhibited as Ex. P/02. However, in his cross-examination, the witness admitted that no goods, belongings, or property were seized from the possession of the accused, Ramchandra Khairwar, in the present case. He further admitted that the seized skin was not sealed, and there is no mention of it being sent to the forensic laboratory in a sealed condition. When questioned about the custody of the seized skin from 23.01.2014 to 12.03.2014, the witness stated that it was deposited at the police station; however, he admitted that no documentary evidence to this effect has been produced. He also admitted that a copy of the malkhana register is not available on record. The witness, however, deposed that on 21.02.2014, the seized leopard skin was sent for examination to the Director, Wildlife Forensic Laboratory, Dehradun, Uttarakhand, through the concerned Superintendent of Police. A perusal of his statement reveals that the Investigating Officer has not clarified that if the seized skin remained in the police station from 23.01.2014 to 12.03.2014, then which skin was sent for forensic examination on 21.02.2014. This inconsistency has not been satisfactorily explained, and thus, material contradictions and omissions are evident in his testimony.

- 10.** Nazir Hussain (PW-01) and Md. Syed (PW-02) were presented as independent witnesses to the seizure memo (Ex. P-2 and Ex. P-3) and the informant panchnama (Ex. P-1). Both witnesses stated that no seizure or panchnama proceedings were conducted in their presence.



However, during cross-examination, they admitted that although they had signed the said documents, but the accused persons were not present at the police station at that time. From their testimonies, it appears that no search or seizure proceedings were conducted at the spot in their presence. Therefore, their statements do not corroborate the version of the Investigating Officer. Consequently, they have not supported the prosecution's case and have been declared hostile.

11. Upon careful appreciation of the evidence on record, it is evident that the testimony of the Investigating Officer Manak Ram Kashyap (PW-07) is suffered by material contradictions and omissions, particularly regarding the seizure and safe custody of the alleged leopard skin, as he admitted that the seized article was neither sealed nor kept in safe custody, and in this regard no malkhana register has been produced. The inconsistency relating to the period during which the seized skin was allegedly kept in the police station and the date i.e. 21.02.2014 on which it was sent for forensic examination remains unexplained, thereby creating serious doubt about the integrity of the seized property. Furthermore, the independent witnesses (PW-01 and PW-02) have not supported the prosecution version and have stated that no seizure or panchnama proceedings were conducted in their presence. Although the report of the Wildlife Forensic Cell, marked by the Trial Court as Ex. C-1, indicates that the seized skin was that of a leopard (*Panthera pardus*), but no question in this regard was put to the accused persons in their examination recorded under Section 313 CrPC, which further causes prejudice to the defence. It is a settled principle of law that any incriminating circumstance not put to the



accused cannot be used against him, and the omission may cause serious prejudice to the defence. In the matter of *Kalicharan and others vs State of Uttar Pradesh* reported in (2023) 2 SCC 583 has held in para 27 which read as under:-

27. Questioning an accused under Section 313 Cr.P.C. is not an empty formality. The requirement of Section 313 Cr.P.C. is that the accused must be explained the circumstances appearing in the evidence against him so that accused can offer an explanation. After an accused is questioned under Section 313 Cr.P.C., he is entitled to take a call on the question of examining defence witnesses and leading other evidence. If the accused is not explained the important circumstances appearing against him in the evidence on which his conviction is sought to be based, the accused will not be in a position to explain the said circumstances brought on record against him. He will not be able to properly defend himself.”

12. Applying the aforesaid principle to the present case, it is evident that the vital circumstance relating to the seizure and identification of the alleged leopard skin was never put to the accused persons during their examination under Section 313 Cr.P.C. This omission significantly weakens the prosecution case and undermines the credibility of the alleged recovery. In view of the material discrepancies, lack of corroboration, and failure to establish the fact that the seized article was properly sealed and kept in safe custody, the prosecution has failed to prove the guilt of the accused persons beyond reasonable doubt.

13. In such circumstances, the findings recorded by the learned Trial Court, as affirmed by the Appellate Court, convicting the applicants and sentencing them, cannot be sustained in the eyes of law.



Accordingly, the conviction and sentence are liable to be set aside, and the applicants are entitled to acquittal by extending them the benefit of doubt.

14. Consequently, the both the criminal revisions are allowed. The conviction of applicants under the aforementioned Section and the sentence imposed thereunder are set-aside. The applicants are acquitted of the charges mentioned above by extending them benefit of doubt.

15. Since the applicants are reported to be on bail, their bail bonds shall remain in force for a period of six months from today in view of the provision of Section 481 of B.N.S.S.

Sd/-

(Radhakishan Agrawal)
JUDGE