

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL REVISIONAL JURISDICTION  
APPELLATE SIDE**

PRESENT:

**THE HON'BLE JUSTICE TIRTHANKAR GHOSH**

**CRR 3523 of 2010**

***Quasim Ali***

***-vs.-***

***Sajal Baran Das & Anr.***

For the Petitioners	:	Mr. Sudipto Moitro Mr. Kushal Paul
For the State	:	Mrs. Rituparna De Ghosh
For the Customs	:	Mr. Kaushik Dey
Heard on	:	26/07/2019; 16/08/2019; 26/09/2019 & 19/11/2019
<b>Judgment on</b>	:	<b>23/12/2019</b>

**Tirthankar Ghosh, J:-**

The present revisional application is directed against the judgment and order dated 26<sup>th</sup> November, 2010 passed by the Ld. Additional District & Sessions Judge, 9<sup>th</sup> Fast Track Court, Bichar Bhavan, Calcutta, in Criminal appeal No. 31 of 2010 wherein the Ld. Appellate Court was pleased to affirm the judgment and order of sentence passed by the Ld. Metropolitan Magistrate (hereinafter referred to as Ld. Magistrate), 11<sup>th</sup> Court, Calcutta in Case No. 718 of 1996 (TR No. 107 of 1996). The Ld. Magistrate was pleased to convict the accused/petitioner under Section 40(2) of the Wildlife

(Protection) Act, 1972 (hereinafter referred to as the 1972 Act) read with Section 51(1-A) of the said Act and sentenced him to suffer Simple Imprisonment for 3 (three) years and fine of Rs. 10,000/- in default Simple Imprisonment for 3 (three) months. The Ld. Appellate Court on reappraisal of evidence concurred with the finding of the Ld. Magistrate and affirmed the sentence passed by the said Court.

The genesis of the case relates to a search conducted by the Officers of Directorate of Revenue Intelligence (DRI) at the residential premises of the present petitioner/Quasim Ali at 16, Ratu Sarkar Lane, Calcutta- 700073 on the basis of information received by the office of the DRI, Calcutta. On search being conducted in presence of two independent witnesses, 3 pieces of tiger skin, 13.4 kgs. of elephant tusks, 1 piece of baby rhino horn, 290 pieces of tiger nail total worth approximately of Rs. 4, 44, 550/- were recovered. Pursuant to such recovery it was alleged by the officer of the DRI that the present petitioner failed to produce any valid documents for legal possession/acquisition/harboring of the goods so recovered. According to the DRI the goods so seized were wildlife materials under the provisions of the 1972 Act. The authorities further alleged that the present petitioner admitted that the goods were attempted to be taken out of India for the purpose of exporting and on such reasonable belief the DRI Authorities arrested the petitioner under Section 104 of the Customs Act, 1962 as the goods so seized were liable to confiscation under the provisions of Customs Act, 1962 read with Foreign Trade (Development) Act, 1992. The petitioner

was thereafter produced before the Ld. Chief Metropolitan Magistrate (Ld. CMM), Calcutta on 6-8-1995.

It is seen from the records of the Ld. CMM, Calcutta that from 6-8-1995 the petitioner was in custody till 11-9-1995 when he was granted bail by the Ld. Chief Judge, City Sessions Court, Calcutta. It would be pertinent to state that in the meantime on 8-8-1995 a communication was made from the office of the Chief Conservator of Forest, Wildlife and Chief Wildlife Warden to the Additional Director General, DRI, Calcutta, wherefrom it is revealed that since all the seizures related to Schedule-I, animals, under the provisions of the 1972 Act, a detailed report was required in respect of the case along with copies of the documents and seized articles for which Sri P. Mukherjee, Forest Ranger, Wildlife Wing was authorized to communicate. The records further reveal that by a communication the Conservator of Forest, Wildlife Circle, West Bengal was pleased to engage the Investigation Officer (IO) being Mr. Sajal Baran Das for conducting investigation in respect of documents/seizure/seizure list and other materials received from DRI. On conclusion of investigation on 9-4-1996, the IO, Forest Ranger attached to the Conservator of Forest, Wildlife Circle and Ex-Officio, Dy. Chief Wildlife Warden, Calcutta and Howrah, West Bengal filed a complaint before the Ld. CMM, Calcutta.

