



PROSECUTION IN FOREST / WILD LIFE OFFENCE CASES

**(A GUIDE FOR FIELD FOREST OFFICERS
AND PUBLIC PROSECUTORS)**

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PREFACE

A scrutiny of court orders passed in Wild Life Offence cases in **Bastar Division**, revealed that the success rate has been zero. In **Jagdalpur District** only in last 5 years, 35 cases were prosecuted in the various courts and in all the cases, the accused persons were acquitted. Out of these, 16 cases pertained to seizure of partner skin. Inability to get the offender punished even in such serious cases, indicates severe lacuna in prosecution. It is essential to correct the mistakes or shortcomings in these cases otherwise there will be no fear in the society regarding the wild life offences. To save the Wild Life our first priority now is to strengthen the prosecution. Serious omissions and lapses were noticed in the enquiry into the offences,

In putting up the chalan or in pleating/ presenting the case in the court by public prosecutors. With a view to overcome these lapses this guide book has been prepared. It is hoped that this will help the field officers and the public prosecutors and they will succeed in getting the offenders duly punished.

Arun Kumar Pandey I.F.S.

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1. WILD LIFE OFFENCE

The word 'Wild Life Offence' has nowhere been specifically defined but section 51 of Wild Life (Protection) Act 1972 provides that "Any person who contravenes any provisions of this Act or rule or order made there-under or who commits a breach of any of the conditions of any license or permit granted under this Act, shall be guilty of an offence against this Act."

Mostly the offences pertaining to Wild Life, consist of illicit hunting of wild animals. In addition damaging the habitat of wild animals— especially damaging in national parks, sanctuaries and in closed area- ,trade in wild animals or parts of wild animals, harassing the animals in zoo etc. also constitute offence under Wild Life (Protection) Act.

Hunting, Wild Animal and Captive animals :-

Under Section 2 (16) of the Act, "hunting" as defined as under-

2 (16) "Hunting"- With its grammatical variations and cognate expressions, includes-

- (a) Killing or poisoning of any wild animal or captive animal and every attempt to do so;
- (b) Capturing, coursing, snaring, trapping, driving or baiting any wild or captive animal and every attempt to do so;
- (c) Injuring or destroying or taking any part of the body of any such animal, or in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles, or disturbing the eggs or nests of such birds or reptiles;

The terms 'Wild Animal' and "Captive animal" have been defined under section 2 (36) and 2 (5) of the Act as under-

2 (36). "Wild Animal" means an animal specified in Schedules I to IV and found wild in nature;

2 (5). "Captive Animal" means any animal, specified in Schedules I, Schedules II, Schedule III or Schedule IV, which is captured or kept or bred in captivity;

It is clear from the above definition that only cases of hunting the animal listed in schedule 1,2,3 or 4 which are wild by nature, will constitute an offence under section 9 of the Act. If there is any other wild animal in the forests, which is not included in schedule

1,2,3, or 4 will not be classified as wild animal but will be termed as "Wild Life" which has been defined under section 2 (37) of the Act as under-

2(37). "**Wild Life**" includes any animal, aquatic or land vegetation which forms part of any habitat;-

The various section of the Act dealing with different offences are as under:-

S. No.	Offence	Relevant Section of Wild Life Protection Act.
1.	Hunting of Wild Animals (Included in Schedule 1 to 4)	9
2.	Illicit entry into sanctuary.	27
3.	Destroying or damaging the wild life, forest produce, habited and stopping or diverting of water flow in sanctuary.	29
4.	Causing fire in sanctuary.	30
5.	Entry into sanctuary with weapons.	31
6.	Teasing, molesting, injuring or feeding in a zoo	38 (5)
7.	Cook or serve meat of wild animal in any hotel or eating house	44 (8)
8.	Trade or commerce of trophies, animal articles derived from scheduled animals (animal listed in schedule 1 or part II of schedule 2.	49 (A)
9.	Destroying, exploiting or removal of any wild life including forest produce or destroying or damaging habited of any wild life or stopping or diverting flow in any national park.	35 (8)
10.	Illicit grazing in national Park.	35 (3)

2. INVESTIGATION INTO OFFENCES

Generally in any special law or Act, detailed procedure is prescribed for enquiry into the offences registered under that law or Act. Generally all the actions such as enquiry into the offences, seizure, arrest and prosecution in the court of law are done as per the detailed provisions contained in Criminal Procedure Code 1973. Section 5 of the Criminal Procedure Code prescribes that if any Act provides for any special procedure, then that special provision will prevail.

It is worthwhile to note that Wild Life (Protection) Act does not lay down detailed guide lines for investigation into offences. The section 50 (8) of the Act clarifies that the provisions contained in any special Law will prevail.

It is note-worthy that Wild Life (Protection) Act does not contain any detailed provisions or guide lines for enquiry into the offence registered under that Act. The section 50 (8) of this Act makes it clear that the relevant provisions contained in any other law for the time being in force can be applied herein as well. Under the provisions contained in section 72 of the Indian Forest Act 1927, the authorized forest officer can enquire into the offences, call witnesses, record statements etc.. Hence all such forest officers can also enquire into the offence related to Wild Life. Section 50 (8) of this Act provides that the State Government can authorize an officer not below the rank of Assistant Conservator of Forests for investigation in to the offences registered under this Act. But this over riding clause does not debar the forest officers authorized under section 72 of the Indian Forest Act from enquiring in to the cases pertaining to wild animals. Hence it is essential that while registering an offence pertaining to Wild Life relevant provisions and sections of Indian Forest Act should also be quoted in the Preliminary Offence Report (P.O.R.). Section 2 (5) of Indian Forest Act classifies wild animal and part thereof as “**forest produce**” and as per section 26 and 33 of this Act an offence related to wild animal committed in reserved forests or in protected forests is an offence under that Act. Hence it will be mandatory that on commission of an offence, based on nature of the offence, all the relevant sections of both the Acts should be mentioned so that as per the powers delegated under both the Acts, the case could be enquired into by any authorized forest officer.

In a case CBI v/s Moti Lal (2001), Hon’ able Supreme Court interpreting the opening words of section 50 (1) “ not withstanding any thing contained in any other law for the time being in force”, has held that CBI and Police Officers can also enquire into the wild life offences. It clearly implies that the officers authorized under Indian Forest Act can also enquire into the offences under Wild Life (Protection) Act and use of provisions under Indian Forest Act for enquiry is in no way illegal or beyond jurisdiction. On commission of an

offence, the aim of the enquiry officer should be that the culprit gets maximum punishment and for it he should use provisions contained in relevant sections of various prevalent laws and Acts. It has to be borne in mind that a special Act for wild life, does not forbid or restrict the use of provisions of the other Acts.

In the process of enquiry various activities such as collection of evidence, preparation of panchnama recording of statements etc are conducted by the enquiry officer. Though all these activities are of importance, but the recording the statement of the witnesses is of the utmost importance. There are special provisions in section 72 of the Indian Forest Act and in section 50(8) of the Wild Life (Protection) Act which provide that, “any evidence recorded under these provisions, shall be admissible in any subsequent trial before a magistrate provided that it has been taken in presence of the accused person”. However because of ignorance of these provisions and because these provision were not brought to the notice of the Hon’able Court, in most of the cases, the accused persons get acquitted.

