

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CRM(M) No. 52/2023

Reserved on: 20.12.2023

Pronounced on 22.12.2023

Bashir Ahmad Khan and others

..... petitioner (s)

Through :- Mr. Ayjaz Lone Advocate.

V/s

UT of Ladakh and another

.....Respondent(s)

Through :- . Mr. Rohan Nanda CGSC.

Coram: HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

1 In the instant petition, the petitioners seek quashment of FIR No.207/2022 dated 21.12.2022 registered with Police Station, Leh Ladakh against the petitioners for commission of offences punishable under Sections 9/51 of the Wildlife Protection Act, 1972 ('Act of 1972' for short).

Factual Matrix:

2 On 21st December, 2022, the Police Station, Leh Ladakh received an information through reliable sources that some unknown persons with the criminal intention entered into the area of Thiksay village with an intention of hunting the animals. The action of unknown persons has attracted the offences under Sections 9/51 Wildlife Protection Act, as such, instant FIR came to be registered against unknown persons in Police Station, Leh and investigation was initiated. During the course of investigation, the Investigating Officer visited the place of occurrence, took the photography, examined the place of

occurrence and searched thereof. The concerned police issued notice under Section 91 CrPC to the Wildlife Chief Warden as it was learnt that the Wild life Department was conducting an enquiry into the matter on its own and all the evidence, materials, documents or other weapon of offence were seized and since such evidences are required for the purpose of investigation as such, Notice under Section 160 CrP.C was also served upon the Wild Life Chief Warden for appearance of witnesses who were present at the time of occurrence. During the further course of investigation, the I.O has recorded the statements of witnesses. It has been established that the petitioners herein were staying in an isolated house of Sonam Dorje away from the village Thiksay. It has also been established that the above mentioned persons were found having suspicious movement in Arzoo village where the occurrence took place. On this, the I.O has issued notice under Section 41A of CrPC to the suspects for their appearance into the matter. From them, the I.O has seized vehicle i.e Gypsy bearing Registration No. JK10A 9669, XUV bearing registration No. HR 26 BR 5467, Gun bearing No. 308 WIN 781-90685-MAKE RUGER-KM77-MARK II along with cartridges and licence which was used for the commission of offence as a piece of evidence.

3 The petitioners seek quashment of impugned FIR on the sole ground that the respondents have no jurisdiction to lodge FIR for offences under the Act of 1972. It is submitted that under Section 55 of the Act of 1972, the Court can take cognizance of the offences under the said Act only on the complaint of the officers mentioned in Section 55 of the Act of 1972. It is contended that the allegations even if taken on their face value do not constitute any offence much less the offences under Section 9/51 of the Act of 1972 especially when there is no mention in the impugned FIR about killing of

an animal. The petitioners in support of their contention that the FIR cannot be lodged in light of Section 55 of the Act of 1972 has relied upon a judgment of Uttarakhand High Court rendered in a case titled **Suraj Singh and another vs. State of Uttarkhand and another** (Cr. Misc. Application No. 428 of 2014, decided on 07.07.2020 and a judgment of Karnatka High Court rendered in a case titled **State by Rural Police vs Ramakrishna Reddy and others** (Criminal Appeal No. 2313/2006, decided on 29.05.2012)

4 *Per contra*, respondents in their response have contended that it has been established that the petitioners herein were involved in the alleged crime, therefore, impugned FIR came to be registered against them. Learned counsel for the respondents Mr. Rohan Nanda, CGSC has submitted that the cognizance of an offence under the Act of 1972 can be taken by a Court on the basis of complaint lodged by any of the police officers. In support of his submission, he has relied upon a judgment of Bombay High Court rendered in a case titled **Wahinduzzaman Mohammad Yaseen and others vs. State of Maharashtra and others**, (Cr. Writ Petition No. 242 of 2019, decided on 30.06.2021. In order to strengthen his case, he has also produced a copy of advisory issued by the Government of India on the basis of findings rendered by the Apex Court in a case titled **Moti Lal vs. Central Bureau of Investigation and others**, (Appeal (Crl) No. 476 of 2002 decided on 09.04.2002

5 Upon hearing learned counsel appearing for the parties and perusal of the record, the question that arises for consideration is as under:

Whether the police is competent to lodge FIR for offence under the Act of 1972 and to investigate the case ?