The allegations made in the complaint which is the foundation of the prosecution case are as follows:-

- i) The complainant is duly empowered under Section 55 of the 1972 Act read with G.O. No. 1269-FOR/4A-1/72 dated 25-2-1977 of the Government of West Bengal to file the petition of complaint as a public servant in discharge of his official duty.
  
- ii) A search was conducted by A.K. Saha, Intelligence Officer, DRI, Calcutta on the strength of “search authorization” at the residential premises of the accused in presence of two independent witnesses. The said search was carried out on 5-8-1995 between 16:00 hours to 17:00 hours at one room of the first floor, entire second floor and one room at the roof top. During search the officers of DRI recovered 3 pieces of tiger skin wrapped in one gunny bag, 6 elephant tusks, 290 tiger nails and 1 rhino horn wrapped in one gunny bag. The complainant alleges that tusks of elephant and rhino are included in Schedule-I of the 1972 Act vide Sl Nos. 39, 30, 12B of Part I respectively.
  
- iii) The accused person could not produce any document/permit/certificate in support of the aforesaid goods being legally procured and also could not provide any satisfactory explanation regarding the procurement, possession, control and business with such material parts. The animals and other articles recovered during the search were duly examined, described, marked and sealed after taking measurements and weights

wherever possible. The copy of the seizure list was handed over to the accused.

- iv) On 5-8-1995 the accused was summoned at about 17:45 hours under Section 108 of the Customs Act to appear and his statement was recorded in response to the enquires which were made in presence of senior intelligence officers. The accused was thereafter produced before the Ld. CMM on 6-8-1995 and he was remanded to jail custody. The case papers were subsequently handed over to the Wildlife Wing, West Bengal for taking action under the 1972 Act.
- v) On 2-11-1995 the seized articles along with other papers relating to the case were received by the complainant from DRI. Thereafter the seized articles were sent to Zoological Survey of India, Calcutta for identification as per the Court Order dated 9-1-1996 and on 15-2-1996 the report by concerned department was submitted before the Court.
- vi) a) As the accused did not obtain any permission from the authorized officer for acquiring or keeping in possession/transfer/transport of the animal parts derived from animals specified in Schedule-I of the 1972 Act, he has violated the provisions of Section 40(2) of the 1972 Act.

b) As the accused procured the wildlife animal articles mentioned in the seizure list other than from a dealer or from the person authorized to sell or otherwise transfer the same under the 1972 Act, he has violated the provisions of Section 49 of the 1972 Act.

c) As the accused failed to produce any permit/certificate in support of legal collection/procurement/transfer or any document relating to stock declaration, it is alleged that the parts so derived from wild animals which were hunted illegally from nature by his self arrangement of hunting and as such has violated the provisions of Section 9 of the 1972 Act.

d) As the accused admitted before the DRI that the said animal articles were collected from Orissa and transferred /transported to Calcutta without any ownership certificate of the said articles without taking any permission from the concerned department/officer of Orissa, he has violated the provisions of Section 43 of the 1972 Act.

e) As the accused while in possession of the animal articles did not inform regarding the possession to any administration or wildlife authority or also did not take any permission from the Chief Wildlife Warden of such Government property, he has violated the provisions of Section 39 of the 1972 Act.

- vii) The complainant therefore alleges that as the accused was dealing in animal articles derived from scheduled animal, which is prohibited on and after the specified date, i.e. 25-1-1987, so he has violated the provisions of Section 49-B(1)(a) of the 1972 Act and was liable to be prosecuted and punished under Section 51(1-A) of the 1972 Act.

On such complaint being filed the Ld. CMM was pleased to take cognizance of the offence and transfer the case to the Ld. Metropolitan Magistrate, 11<sup>th</sup> Court, Calcutta. After the direction being passed the prosecution supplied copy of the complaint, which was received by the petitioner as reflected from the order dated 15-7-1996.

The prosecution in order to prove its charge adduced the evidence of PW1 Ashim Kumar Saha, Senior Intelligence Officer, DRI; PW2 Anup Raj Damta, Intelligence Officer, DRI; PW3 Dilip Chattopadhyay, Senior Intelligence Officer, DRI; PW4 Sajal Baran Das, complainant; and PW5 Dr. Sujit Chakraborty, Joint Director, Zoological Survey of India and also relied upon 6 documents and 7 Material Exhibits.

After the examination of evidence before charge of the 5 prosecution witnesses were over, the Ld. Trial Court was pleased to frame charge against the present petitioner under Sections 40(2), 49, 9 and 43 of the 1972 Act which is punishable under Section 51(1A) of the 1972 Act.