In past few years a number of cases where skin of the panther was seized, were prosecuted by Police/ Forest Department in various courts but however in all the cases, the accused persons were acquitted. The information about the wild life offence cases decided in last five years was obtained from. District Court Jagdalpur and the reasons qufor acittal were scrutinized. The situation comes out to be as under-

S.No.	:	01
Case No. & Date	:	396/05 15-05-1995
Offence	:	<u>Keeping illegally tiger skin with a view to sell it</u>
Prosecutor	:	Police Station Bhodghat Jagadapur
Court	:	Hon'able V.K. Chandkya, Chief Justice, Jagadapur
Decision & Date	:	<u>Acquitted 21-09-2008</u>
Reasons for acquittal	:	Prosecution witness Javed turned hostile and denied his earlier statements.
S.No.	:	0 2
Case No. & Date	:	1687/2005 1999
Offence	:	<u>Illicit possession of two deer skins</u>
Prosecutor	:	Police Station Bhodghat Jagadapur
Court	:	Judicial Magistrate Class one Hon'able, Smt. Girija Devi Marabi
Decision & Date	:	<u>Acquitted 28-08-2007</u>
Reasons for acquittal	:	1. Refusal of independent witnesses to corroborate their original Statements. 2. Evidence of enquiry officer was not produced.
S.No.	:	03
Case No. & Date	:	1362/2005 05-05-2005
Offence	:	<u>Illicit possession of panther skin</u>
Prosecutor	:	Police Station Bhodghat Jagadapur
Court	:	Judicial Magistrate Class one Hon'able, Smt. Girija Devi Marabi
Decision & Date	:	<u>Acquitted 04-04-2007</u>
Reasons for acquittal	:	Refusal of independent witnesses to corroborate their original statements.
S.No.	:	04
Case No. & Date	:	396/05 15-05-1995
Offence	:	<u>Keeping illegally panther skin with a view to sell it</u>
Prosecutor	:	Forest Department Darbha
Court	:	Hon'able V.K. Chandkya, Chief Justice, Jagadapur
Decision & Date	:	<u>Acquitted 05-06-2009</u>

Reasons for acquittal	: 1.Witnesses Sarva-shri Harkesh Bahadur Singh & Anil Khande deposed that they know the accused person and no material was seized from the accused person before them. When the forest staff brought the partially treated and partially cured skin, the accused person was not with them. The forest staff did not record any statement of the accused person in their presence. 2. Shri Y.N.Masih informed that all the actions were conducted by Forest guard C.R.Nagare. The statement of the accused person was recorded in presence of the witnesses. During the action many residents of that ward had gathered on the spot. When the accused was called out of the house, he had come empty-handed. 3. Important witness Forest guard C.R.Nagare was not produced in the court. Due to the denial of witnesses from their earlier statements and as the main witness Forest guard C.R.Nagare was not produced, the accused was given the benefit of doubt and was acquitted
S.No.	: 05
Case No. & Date	: 268/06 16.06.2006
Offence	: <u>Illegal possession of panther skins.</u>
Prosecutor	: Forest Department
Court	: Hon' able V.K. Chandkya, : Chief Justice, Jagdalpur.
Decision & Date	: <u>Acquitted 26.03.2009.</u>
Reasons for acquittal	: 1. Both the witnesses Roopnath and Ramratan Gond, denied any information about the offence. They said that no seizure was made in their presence and they had merely signed the document as per directives of the police staff. 2. Dy. Ranger Shri. R.K. Kashyap had examined the skin. He told that on basis of length and width of the skin, the age of the animal cannot be ascertained. He was not aware as to who brought the skin and to which offence it was connected.

S.No.	: 06
Case No. & Date	: 436/08 13.12.1999
Offence	: <u>Illegal possession of chital skin and attempt to sell it.</u>
Prosecutor	: Police Station. Bhanpuri, Baster
Court	: Hon' able V.K. Chandakya, : Chief Justice Jagdalpur.
Decision & Date	: <u>Acquitted 28.04.2008</u>
Reasons for acquittal	: 1. Witness Kalyan Singh refused to identify the accused persons and told that no chital horn, skin etc were seizure in his presence. 2. The signature of the witness was not obtained at the site but he. was called at Police station and was asked to sign. 3. The Police Staff had not disclosed the name of the persons from whom seizure was made.
S.No.	: 07
Case No. & Date	: 1395/05 03.08.1999
Offence	: <u>Illegal possession of deer skin.</u>
Prosecutor	: Police Station Jagdalpur
Court	: Judicial Magistrate Class One, Smt. Girja Devi Marabi
Decision & Date	: <u>Acquitted 10.01.2008</u>
Reasons for acquittal	: 1. Witness in panchnama refused to identify the accused person and said no skin was seized in his presence. He told that when he had gone to police station to serve tea, he was asked to sign the paper. 2. Second witness Kanhaiya also stated that no skin was seized in his presence. Dy. Inspector Kailash Bhardwaj who had seized the skin, was not produced as witness.
S.No.	: 08
Case No. & Date	: 39/09 03.07.2008
Offence	: <u>Putting fire in Kanger Ghati National Park and hunting of Kotari.</u>

Prosecutor	:	Range Officer Kotamsar, Kanger Ghati National Park.
Court	:	Judicial Magistrate Class One, Smt. Swarnalata Toppo.
Decision & Date	:	<u>Acquitted 17.012.2009</u>
Reasons for acquittal	:	<ol style="list-style-type: none"> 1. Denial of witnesses from their earlier statements. 2. There was over-writing in seizure-memo and initial time of seizure was shown as 8.00 which was later on corrected as 5.30. In the statement time as shown as 4.00 O'clock. One witness told that seizure was done in compartment No. 78,79. Not only the seizure memo but the seizure of weapon from the accused, appears doubtful. 3. No chemical verification that the blood found on axe was of kotari, was get done or no such report was produced.
S.No.	:	09
Case No. & Date	:	1/26/2005 29.07.2002
Offence	:	<u>Illicit possession of Panther Skin.</u>
Prosecutor	:	Police Station Lohardiguda, Baster
Court	:	Judicial Magistrate Class One, Smt. Girja Devi Marabi
Decision & Date	:	<u>Acquitted</u>
Reasons for acquittal	:	<ol style="list-style-type: none"> 1. Witness Suresh said that the skin was not in possession of the accused person but was lying on the ground near the spot and he had signed the papers in the Police Station. 2. Second witness also denied that skin was a seized from the accused person. He told that he had gone to Police Station with regard to release of his cart and there he was asked to sign the papers. <p>As seizure of skin from the accused person was not established, he was given benefit of doubt and was acquitted.</p>
S.No.	:	10
Case No. & Date	:	967/2005 06.09.2008
Offence	:	<u>Encroachment, clearing of area ploughing and destruction of wild life habited in Kanger Ghati National Park.</u>
Prosecutor	:	Range Officer Kolang Kanger Ghati National Park.
Court	:	Judicial Magistrate Class One, Ms. Sanghratna Bhatpahri,