6 For appreciating the contentions raised by the parties, it would be appropriate to refer to relevant Sections of the Act of 1972 which read as under: -

“50. Power of entry, search, arrest and detention:—

(1) Notwithstanding anything contained in any other law for the time being in force, the Director or any other officer authorised by him in this behalf or the Chief Wild Life Warden or the authorised officer or any forest officer or any police officer not below the rank of a sub-inspector, may, if he has reasonable grounds for believing that any person has committed an offence against this Act,—

(a) require any such person to produce for inspection any captive animal, wild animal, animal article, meat, 1[trophy, uncured trophy, specified plant or part or derivative thereof] in his control, custody or possession, or any licence, permit or other document granted to him or required to be kept by him under the provisions of this Act;

(b) stop any vehicle or vessel in order to conduct search or inquiry or enter upon and search any premises, land, vehicle or vessel, in the occupation of such person, and open and search any baggage or other things in his possession;

(c) seize any captive animal, wild animal, animal article, meat, trophy or uncured trophy, or any specified plant or part or derivative thereof, in respect of which an offence against this Act appears to have been committed, in the possession of any person together with any trap, tool, vehicle, vessel or weapon used for committing any such offence and, unless he is satisfied that such person will appear and answer any charge which may be preferred against him, arrest him without warrant, and detain him;

Provided that where a fisherman residing within ten kilometres of a sanctuary or National Park, inadvertently enters on a boat, not used for commercial fishing, in the territorial waters in that sanctuary or National Park, a fishing tackle or net on such boat shall not be seized

(2)xxxxxx

(3) It shall be lawful for any of the officers referred to in sub-section (1) to stop and detain any person, whom he sees doing any act for which a licence or permit is required under the provisions

of this Act, for the purposes of requiring such person to produce the licence or permit and if such person fails to produce the licence or permit, as the case may be, he may be arrested without warrant, unless he furnishes his name and address, and otherwise satisfies the officer arresting him that he will duly answer any summons or other proceedings which may be taken against him.

(3-A) Any officer of a rank not inferior to that of an Assistant Director of Wild Life Preservation or 5[an Assistant Conservator of Forests], who, or whose subordinate, has seized any captive animal or wild animal under clause (c) of sub-section (1) may give the same for custody on the execution by any person of a bond for the production of such animal if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

(4) Any person detained, or things seized under the foregoing power, shall forthwith be taken before a Magistrate to be dealt with according to law 6[under intimation to the Chief Wild Life Warden or the officer authorised by him in this regard.

(5) Any person who, without reasonable cause, fails to produce anything, which he is required to produce under this section, shall be guilty of an offence against this Act.

(6) Where any meat, uncured trophy, specified plant or part of derivative thereof is seized under the provisions of this section, the Assistant Director of Wild Life Preservation or any other officer of a gazetted rank authorised by him in this behalf or the Chief Wild Life Warden or the authorised officer may arrange for the disposal of the same in such manner as may be prescribed.

(7) Whenever any person is approached by any of the officers referred to in sub-section (1) for assistance in the prevention or detection of an offence against this Act, or in apprehending persons charged with the violation of this Act, or for seizure in accordance with clause (c) of sub-section (1), it shall be the duty of such person or persons to render such assistance.

(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 9[an officer not below the rank of Assistant Conservator of Forests authorised by the State Government in this behalf] shall have the powers, for purposes of making investigation into any offence against any provision of this Act,—

(a) to issue a search warrant;

(b) to enforce the attendance of witnesses;

(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 the presence of the accused person.

55. Cognizance of offences.- No court shall take cognizance of any offence against this Act except on the complaint of any person other than-

(a) the Director of Wild Life Preservation or any other officer authorised in this behalf by the Central Government, or

(aa) Member Secretary, Central Zoo authority in matters relating to violation of the provisions of Chapter IVA or]

(ab) Member-Secretary, Tiger Conservation Authority; or

(ac) Director of the concerned tiger reserve; or]

(b) the Chief Wild Life Warden, or any other officer authorised in, this behalf by the State Government [subject to such conditions as may be specified by that Government; or]

(bb) the officer incharge of the Zoo in respect of violation of provisions of Section 38J; or]

(c) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Central Government or the State Government or the officer authorised as aforesaid.