The defence was thereafter afforded opportunity for cross-examination and on completion of the cross-examination of all the 5 witnesses so relied upon by the prosecution, the present petitioner was examined under Section 313 of the CrPC.

After the examination as aforesaid was over the Ld. Court called on the defence to adduce its evidence in support of its case, accordingly the defence cited one witness namely, Md. Sonaullah as a witness.

The Ld. Magistrate on appreciation of the evidence adduced by the prosecution as also by the defence was pleased to hold the present petitioner not guilty in respect of offences under Section 9, 43 and 49 of the 1972 Act and held the petitioner guilty for commission of the offence under Section 40(2) of the 1972 Act read with Section 51(1A) of the said Act and sentenced him as aforesaid.

The present petitioner being aggrieved by the judgment and order of conviction and sentence passed by the Ld. Magistrate preferred an appeal being Criminal Appeal No. 31 of 2010. The Ld. Appellate Court after reappraisal of the evidence and the judgment and order of the Ld. Trial Court was pleased to affirm the finding of guilt as well as the order of conviction and sentence so passed by the Ld. Magistrate.

This Court after taking into account the judgment delivered by the Ld. Trial Court and the Ld. Appellate Court felt that re-appreciation of the evidence were required in view of the excessive reliance placed by the Ld.



Courts below on the statement under Section 108 of the Customs Act recorded by the officer of DRI.

PW1, Ashim Kumar Saha, Senior Intelligence Officer in his examination-in-chief narrated the search being conducted at 16, Ratu Sarkar Lane, Calcutta- 700073 at the premises of the petitioner in presence of two independent witnesses and deposed that during search 3 pieces of tiger skin, 6 pieces of elephant tusks, 1 piece of baby rhino horn, 290 pieces of tiger nails, 45 pieces of plastic eye balls, one weighing scale machine along with different weights were recovered. The witness further deposed that the accused could not produce any documentary evidence in support of possession of the aforesaid animal articles as required under the 1972 Act and on enquiry the accused admitted that the said articles were for illegal export out of India. The accused identified the seizure list which was prepared by him and was marked as Ext.1. The said document was admitted after objection was raised by the accused. The witness also identified his signature in seizure list which was also marked as Exhibit. The witness also identified the signature of the accused on the 6 pieces of elephant tusks, on the 3 pieces of tiger skin, on the baby rhino horn which was marked as MAT Ext. I, II & III respectively. The witness identified the 290 pieces of tiger nails which was marked as MAT Ext. IV. The witness identified the signature of the accused on 45 plastic eye balls which was marked as MAT Ext. V and the weighing scale machine with 12 pieces of weights which was marked as Ext.6 collectively. The witness identified the brass seal which was seized from the accused and marked as Ext.8. The

witness only narrated the recording of the statement of the accused under Section 108 of the Customs Act by PW2.

PW2, Anup Raj Vitor Damta deposed that on the direction of PW1 he recorded the statement of the accused. The witness identified the seized items which were marked as MAT Exhibits I to VII. The witness deposed that he recorded the statement of the accused in his narration and the accused signed the same. The said statement of the accused was marked as Ext.2, the signature of the witness and the accused was marked as Ext. 2/1 and 2/2. All these documents were marked as Exhibits after objection being given on behalf of the accused. The witness in his cross-examination stated that he is unable to identify the articles to the extent whether the same belongs to this case or any other case and proceeded to state that the material parts were produced before PW3.

PW3, Dilip Chattopadhyay identified his signature on the statement recorded under Section 108 of the Customs Act.

PW4, Sajal Baran Das reiterated his contention as made in the petition of complaint and added that he had sent the articles for expert opinion to Zoological Survey of India. The witness identified all the materials which were already marked as MAT Exhibits. In cross-examination the witness admitted that in the seizure list the column relating to place of seizure do not reflect any premise number. He also stated in cross-examination that he had never been to the place of occurrence, no sketch map was drawn in respect of premises where the

seizure was affected and admitted that he filed on the basis of presumption that the articles were seized from the accused.

PW5, Dr. Sujit Chakraborty identified the report which was marked as Ext.6 and deposed that the report was submitted after examining the tiger skin, tiger nails, tusks and rhino horn.