Decision & Date	:	<u>Acquitted 31.05.2010.</u>
Reasons for acquittal	:	<ol style="list-style-type: none"> 1. Denial of their earlier Statements by witnesses. 2. As negative of the photograph of the site, was not produced, the photograph was treated as doubtful. 3. All the forest employees were treated as interested party, and their statements were not admitted. Hence benefit of doubt.
S.No.	:	11
Case No. & Date	:	532/09 19.11.2004
Offence	:	<u>Poaching of wild boar.</u>
Prosecutor	:	Range Officer Bhanpuri Baster, Executive Forest Guard Tilak Ram, Range Assistant Himalaya Prasad,
Court	:	Judicial Magistrates Class One, Smt. Girja Devi Marabi
Decision & Date	:	<u>Acquitted 07.12.2009.</u>
Reasons for acquittal	:	<ol style="list-style-type: none"> 1. The witness mentioned in the seizure memo, did not prove it and said that those were not this signature. He also denied the facts mentioned in the prior statement. 2. In the Panchnama for site inspection, date was not mentioned. The independent witness refused to corroborate the panchnama. There was difference in statements of the Range Assistant and the forest guard. Hence acquitted giving benefit of doubt.
S.No.	:	12
Case No. & Date	:	862/05 09.08.1999
Offence	:	<u>Illegal possession of panther skin.</u>
Prosecutor	:	Police Station Frejarpur, Jagdalpur
Court	:	Judicial Magistrate Class One, Smt. Girja Devi Marabi
Decision & Date	:	<u>Acquitted 27.11.2008</u>
Reasons for acquittal	:	<ol style="list-style-type: none"> 1. Dy. Inspector D.S. Dehari who was the investigation officer and an important witness was not produced. 2. Witness Godawari admitted the signature on the seizure memo was his, but he did not know, what was seized. In fact, he

	<p>had signed under pressure from police.</p> <p>3. Second witness Kunwar also said that the seized property was not shown to him and he had signed under pressure from police.</p> <p>4. Constable Raj Kumar, Padam Singh Thakur and Ram Sajiwan told that the seizure was made in their presence but they had not signed the seizure memo as witnesses as such their statements can not be taken as proof.</p> <p>5. Shri. D.B. Mathews had verified the skin but if does not prove that it was seized from the accused person . Hence the accused person was given benefit of doubt and was acquitted.</p>
S.No.	: 13
Case No. & Date	: 1062/05 10.08.2005
Offence	: <u>Illegal possession of skin of panther and mongoose.</u>
Prosecutor	: Police Station Jagdalpur
Court	: Judicial Magistrate Class One, Smt. Girja Devi Marabi
Decision & Date	: <u>Acquitted 04.10.2007</u>
Reasons for acquittal	<p>1. Home guard Manohar Gopal and Constable Ganesh Choukse told that on information of sale of skin, they had gone with Town Inspector T.R. Sharma and Station-in charge Tilak Singh Thakur in Civilian dress but S.I. Tillu Singh did not produce any evidence regarding this.</p> <p>2. T.I. T.R. Sharma had seized the skins from the accused persons but which skin was seized from whom, is not mentioned.</p> <p>3. Witness Manohar Gopal told that one panther skin and one mongoose skin was seized but he could not tell that which item was seized from whom.</p> <p>4. Constable Ganesh Choukse told only about seizure of panther skin. There was no mention of mongoose skin.</p> <p>5. Independent witness Ganesh could not indentify the accused persons. He told that he had signed the blank paper.</p> <p>As it was not proved that who had gone for seizure and arrest and no “ Roj-namchna” was produced, the accused persons were acquitted giving the benefit of doubt.</p>

S.No.	: 14
Case No. & Date	: 287/2004 27.05.2004
Offence	: <u>Illegal Possession of partner skin.</u>
Prosecutor	: Police Station Bodhghat, Jagdalpur
Court	: Chief Justice Jagdalpur, Hon' able V.K. Chandakya.
Decision & Date	: <u>Acquitted 24.04.2007.</u>
Reasons for acquittal	: <ol style="list-style-type: none"> 1. Witness Raj Narayan said that he does not know the accused person and no skin was seized from the accused person. He told that his statements were not recorded by the Police. He was going with his thela in front of the police station and Shri Parihar called him and asked him to sign. 2. Second witness Shri Pal Jain told that he had not gone with the station officer for seizure and no seizure was done in this pressure. He told that he is a booking agent in Payal Travels and as such he is acquitted with police staff. 3. Third witness Shri K.V. Singh told the seizure was done by Shri Rajendra Singh Parihar but he had not come with the original copy of the "Rojnamcha". 4. Witness Gajman told that he had verified the skin. The skin when brought for verification was not sealed. He also admitted that he had so experience in skin verification. 5. Enquiry Officer Shri Rajhans Singh Parihar was not produced as witness. <p>Hence giving the benefit of doubt, the accused was acquitted.</p>

Thus it will be evident that in absence of independent witnesses and in most of the cases because of denial of their previous statements (turning hostile)- by the witnesses, the department was not successful in proving the offence and the guilt.

This is an alarming situation. Apart from Jagdalpur, in other districts also in most of the cases presented by the department in courts, the accused persons are getting acquitted. The total strength and capacity of the department is being dwarfed by such ordinary persons who under some pressure change their statements and prosecution side becomes helpless. If the things continue as such, there will not remain any fear for wild life offences. The question arises that," Is there any legal provision for this or way out from this?" **The answer is 'YES', because Indian Forest Act 1927 and Wild Life (Protection) Act 1972 had foreseen such situation and they contain special provisions; according to which, the statement recoded by a forest officer during the enquiry, will be**

admissible in any subsequent trial before a magistrate under certain conditions. But non-following of these provisions is resulting in failure of the cases in the court.

Validity of Statement Recorded During Enquiry:-

Section 72 of Indian Forest Act provides that statement recorded by a forest officer during an enquiry will be admissible in any subsequent trial before a magistrate. If this special provision was brought to the notice of the Hon' able court by the Government advocate or the prosecution side then it was quite possible that in most of the cases, the verdict would have been different.

As already indicated, the various sections of Indian Forest Act can also be used in cases of wild life offences and as such powers vested under section 72 of Indian Forest Act can be used in such cases. Along with this, the knowledge of provisions contained in section 50 of the Wild Life (Protection) Act 1972 is also essential and mandatory.

The provisions contained in section 72 of Indian forest Act are as under:-

72. State Government may invest Forest – Officers with certain powers.

- (1) The State Government may invest any forest- officer with all or any of the following powers, that is to say:-
 - (a) Power to enter upon any land and to survey, demarcate and make a map of the same;
 - (b) The powers of a Civil Court to compel the attendance of witness and the production of documents and material object;
 - (c) Power to issue a search-warrant under the code of Criminal production 1898 (5 of 1898); and
 - (d) Power to hold an inquiry in to forest –offences, and, in the course of inquiry, to receive and record evidence.
- (2) **Any evidence recorded under clause (d) of sub-section (1) shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in this presence of the accused person.**

Under the powers vested vide section 72 of the Indian Forest Act statement if recorded in presence of the accused person and with chance given to him for due cross-examination, are important evidence in a criminal case and can be used before the Magistrate. (Law Journal 1960- comments Sahjan Singh v/s State of Madhya Pradesh).