Mr. Moitra, Ld. Senior Advocate appearing for the petitioner submitted that the deposition of PW4, i.e. the complainant shows that he only received the photocopies of the documents from the Customs Authority and not the original documents in respect of seizure which were produced before the Ld. Trial Court and the complainant being the IO only performed the duty of sending the seized articles of the DRI Authority to the Zoological Survey of India for identification. The complaint was filed pursuant to the order dated 31-8-1995 passed by the Ld. CMM, Calcutta and the same was filed on 9-4-1996. The investigation so conducted by the complainant was not in accordance with law and the documents so relied upon by the Ld. Courts below were inadmissible materials which were marked as Exhibits. The very foundation of the Courts below in arriving at the finding of guilt was the statement of the accused/petitioner under Section 108 of the Customs Act and the statements so produced before the Ld. Trial Court was a photocopy which even after being objected by the defence was admitted in evidence by the Ld. Trial Court. The petitioner faced trial for charges being framed under Sections 9, 40(2), 49 and 43 of the 1972 Act and the Ld. Trial Court on appreciation of the evidence found the accused to be not guilty of the

charges under Sections 9, 43 and 49 of the 1972 Act. However, the Ld. Trial Court was pleased to hold the petitioner guilty under Section 40(2) of the 1972 Act read with Section 51(1-A) of the 1972 Act. According to the Ld. Advocate Section 51A is applicable only in the case of offence under Chapter VA the punishment under Section 40(2) of the 1972 Act do not come under Chapter VA but under Chapter V of the 1972 Act and as such the sentence passed by the Ld. Trial Court and affirmed by the Ld. Appellate Court is not sustainable. In order to substantiate his submission the Ld. Advocate for the petitioner relied upon ***State of Punjab vs. Balbir Singh, 1994 SCC (Cri) 634; Noor Aga vs. State of Punjab & Anr., (2008) 16 SCC 417;*** and ***The State of Gujarat vs. Anwar Osman Sumbhaniya & Ors., MANU/SC/0286/2019.***

Mrs. De Ghosh, Ld. Advocate appearing for the State submitted that the factum of seizure in respect of the elephant tusks, tiger skins, rhino horn, tiger nails and plastic eye balls are proved beyond any reasonable doubt as the seizure lists support the same. The statement of the accused/petitioner under Section 108 of the Customs Act also corroborates the factum of seizure regarding the communications which are available in the record, the same are in original and it reflects that the seized materials were acknowledged by a communication on 7-8-1995. According to Mrs. De Ghosh as the seized articles qualified “uncured trophy” of animals following under Schedule-I Part I as Article 12B, 30 and 39 of the 1972 Act, charge was framed under Section 15 of the 1972 Act, which is not a complete code and the DRI Authorities have jurisdiction to investigate such offences. Mrs.

De Ghosh relied upon **Moti lal vs. Central Bureau of Investigation & Anr., AIR 2002 SC 1691** and **State & Ors. vs. NMT Joy Immaculate, 2004 (5) SCC 729** on the issue of mere irregularity will not vitiate the proceedings.

In **Balbir Singh's** case (supra) relied upon by the Ld. Advocate for the petitioner in paragraph 25, which is held as follows:-

*“25. The questions considered above arise frequently before the trial courts. Therefore we find it necessary to set out our conclusions which are as follows :*

*(1) If a police officer without any prior information as contemplated under the provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offences as provided under the provisions of CrPC and when such search is completed at that stage Section 50 of the NDPS Act would not be attracted and the question of complying with the requirements thereunder would not arise. If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act. If he happens to be an empowered officer also, then from that stage onwards, he should carry out the investigation in accordance with the other provisions of the NDPS Act.*

*(2-A) Under Section 41(1) only an empowered Magistrate can issue warrant for the arrest or for the search in respect of offences punishable under Chapter IV of the Act etc. when he has reason to believe that such offences have been committed or such substances are kept or concealed in any building, conveyance or place. When such warrant for arrest or for search is issued by a Magistrate who is not empowered, then such search or arrest if carried out would be illegal. Likewise only empowered officers or duly authorized officers as enumerated in Sections 41(2) and 42(1) can act under the provisions of the NDPS Act. If such arrest or search is made under the provisions of the NDPS Act by anyone other than such officers, the same would be illegal.*

*(2-B) Under Section 41(2) only the empowered officer can give the authorisation to his subordinate officer to carry out*

*the arrest of a person or search as mentioned therein. If there is a contravention, that would affect the prosecution case and vitiate the conviction.*

*(2-C) Under Section 42(1) the empowered officer if has a prior information given by any person, that should necessarily be taken down in writing. But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc. he may carry out the arrest or search without a warrant between sunrise and sunset and this provision does not mandate that he should record his reasons of belief. But under the proviso to Section 42(1) if such officer has to carry out such search between sunset and sunrise, he must record the grounds of his belief.*

*To this extent these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial. (3) Under Section 42(2) such empowered officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate official superior. If there is total non-compliance of this provision the same affects the prosecution case. To that extent it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case.*

*(4-A) If a police officer, even if he happens to be an "empowered" officer while effecting an arrest or search during normal investigation into offences purely under the provisions of CrPC fails to strictly comply with the provisions of Sections 100 and 165 CrPC including the requirement to record reasons, such failure would only amount to an irregularity.*

*(4-B) If an empowered officer or an authorised officer under Section 41(2) of the Act carries out a search, he would be doing so under the provisions of CrPC namely Sections 100 and 165 CrPC and if there is no strict compliance with the provisions of CrPC then such search would not per se be illegal and would not vitiate the trial.*

*The effect of such failure has to be borne in mind by the courts while appreciating the evidence in the facts and circumstances of each case.*

*(5) On prior information the empowered officer or authorised officer while acting under Sections 41(2) or 42 should comply with the provisions of Section 50 before the search of the person is made and such person should be informed that if he so requires, he shall be produced before a Gazetted Officer or a Magistrate as provided thereunder.*

*It is obligatory on the part of such officer to inform the person to be searched. Failure to inform the person to be searched and if such person so requires, failure to take him to the Gazetted Officer or the Magistrate, would amount to non-compliance of Section 50 which is mandatory and thus it would affect the prosecution case and vitiate the trial. After being so informed whether such person opted for such a course or not would be a question of fact.*

*(6) The provisions of Sections 52 and 57 which deal with the steps to be taken by the officers after making arrest or seizure under Sections 41 to 44 are by themselves not mandatory. If there is non-compliance or if there are lapses like delay etc. then the same has to be examined to see whether any prejudice has been caused to the accused and such failure will have a bearing on the appreciation of evidence regarding arrest or seizure as well as on merits of the case.”*

In **Noor Aga** (supra) relied upon by the Ld. Advocate for the petitioner in paragraph 66, wherein the Hon'ble Apex Court observed as follows:-

*“66. We may, at the outset, notice that a fundamental error has been committed by the High Court in placing explicit reliance upon Section 108 of the Customs Act.*

*It refers to leading of evidence, production of document or any other thing in an enquiry in connection with smuggling of goods. Every proceeding in terms of sub-section (4) of Section 108 would be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code. The enquiry contemplated under Section 108 is for the purpose of 1962 Act and not for the purpose of convicting an accused under any other statute including the provisions of the Act.”*

In **The State of Gujarat vs. Anwar Osman Sumbhaniya & Ors.** relied upon by the Ld. Advocate for the petitioner in paragraph 24, which is as follows:-

*“24. Even in the present case, it is noticed that the prosecution has essentially relied upon the confessional statement of the accused recorded under the provisions of TADA. That will be of no avail and certainly not admissible against the accused in the trial for offences under other enactments, especially when the Designated Court could not have taken cognizance of the offence under TADA for lack of a valid sanction. Additionally, in the present case, the evidence produced by the prosecution regarding search and seizure is replete with fatal deficiencies. We do not wish to deviate from the view taken by the Designated Court that there was no legally admissible evidence to establish the charges against the respondents regarding offences under other enactments (other than TADA).”*

In ***Moti Lal***'s case (supra) relied upon by the Ld. Advocate for the State, the Hon'ble Apex Court was dealing with the issue whether CBI was authorized to investigate an offence which is punishable under the 1972 Act. In such juncture the Hon'ble Apex Court decided that CBI had the jurisdiction to investigate offences under the 1972 Act. The present case do not raise such a question as the investigation was carried out by the Wildlife Authorities as provided under the 1972 Act and never this was an issue before this Court whether the DRI Authorities were empowered to conduct search or seizure or to investigate into the offence.