Similar provisions also exist in section 50 sub section (8) and (9) of the Wild Life (Protection) Act as under-

- (8) Notwithstanding anything contained in any other law for the time being in force, any officer not below the rank of an Assistant Director of Wild Life Preservation or an officer not below the rank of Assistant Conservator of Forests authorized by the State Government in this behalf shall have the powers, for the purpose of making investigation in to any offence against any provision of this Act-
- (a) To issue a search warrant;
 - (b) To enforce the attendance of witness;
 - (c) To compel the discovery and production of documents and material Objects ; and
 - (d) To receive and record evidence.
- (9) **Any evidence recorded under clause (d) of sub-section (8) shall be admissible in any subsequent trial before a Magistrate provided that it has been taken in presence of the accused person.**

From the provisions contained on both the sections mentioned above, it is amply clear that if the statements of the witnesses are recorded in presence of the accused person and he has been given chance to cross-examine them, then such statements will be admissible in the court. Hence it is essential that the statements of the witnesses should be recorded in presence of the accused person and he should be given due opportunity to cross-examine them. The questions so asked and their replies should be recorded. The statement so recorded will be admissible before the court. The statements can be recorded in the following format-

DRAFT STATEMENT

Statement of witness **Shri** :-.....

Date:-**Place:-**

|-----s/o-----**Address:-**.....

.....
.....
.....
.....
.....

Recorded before me

(Signature accused)
/Name

(Signature witness)
/Name

Statement taken and recorded by me under power vested by section 72 (1) of Indian Forest Act 1927.

(Signature Enquiry Officer)

Name :-

Rank :-

Post :-

Cross-examination by accused **Shri** :-.....

Ques.1.

Ans.

Ques.2.

Ans.

Ques.3.

Ans.

(Signature Accused)
\Name

(Signature Witness)
/Name

(Signature Enquiry Officer)

Name.....

Rank.....

Post.....

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Though the direct evidence is of utmost importance but in forest/ wild life offence cases circumstantial evidence is also very important. Hon' able Supreme Court and many High Courts have delivered land-mark judgments on basis of circumstantial evidences. In the offences committed inside the forest, it is very difficult to get direct evidence hence the prosecution side has to explain to the court, the circumstances prevailing at the site. It is not necessary that each evidence has to be proved as there is no law making of mandatory. It is discretion of the Magistrate to reach to a reasonable conclusion after considering all the relevant circumstances. For example if a forest officer comes across a person in forest and on basis of doubt in search a deer skin is found in his possession, and with the help of the chaukidar, the panchnama is prepared, then even though there is no independent witness, the Magistrate after considering the situation of the spot on his discretion can hold that man guilty and can punish him. In a famous case Forest Ranger V/s Abubkar FLT 22 Dt 24 (Ker), the learned Judge of High Court Kerala had clearly opined that forest is a place where human activities are quite less and at such places the poachers carry their clandestine activities. Hence under such circumstances, insistence on verification by independent witness will be against the justice. The relevant part of the judgment is as under-

“If a crime is committed in such a manner that no other person could normally have been present in the vicinity, insistence on the rule of corroboration in such case would maul the cause of justice because such insistence would only help the perpetrator to go scot free. It should not be forgotten that there is no rule of law that no evidence should be relied on unless there is corroboration. Facts and circumstances may warrant sometimes to act on such evidence even without corroboration. **Forest is an area where human activities are scanty except the clandestine adventures of poachers. The invaders of forest and wild life usually ensure their poaching techniques go unnoticed by others including wild animals. They adopt devices to keep their movements undetected. Hence, it be pedantic to insist on the rule of corroboration by independent evidence in proof of offence relating to forest and wild life”**

Provisions in Indian Evidence Act 1872, Indian Forest Act 1927 and Wild Life (Protection) Act 1972 regarding evidence -

In most of the cases the Advocates base their arguments on provision contained in Criminal Procedure Code 1973 and Indian Evidence Act 1872. Though it is clear that the Cr.P.C. and Indian Evidence Act have vast jurisdiction but it is also noteworthy

that any provisions contained in a special Law- (As per section 5 of Cr.P.C. the Indian Forest Act 1927 and Wild Life (Protection) Act 1972 are special Laws)- get priority over the provisions contained in general law.

As Indian Forest Act and Wild Life (Protection) Act have special provisions to record statement with a view to collect evidence, hence the provisions of general Indian Evidence Act 1872 are not applicable to the forest officer. This fact should specifically be brought out before court by the prosecution side. In addition if the accused person admits his offence before the forest officer, then also it will be admissible before the court.

Section 25 of the Indian Evidence Act provides that the statement and admittance of offence before the police will not be admissible in the court. As a forest officer is not a police officer, hence provision of section 25 of Indian Evidence Act will not apply in his case. In this regard following judgment are noteworthy.

1. Dr. Enrico D' Suja V/s State 1995 FTL 72 (Bom)-

Hon' able High Court decreed that the confession statement given by the accused before the Range officer, will be admissible in the court because as the Range Officers is not a Police Officer, the provisions of section 25 and 30 of the Evidence will not be applicable on his case.

2. State V/s Banku Lal Goku Lal Shah 1955 NUC (Bom) 4492-

Hon' ble High Court ruled that a forest officer is competent to record statement as per section 72 of the Indian Forest Act, and those are admissible in any sequent trial before the Magistrate. Hence the confession statement given by the accused before forest officer will be admissible before the court.

Burden of proof:-

Section 57 of the Wild Life (Protection) Act prescribes that where it is established that a person is in possession, custody or control of any animal or animal article, it shall be presumed that it is being held illicitly, until the contrary is proved and the burden of proving shall be on the accused. Hence it is evident that the burden of proof will be on the accused person and not on the prosecution side. **It is very important to bring this provision to the notice of the court but before that the prosecution side will have to establish the seizure.** From the various judgments quoted above, it is seen that witnesses who had signed the seizure memo, later on denied their earlier statements and hence the seizure was not established. Hence it is essential that the statements of the witnesses in the

seizure memo should be recorded in the presence of the accused person in the format suggested earlier so they would be admissible before the court. If any witness of the seizure memo changes his statement, then the Government advocate should, giving reference of section 72 of Indian Forest Act and section 50 of the Wild Life (Protection) Act, plead that the statements recorded at the time of seizure should be admitted. Thus the seizure will be established and punishment to the accused person will be ensured.

3. PENALTY IN WILD LIFE OFFENCES

Section 57 of Wild Life (Protection) Act 1972 prescribes penalties for various offences under that Act. They are as under-

S. No.	Offence	Penalty	As per section 468 of Cr.P.C. time limit for prosecution
1.	(a) contravening any provision of the Act (except chapter V-A and section. 38J) or Rule or order made there under	Imprisonment up to 3 year or fine up to Rs. 25,000.00 or both.	3 Years.
	But (b) It the offence pertains to schedule 1 or part II of schedule 2. Or Pertains to hunting in national park or sanctuary. Or Pertains to changing the boundary of national park or sanctuary.	Imprisonment minimum 3 years maximum 7 years and also fine not less than Rs. 10000.00 <u>Offence</u> Non- Bailable	No time Limit.
	(c) It the offence mentioned in (b) above is done second time or is repeated.	Imprisonment minimum 3 years maximum 7 years and also fine not less than Rs. 25000.00 <u>Offence</u> Non - Bailable	No time limit.
2.	Offence pertaining to chapter V-A and animals or trophies pertaining to schedule I or Schedule 2 part II	Imprisonment minimum 3 years maximum 7 years and fine not less than Rs. 10,000.00 <u>Offence</u> Non- Bailable	No time limit.
3.	Offence pertaining to section, 38J (harassing animals in zoo).	Imprisonment up to 6 months or fine up to Rs. 2000.00 or both <u>Offence</u> Bailable	One Year.
4.	Any offence in core area of tiger reserve or hunting in tiger reserve or changing the boundary of the tiger reserve.	Imprisonment minimum 3 years maximum 7 years and fine minimum Rs. 50,000.00 or maximum Rs. 200,000.00 <u>Offence</u> Non- Bailable	No time Limit.
5.	On Proving of the offence mentioned above in (4) for the second time or on further repetition.	Imprisonment minimum 7 years and fine minimum Rs. 5.00 Lakh and maximum Rs. 50.00 lakh. <u>Offence</u> Non- Bailable	No time limit
6.	By abetting or contravening in offences mentioned above in(4) and (5)	Punishment equal to the offender <u>Offence</u> Non- Bailable	No time Limit.

4. WILD LIFE OFFENCES – BAILABLE OR NON-BAILABLE

Bailable Offence- There are the offences wherein the person who is arrested has right for release on bail.

Non- Bailable Offence- There are the offence wherein decision to release on bail depends on discretion of the court.

The first schedule part II of Criminal Procedure Code 1972, prescribes the cases which are Bailable/ Non- Bailable, cognizable/ Non- cognizable and the court wherein the case is friable as under-

THE FIRST SCHEDULES CLASSIFICATION OF OFFENCES II CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS

Offence	Cognizable or Non-cognizable	Bailable or Non-Bailable	By what Court tribal
If punishable with death, life imprisonment or imprisonment more than 7 years.	Cognizable	Non-Bailable	Court of Sessions
It punishable with imprisonment for more 3 years and upward but not more than 7 years.	Cognizable	Non-Bailable	Magistrate of First Class
It punishable with imprisonment for less than 3 years or with fine only.	Non-Cognizable	Bailable	Any Magistrate

Hence it is clear that all the offences which are punishable with imprisonment for 3 years or more are non-bailable. The general penal clause in section 51 (1) of the Wild Life (Protection) Act prescribes that any person who contravenes any provision of this Act (except chapter V-A and section 38 J) or any rule or order made thereunder or who commits a breach of any of the conditions of any license or permit granted under this Act, shall be guilty of an offence punishable with imprisonment for a term that may extend up to 3 years or with fine which may extend up to Rs. 25,000.00 or with both. The words in this clause need close attention. **The term “which may extend up to 3 year” does not mean” less than 3 years”.** Though as per provision of the section 51 (1) court can leave the accused person after imposing fine only but it should not taken to mean that the offences described in section 51 (1) are bailable because for any of the offence described therein, the court can punish with imprisonment for 3 years as well.

The first paragraph of section 51 (1) describes the general offences while the second paragraph contains grave offences wherein the minimum imprisonment is for 3 years and maximum imprisonment is up to 7 years. Section 51 (I A) and (I C) is also about offences wherein the minimum imprisonment is 3 years and maximum imprisonment is 7 years. This all these offence are non-bailable.

Section 51 (1) (13) provides that whosoever contravenes the provisions of section 38 (J) will be punishable with imprisonment up to 6 month or fine up to Rs. 2000.00 or both. This offence is bailable.

Thus the conclusion emerges that as per section 51 (1), all the offences under Wild Life (Protection) Act except for the offence under section 38 (J) are non-bailable. Thus the offences under Wild Life (Protection) Act can be classified as under-

S. No.	Offence	Boilable/ Non-Boilable	Cognizable/ Non Cognizable	Competent court for listed.
1.	Offence under Section, 38 (J)	Bailable	Non-cognizable	Any Court (lower than session courts)
2.	All the offences under the Act except for offence under 38 (J), and rules and order made there-under or violation of conditions of any permit or license issued there under	Non-bailable	Cognizable (Liable to be arrested without warrant)	Class one Court.

5. PRESENTATION OF OFFENCE CASE BEFORE COURT

Forest/ Wild Life Offence cases after enquiry are presented before the court. In common language it is known, as “Chalan of the case in Court”. Technically it is a complaint. Except for few exceptions, the complaint submitted by a forest officer before court, is equivalent to “Court Chalan” submitted by police. This complaint is submitted under section 200 of Criminal Procedure Code, while the court-chalan is submitted by police under section 170 of Cr.P.C.

Under section 50 (8) of the Act, officers not below the rank of Assistant Conservator of Forests, have been vested with certain powers for the purpose of investigation in to the offences under the Act. It does not mean that except for those authorized officers, no other forest officer can enquire or investigate into Wild Life Offence cases. The section 50 (8) of the Wild Life (Protection) Act does not forbid use of application of the provisions of any other law for the time being in force. Hence any forest officer authorized by the State Government under the powers vested under section 72 of Indian Forest Act can enquire into Wild Life Offences. As far as the question of lodging the complaint in the court is concerned, section 55 of the Act, contains the list of the persons authorized in this regard. All the Divisional Forest Officers have been notified by the State Government as Wild Life wardens for their jurisdiction and have been authorized to file complaint. Hence in every case wherein the complaint is filed in the court, the “Court chalan form” which is first document submitted in each case, will have to be signed by Divisions Forest Officer in the capacity of Wild Life warden.

Complaint to be filed in which court?.

In most of the cases of wild life offences, the minimum imprisonment is 3 years and the maximum is 7 years. Hence all such cases will be submitted to the court of Chief Judicial Magistrate. The cases wherein the imprisonment is up to 3 years, can be submitted to the court of Judicial Magistrate class one. The powers of the various courts to deal with various offences are as under-

S. No.	Court	Punishment
1.	Judicial Magistrate Class two	Imprisonment up to one year and maximum fine Rs. 1000.00.
2.	Judicial Magistrate Class one	Imprisonment up to 3 years and fine up to Rs. 5000.00
3.	Metropolitan Magistrate	Same as Judicial Magistrate Class one

4.	Chief Judicial Magistrate	Imprisonment up to 7 years, no limit for fine.
5.	Chief Metropolitan Magistrate	Same as Chief Judicial Magistrate
6.	Additional Session Judge	Imprisonment up to 10 years, no limit for fine.
7.	Session Judge (D.J.)	Death penalty and other punishment, no limit for fine.

Contents of Complaint (Court Chalan)-

After enquiry into the offence case, when the case is submitted before the court, the following form/ documents and information etc are attached there with-

1. Court Chalan Form (To- most document)
2. Prayer
3. Preliminary Offence Report.
4. Seizure – memo / Superdnama
5. Statement of the accused person and the witnesses
6. Panchnama of the spot and other panchnama
7. Post-mortem report/ other technical report from Wild Life Instituted Dehradun or other authorized agency.
8. Legal documents such as gazette notification for national park, sanctuary, forest area and Government orders in this regard.
9. Photographs
10. Other documents / information.