In ***NMT Joy Immaculate*** (supra) relied upon by the Ld. Advocate for the State, the Hon'ble Apex Court was dealing with a situation where a revisional application was preferred in respect of a prayer for police remand being allowed by the Magistrate. So far as the facts of the case are concerned initially the petitioner surrendered and was sent to jail custody. On an application made by the investigating officer of the case the prayer for



police remand was allowed. During police custody on the basis of the statement of the accused, search and seizure were affected. The Hon'ble Supreme Court was dealing with a situation wherein in an application preferred by the revisionist, the High Court held that the granting of police remand and consequent confession and the alleged recovery had no evidentiary value. While dealing with the order passed by the High Court, the Hon'ble Supreme Court observed that the order of police remand is an interlocutory order and the revisional application against the same is not maintainable. Further, it has been categorically held that what was to be decided on a full-fledged trial, the High Court merely on the pleadings of the parties gave its finding holding the police remand and consequent confession and the alleged recovery had no evidentially value to be illegal. In this case, the Hon'ble Apex Court was dealing with completely different set of facts and circumstances. The present case is one, where trial has been concluded, a finding of fact is there and the issue is whether the materials placed before the Court would be fit and proper for arriving at a finding of guilt in respect of the present petitioner.

I have taken into account the submissions advanced by both the parties, the deposition of the 5 witnesses relied upon by the prosecution, the documents so relied upon by the prosecution which were admitted in evidence as also the findings of the Ld. Courts below. While assessing the evidence of the prosecution witnesses, I do not find any material except the oral deposition of the witnesses particularly PW1 from where it would be evident that the said witness in his official capacity led the DRI officials for

conducting search and seizure at the above mentioned said premises. No documents relating to search authorization or movement register reflecting that the DRI officers on the basis of information they received had been to the residence of the present petitioner, are available. None of the other DRI officers (PW2 and PW3) ever represented in their oral deposition that they were present at 16, Rotu Sarkar Lane, Kolkata- 700073 when the raid was conducted and search and seizure had taken place. Further no information was given to the local police authorities prior to conducting any search at the said premises/residence of the present petitioner. This assumes much importance in view of the fact that the Ld. Courts below has laid much emphasis on the statement of the accused under Section 108 of the Customs Act.

The prosecution in order to prove its case was duty bound to connect the materials which they claimed to have received from the DRI Authorities. No document in evidence has been produced regarding the materials and/or the documents being seized/reseized by the complainant of the instant case being the Authorized Ranger attached to the office of the Conservator of Forest, Wildlife Circle from the DRI Authorities. The connecting document and/or transfer of document being absent failed to establish any official change of custody of the seized articles which were the subject matter of the case. This Court took efforts by adding the Customs/DRI Authorities as a party and provided them ample opportunity for producing the office copy and come with an affidavit through an appropriate officer of the said department, however, only a xerox copy was tendered regarding the

document referred to above but no one came forward on behalf of the department to submit the said document on oath.

The statement under Section 108 of the Customs Act which has been made the foundation for conviction by the Ld. Courts below, firstly is a very weak piece of evidence, as no Court can rely upon a statement of the accused until and unless the same is corroborated by material particulars. Moreover, the said statement under Section 108 of the Customs Act were made before the DRI Authorities which can be used in a prosecution under the Customs Act and using the same as a foundation for an offence under the 1972 Act is against the settled principles of law. To that extent the authorities cited by Mr. Moitra, Ld. Senior Advocate for the petitioner are aptly applicable in the present case. [***Noor Aga vs. State of Punjab & Anr., (2008) 16 SCC 417; The State of Gujarat vs. Anwar Osman Sumbhaniya & Ors., MANU/SC/0286/2019***]

Having due regard to the submission advanced by the State, I am constrained to hold that on the evidence so relied upon by the prosecution it is not a case of mere irregularity but raises a grave suspicion regarding the manner and mode of search and seizure alleged to be conducted at the said premises and it would not be fit and proper to arrive at a finding of guilt on the basis of the search and seizure.

Accordingly, the judgment and order of conviction and sentence passed by the Ld. Metropolitan Magistrate, 11<sup>th</sup> Court, Calcutta in case No. 718 of 1996 and affirmed by the Ld. Additional District & Sessions Judge,

9<sup>th</sup> Fast Track Court, Bichar Bhavan, Calcutta in Criminal Appeal No. 31 of 2010 are set aside.

The petitioner is acquitted from the charges under Section 40(2) of the Wildlife (Protection) Act, 1972 read with Section 51(1-A) of the said Act.

The petitioner is on bail, he shall therefore be discharged from the bail bonds.

As such CRR 3523 of 2010 is allowed.

Department is directed to communicate this order to both the Courts below and the LCR be sent back to the Ld. Courts below.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

**(Tirthankar Ghosh, J.)**