Court Chalan Form-

While submitting the forest/wild life offence case to the court, chalan form is annexed at top. The form prescribed by the State Government is called “form chalan Muljim Badalat” which means chalan form for producing the accused before the court. Forest

manual also prescribes this form one page which is numbered as 1x-(ar-3). This form is of One page and is divided in 3 parts by vertical lines. This form contains following information-

1. Date of report and panchnama and rank of the employee detecting the case.
2. Date of offence.
3. Name of the accused person along with father's name, caste and place of residence.
4. Date of arrest, if the accused person was arrested.
5. Details of offence with relevant sections of the Act and estimate of the damage.
6. Name and addresses of the persons who can give witness.
7. Name of the enquiry officer along with dates of enquiry.
8. Finding of the enquiry officer along with statement of the accused person.

These information's are to be filled in the corner parts of the chalan. In one part it is written horizontally while in the other corner part, it is written vertically. In the middle part the S. No. 8 is for the findings of the court. This middle part should come back to the Divisional Forest Office but however most of the courts and Govt. Advocates are not following it.

Prayer-

This is the most important part of the complaint but as there is no column or space for it, and traditionally no such prayer was being made. There is no set procedure in Forest Department for submitting such prayer. In fact the prayer is a must in cases being submitted to the courts.

What is Prayer-

“Prayer” is a written submission submitted by the prosecuting forest officer for consideration of the court. In this submission a request is made before the court to impose due punishment upon the accused person and for other such order as court may deem fit. It

is of utmost importance because court will not consider any such point which is not included in the prayer. The prayer should include the following-

1. Submission for imposing possible imprisonment and/ or fine upon the offender quoting relevant Act, section, rules other etc.
2. Submission for forfeiture of articles liable for forfeiture quoting relevant Act and sections.
3. in case of damage in Reserved Forest the demand for compensation.
4. Any other order as court may deem fit regarding offence or the offences.

Where to write the Prayer-

There is no prescribed space or heading in the court chalan form in use at present for submitting the prayer. No form or draft for it has been prescribed by the Government or by the department. That is why in the forest/ wild life offence cases at present there is procedure or system of submitting the prayer.

However the prayer can also be submitted in the present chalan form, but there is very short space available for it. Hence it is advisable to submit the prayer in a separate sheet. Here are a few examples for prayer in different cases-

Example 1- Say a man named Ram Lal is caught with vehicle and a panther skin found in his possession. Following prayer should be submitted in this case.

Prayer in Offence case No.....Following prayer as submitted in the case for consideration of the Hon' ble court-

1. Under the provisions contained under section 51 of Wild Life (Protection) Act 1972, the accused Shri Ram Lal may kindly be penalized with the maximum imprisonment of 7 years and in addition he may kindly also be imposed a fine of Rs. 10,000.00.
2. As per provisions contained on section 39.1 (d), the vehicle No.....seized from the accused, may kindly be declared Government property and may be handed over to forest department for further necessary action.
3. The seized panther skin may kindly be handed over forest department for further disposal as the law.
4. Any other order as Hon' ble court may deem fit.

Example 2- A person named Shyam Lal with othes encroached over 2 hectare of forest land in Pamed sanctuary and cleared it using a vehicle.

Prayer in Offence case No.....

- 1 Accused Shri Shyam Lal and (give names) have violated the provisions of section 29 of Wild Life (Protection) Act 1972 by encroaching upon forest land in compartment No..... of beatin Pamed sanctuary. For this offence they may kindly be punished with imprisonment for 3 years.
- 2 As per the provisions contained in section 39.1 (d) of the Wild life (Protection) Act 1972, the vehicle No....., bullocks, ploughs (give details) used for the offence, may kindly be declared government property.
3. Any other order as Hon' ble court may deem fit.

At present normally all the offence cases chalaned in the court by the forest officers, are in proper form and the necessary and relevant document are also enclosed therewith but however the prayer format in no being attached. The following form can be used for it and should be annexed just after the chalan form-

PRAYER APPLICATION

Case No:-and Date:-

Name of the accused persons:-.....

Nature of Offence:-.....

Act and sections violated:-

Following prayer is submitted in this regard-

- (1)
- (2)
- (3)
- (4)
- (5)

Date :-

Signature

Place :-

Enquiry Officer Seal

6. WILD LIFE (PROTECTION) ACT AND FORFEITURE

There is no provision in Wild Life (Protection) Act for forfeiture of vehicles etc. used in committing the offence. Hence in such cases wherein only provisions of Wild Life (Protection) Act have been applied, the action for forfeiture cannot be initiated. Because of the confusion created as a result of misinterpretation of provisions of section 39.1 (d), a few cases have come into light wherein the forest officer has passed orders declaring the seized vehicle as Government property. This was legally not correct. The section 39 (1) of the Act is as under-

(1) Every-

- (a) Wild Animal, other than vermin, which is hunted under Section 11 or section 29 or sub-section (6) of section 35 or kept or (bred in captivity or hunted) in contravention of any provisions of this Act or any rule or order made there under, or found dead, or killed by mistake;
- (b) Animal article, trophy or uncured trophy or meat derived from any wild animal referred to in Clause (a) in respect of which any offence against this Act or any rule or order made there under has been committed;
- (c) Ivory imported into India and an article made from such ivory in respect of which any offence against this Act or any rule or order made there under has been committed.
- (d) Vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act.

shall be the property of the State Government and, where such animal is hunted in a sanctuary or National Park declared by the Central Government such animal or any article, trophy, uncured trophy or meat derived from such animal or any vehicle, vessel, weapon, trap, or tool used in such hunting, shall be the property of the Central Government.

The section specifically provides that the vehicles used in committing an offence will be the government property. This means that only after establishing that the offence has been committed, the vehicle etc can be ordered to be Government property as per the Act. This authority to decide whether the offence has been committed vests with the court and court only can punish the offender and pass order declaring the seized vehicle etc, as Government property. Hence it is essential to make the necessary prayer in this regard. Registering a wild life offence and seizure of a vehicle cannot be taken as commission of an offence. Section 51 (2) of the Act clearly provides that if a person is punished for an offence under this Act, then the concerned court has power to forfeit seized vehicle etc; in favor of the State Government. This has also been held by various orders of the court as under-

- (1) “In absence of criminal trial and offence having been confirmed as committed section - 39 may not have any application”

(Indian Handicraft-emporium v/s, Union of India (AIR 2003, SC 3240)

- (2) “If the interpretation as has been sought to be put on behalf of the State on clause (d) of sub-section (I) of Section 39 is accepted, every property mentioned therein including a vehicle seized merely on accusation or suspicion would become property of the State and that would be the result even though in the trial ultimately the Magistrate finds that no offence has been committed and acquits the accused. In our considered opinion the property seized under section 50 of the Act from an alleged offender cannot become property of the State under Clause (d) of Section 30 (I) unless there is a trial and a finding reached by the competent Court that the property was used for committing an offence under the Act. If the seizure of a property was enough to declare it the property of the Government, there was no necessity to provide under subsection (2) of section 51 that on proof of commission of the offence, the properties including vehicle, vessel, or weapon used in the commission of the offence would be forfeited to the State Government. We do not find any dichotomy or conflict in the provisions under Section 39 (1) (d) and section 51 (2) of the Act. Properties including vessel can be seized on accusation of commission of an offence under the Act and if offender is available and is arrested, on proof of his guilt, the property seized from him and used in commission of the offence is liable to forfeiture to the State under section 51 (2) of the Act,

Similarly every property seized and is held to have been used for committing an offence by competent Court, whether the offender is available or not for punishment, would be declared to be the property of the State by virtue of the provisions contained under Section 39 (1) (d) of the Act.

(Madhukar Rao v/s State of M.P. & Others

In WP No. 4421 of 1997)

Forfeiture proceeding on Wild Life Offences under Indian Forest Act –

The section 50 of the Wild Life (Protection) Act provides that, “Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for the time being in force, for any act of omission which constitutes an offence against this Act or from being liable under such other law to any higher punishment or penalty than that provided by this Act; provided that no person shall be punished twice for the same offence”.

This means that if in a wild life case, the provisions of section of Indian Forest Act 1927 is also applicable and are also mentioned in the preliminary offence report, then it is legally correct to initiate forfeiture proceedings under the provisions of Indian Forest Act. In such cases the proceeding for forfeiture of vehicle or other property should be initiated and after enquiry the case should also be submitted before the court for the punishment by the court.

There can be a situation wherein the court may acquit the accused person and order release of the seized vehicle etc., while on other hand the authorized officer after forfeiture proceedings may have passed orders for forfeiture of the vehicle. Under such circumstances the forfeiture order may be brought to the knowledge of the court quoting reference to the provisions contained in section 58 of the Act, and court may be requested to reconsider the release order of the vehicle. This will not amount to contempt of the court.

It is noteworthy here that the court holds a person guilty on basis of “proof beyond doubt”. But however the authorized officers can pass a forfeiture order provided he has reasons to believe that the offence has been committed. “Reason to believe or to be satisfied” and “ proved” are two totally different situations. “Prove” means establishing without doubt but “the reason to believe” has preponderance of probability”. Hence there is possibility that wherein court may acquit a person giving benefit of doubt and whereas other hand the authorized officer under provisions of Indian Forest Act may pass forfeiture order.

7. APPEAL AGAINST THE ACQUITTAL ORDER

In most of the offences under Wild Life (Protection) Act, the maximum imprisonment is 7 years as such all these cases are presented in the court of Chief Judicial Magistrate. Some cases where there is no provision for minimum imprisonment but are punishable with imprisonment up to 3 years or fine of Rs. 25,000.00 or both, are submitted in the court of Judicial Magistrate Class One. If somebody is found committing the same offence in the tiger reserve he can be punished with 7 years minimum imprisonment and fine ranging from Rs. 5.00 Lakh to Rs. 50.00 Lakh. There is no maximum limit for imprisonment. Such cases are submitted in the court of Addl. Session Judge or Session Judge.

Thus most of the wild life offence cases are presented in the court of Judicial Magistrate Class One and the Chief Judicial Magistrate. If in the order passed by these courts, the offender is acquitted; then if after minute study of the order and after obtaining the opinion of legal experts it appears that the appeal should be filed in the case, then the proposal should be submitted through department to State Government to Law Department and after due permission appeal should be filed in the Higher Court.

This appeal is filed under the provisions of section. 378 of Criminal Procedure Code. which is as under-

378 Appeal in case of acquittal –

(1) “..... the State Government may on any case, direct the public prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court”.

Period of Appeal –

As per provisions contained in 378 (5) of Cr.P.C. maximum period available for **filing an appeal against the acquittal order passed by a Lower Court into High Court is 6 months for Government Department. It is important to note that this period of 6 months is counted from the date of order;** and not from the date of receipt of the order. Hence as soon as order is passed, the action to obtain the certified copy should be initiated immediately. After close study of the order if on first sight the case appears to be fit for appeal, proposal should be submitted clearly stating this points of appeal. The proposal should be routed through Department to Law Department proposing the officer who will be the Officer – in- Charge of the appeal case. On approval by the Law Department, order to file the appeal will be issued by the Forest department and order for appointment of Officer- in – Charge will also be issued. On receipt of such order, immediate action to file the appeal should be initiated.

A case-study about wrong appeal-

On receipt of information from confidential source, the Range Officer Pharasgoan on 24.10.2004 seized two tiger skins and a motorcycle and the offence was registered vide P.O.R. No. 50/22 Dated 25.10.2004. The case was chalaned on the court of Judicial Magistrate Class one Narayanpur – camp Kondagoan as case No. 249/07. Giving benefit of doubt, the accused persons were acquittal.

Range Officer Pharasgoan filed an appeal against the acquittal order in the court of Addl. Session Judge Jagdalpur while this order was appealable only in the High Court. Addl. Session Judge also did not look into this point and admitted the appeal and quoting the provisions contained on section 133 of Limitation Act, rejected the appeal as time – barred because it was filed after the time limit of 90 days. As a result in such an important case the offenders were acquitted and all the hard labour of the staff became futile.

8. INTELLIGENCE MECHANISM AND REWARDS ESTABLISHING

INTELLIGENCE MECHANISM

Intelligence mechanism plays a very important role in prevention of the wild life offences and in apprehending the offenders. Without developing such intelligence mechanism, control over wild life offences will be very difficult. In fact an officer has to work hard at personal level to develop a reliable Informer and has to keep personal contact with him. Hence all the officers from the level of Divisional Forest Officer to forest guard should attempt to develop their informers. Fear, revenge, money power, personal ego, repentance, social obligation, prestige etc. are many factors which can play an important role in developing a person into informer. A lot of sincere efforts in this regard are needed. Forest Department has huge personnel posted in villages. If they try with personal commitment, forest department can develop a very effective network of intelligence. Each person can adopt his own methodology for developing informers. Here are a few useful tips which can be helpful in developing a good intelligence network.

- (1) At Range-level a list of all the persons caught in past years in Wild Life Offence cases- (even though they might have been acquitted)- should be prepared and the field staff should keep a close watch on their activities. If such persons are taken into confidence, they can be a good informer because they have access to the core group of offenders.
- (2) List of persons against whom police department has registered forest/ wild life offences in past years, should be obtained from office of the Supdt. of police and local police stations. This may also be used to develop information network.
- (3) Apart from the persons previously involved in wild life offence, there can be other local persons who keep tabs on local activities. Forest Department should try actively to gain their support.
- (4) It is very essential that secrecy about the informer should be maintained at all levels. If he is to be rewarded or paid for his confidential services, it should be done personally by Divisional Forest Officers, Sub-Divisional Forest Officer or the Range Officer so that the person has faith in his secrecy.

- (5) Divisional Forest Officer, Sub-Divisional forest officer and Range Officers should develop their personal informers. This will need personal effort.
- (6) Wild Life Offenders have a very wide network and it may be spreading over a number of divisions. Hence one should not presume that an offence which has not occurred in past, cannot happen here as well. One has to maintain constant vigil and alert. In addition regular contact with the adjoining Divisions should be kept, for effective control.

Reward –

In development of intelligence and information net-work, role of reward and secret funding is very important. Section 76 (b) of Indian Forest Act empower the State Government to make rules to regulate the rewards to be paid to officers and informers out of the proceed of fines and confiscation under the Act. The rules on this regard are given in para 76 of the Forest Manual and are also reproduced in Rule 117of Forest Financial Rules, which reads as under –

FFR Rule – 117:-

Under section 76 (a) and (b) of the Indian Forest Act. all Revenue Officers below the rank of Tahsilder, all Police Officers up to and including Inspectors, Sub-Inspectors and Inspectors of Excise and all officials in the Forest Department below the rank of Assistant Conservator of Forests as well as persons not in the public service, are eligible for rewards under the following rules:-

- i.) On conviction of an offender, the Magistrate by whom the case has been decided is authorized to grant a reward not exceeding the estimated value of the timber or other forest produce or other article confiscated plus the amount of any fine imposed (and not exceeding Rs. 100) in such proportions as he ²⁰ think fit to any person or persons who may have contributed to the seizure of the property confiscation or the conviction of the offender.
- ii.) If after the payment of the reward, the conviction is reversed in appeal, the amount paid in reward shall not be recovered from the persons to whom it has been paid unless it shall appear that they have acted fraudulently in the case.
- iii.) In cases where compensation has been accepted under section 68 of the Indian Forest Act, the Conservator of Forests may authorize the payment of a reward under these rules not exceeding the amount of the compensation accepted.

The Forest Manual was revised in 1937 and the reward money fixed at that time, has not been revised as yet. Government of Madhya Pradesh vide order No. F/3/4997/10.02/86 dated 04.10.1986 has fixed the maximum limit of reward in Wild Life cases, as Rs. 500.00. Proposals for increasing the reward money to Rs. 20,000.00 are under consideration of the State Government.

However there are better provisions in section 60 A(1) of the Wild Life Protection Act which reads as under –

60 (A) Reward to Persons:-

(1) When a court imposes a sentence of fine or a sentence of which fine forms a part, the court may when passing judgment order that the reward be paid to a person who renders assistance in the detection of the offence or the apprehension of the offenders out of the proceeds of fine not exceeding [Fifty percent of such fine].

The relevant provisions should be brought to the notice of the court and for grant of reward, the proposal should be submitted while submitting the case and it has to be included in the prayer. On grant of the reward, necessary funds are provided by head office.

Section 60 (B) of the Wild Life (Protection) Act provides as under –

60 (B) Reward by State Government:-

The State Government may empower the Chief Wild Life Warden to order payment of reward not exceeding Ten Thousand Rupees to be paid to a person who renders assistance in the detection of the offence or the apprehension of the offender, from such fund and in such manner as may be prescribed.

Thus a reward up to Rs. 10,000.00 can be sanctioned by Chief Wild Life Warden in each case. Hence in wild life offence where role of the informer has been significant, necessary proposal should be submitted to Chief Wild Life Warden giving all the details. Such proposals can be sent after submitting the chalan in the court. It will not be necessary to wait for the verdict of the court.

Hence it is evident that by actions as above, the informer can be rewarded suitably and it will help in expanding the information net-work.

9. SPECIAL PROVISIONS FOR REMOVING THE ENCROACHMENT IN PROTECTED AREAS

Generally in the offence under Wild Life (Protection) Act 1972, the cases are registered and after enquiry are chalaned in the court. But considering an encroachment in National Park and sanctuaries as a grave offence, forest officers have been vested with special powers to remove encroachment and to forfeit the articles, appliance, instruments etc used for encroachment.

This provision has been specially provided because if encroachment in protected areas is not removed immediately, it can cause severe damage to wild life habitat. As the court proceedings are time-consuming, and if the encroachment is allowed till the court order, it will result in irreparable damage to wild life habitat. For example if a cattle camp in National Park is not removed immediately and court orders are awaited, then by the time of court order, this cattle camp would have destroyed large area. Hence for such eventualities and for its immediate remedial action, provisions are contained in section. 34 A of the Act as under –

34 A. Power to Remove Encroachment:-

- (1)** Notwithstanding anything contained in any other law for the time being in force, any officer not below the rank of an Assistant Conservator of Forests may -
 - (a)** evict any person from a sanctuary of National Park, who unauthorizedly occupies Government land in contravention of the provisions of this Act;
 - (b)** Remove any unauthorized structures, building, or constructions erected on any Government land within any sanctuary or National Park and all the things, tools and effects belonging to such person shall be confiscated by an order of an officer not below the rank of the Deputy Conservator of Forests;Provided that no such order shall be passed unless the affected person is given an opportunity of being heard.
- (2)** The provision of this section shall apply notwithstanding any other penalty which may be inflicted for violation of any other provision of this Act.

The provisions of this section makes it clear that if in National Park or sanctuary some encroachment, cattle camp etc are found, then the competent forest officer after giving due notice and hearing/considering their reply, can order eviction and forfeit the article/appliances used for encroachment and simultaneously can submit case before the

court . In fact eviction of encroachment is no punishment, The offence should also be registered against the encroacher under section 29 and 35 (6) of the Wild Life (Protection) Act for destroying the habitat and also under other relevant sections and should be prosecuted in the court. An imprisonment in this regard will act as a deterrent for the encroachers and persons intending to encroach.

If any encroachment (hutment, cattle camp, cultivation etc.) or the attempt for encroachment is found, action should be initiated as under –

- (i) While registering the offence of encroachment, in the POR, the relevant section of Indian Forest Act and Wild Life (Protection) Act should be mentioned with specific mention of section 29 and 35 (c) of the Wild Life (Protection) Act. Then the enquiry into the case will be conducted by the forest officer authorized under section 72 of Indian Forest Act. i.e. the concerned Range Assistant or by an officer authorized by the Divisional Forest Officer.
- (ii) It has to be kept in mind that in POR, along with the mention of section of Wild Life (Protection) Act, mention of relevant sections of Indian Forest Act is a must.
- (iii) After enquiry, the case will be submitted through the Range Officer to the concerned Sub- Divisional Forest Officer / Supdt. National Park or sanctuary or to any officer of the rank of Assistant Conservator of Forests posted in National Park or sanctuary²²
- (iv) Section 34 (A) sub-section 9 (a) and (b) of the Wild Life (Protection) Act empower any officer not below the rank of Assistant Conservator of forests to evict the encroacher and to remove any unauthorized structures. For any such action, prior notice is to be given, he should be heard and all the relevant instructions and precautions for removal of encroachment should be followed.
- (v) Along with these action, the Assistant Conservator of forest will send detailed and complete report to the Divisional Forest Officer / Director National Park along with the list of articles, appliance etc. used for encroachment and liable for confiscation.
- (vi) Divisional Forest Officer / Director after giving the encroacher a chance to be heard, can pass an order under the powers vested by section 34 A. 1(b) for forfeiture of the articles used in encroachment.

Section 34 (A) sub-section 2 of the Act provides that eviction of the encroacher and forfeiture, will have no effect on imposition of any other penalty prescribed under the Act. This clearly signifies that after eviction and forfeiture, the encroacher can as well be prosecuted in the court for offences under section 29 and 35 (6) of the Wild Life (Protection) Act.