7 From a close perusal of the sub-section (1) of [Section 50](#), it is apparent that under the [Wild Life Act](#), the Director or any other officer authorised by him in this behalf or the Chief Wild Life Warden or the authorised officer or any Forest Officer are empowered to exercise the powers mentioned in sub-clauses (a), (b) and (c). Not only this, the aforesaid provision specifically empowers the Police Officer not below the rank of sub-inspector to

inspect, conduct search or hold inquiry or seize articles, as provided in clauses (a), (b) and (c) which means that the Police Officers are not excluded from investigating the offences under the Act. Sub-section (1) starts with a non-obstante clause that 'notwithstanding anything contained in any other law for the time being in force' which would include [the Code](#) of Criminal Procedure and the Officers mentioned therein are also entitled to inspect, search or seize the articles mentioned in clauses (a), (b) and (c).

8 From the above, it is clear that apart from the Police Officers not below the rank of Sub- Inspector, other officers as mentioned above are given special powers for the purpose of prevention and detection of the offence under the Act. Similarly, sub-section (8) of section 50 of the Act of 1972 empowers the officer not below the rank of an Assistant Director of Wild Life Preservation or Wild Life Warden for the purposes of making investigation into any offence against any provision of the Act to issue search warrant; to enforce the attendance of witnesses; to compel the discovery and production of documents and material objects; and to receive and record evidence. Further, sub-section (9) provides that evidence recorded by such officer would be admissible in the trial if it is taken in presence of the accused person. But this would have no bearing on the question whether the Police Officers are entitled to investigate the case or not.

9 As provided under sub-section (1) of [Section 50](#), 'police officers' are not excluded for the purpose of investigation including inspection, search and seizure of the offending articles. No doubt, special powers are conferred to other officers but that is in consonance with sub-section (2) of [Section 4](#) of Code of Criminal Procedure. [Section 4](#) of Cr.PC reads thus:

"4. Trial of offences under [the Indian Penal Code](#) and other laws.(1) All offences under [the Indian Penal Code](#) (45 of 1860) shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

10 The aforesaid section, *inter alia*, specifically provides that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to [the Code](#) of Criminal Procedure but it shall be subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences. In view of specific provision under the [Wild Life Act](#), apart from the police officer not below the rank of sub-inspector, the Director or any other officer authorised by him in this behalf or the Chief Wild Life Warden or authorised officer or any Forest officer can inspect, conduct search or inquire, seize article mentioned in the clauses (a), (b) and (c) of sub-section (1). To this extent, there is contrary provision under the [Wild Life Act](#) and would prevail as provided under sub-section (2) of [Section 4](#) of Code of Criminal Procedure.

11 The Apex Court in a case titled **Moti Lal vs CBI and another; (2002) 4 SCC 713** has held as under:

“The scheme of [Section 50](#) of the Wild Life Act makes it abundantly clear that Police Officer is also empowered to investigate the offences and search and seize the offending articles. For trial of offences, Code of Criminal Procedure is required to be followed and for that there is no other specific provision to the contrary. Special procedure prescribed is limited for taking cognizance of the offence as well as powers are given to other officers mentioned in [Section 50](#) for inspection, arrest, search and seizure as well of recording statement”.

12` The Apex Court in the aforesaid case has clearly held that Section 50 of the Act of 1972 is not a complete code and for trial of offences, Code of Criminal Procedure is required to be followed. The same would mean that the police officer not below the rank of Sub Inspector can investigate the offences punishable under the Act of 1972.

13 Apart from the above, the Bombay High Court in a case titled **Wahiduzzaman Mohammad Yaseen and others vs. State of Maharashtra and others** (Cr. Writ Petition No. 242/2019, decided on 30.06.2021) relying upon the judgment of Apex Court in **Moti Lal vs. CBI and another, (2002) 4 SCC 713** has held that cognizance of an offence against the Act of 1972 can even be taken by a Court on the basis of complaint lodged by any of the police officers authorised for the purpose of Section 55 of the Act. Besides, the notification dated 10.10.2014 issued by the Government of India on the basis of findings rendered by the Apex Court in **Moti Lal's** case (supra), relied upon by Mr. Nanda learned CGSC, reveals about the correct position with regard to the powers of the police officers to investigate wildlife offences. Relevant extract of the said notification reads thus:

“Similarly, sub section (8) empowers the officer not below the rank of an Assistant Director of Wild Life Preservation or Wild Life Warden for the purposes of making investigation into any offence against any provision of the Act: to issue search warrant; to enforce the attendance of witnesses; to compel the discovery and production of documents and material objects; and to receive and record evidence. Further sub section (9) provides that evidence recorded by such officer would be admissible in the trial if it is taken in presence of the accused person. But this would have no bearing on the question whether the police officers are entitled to investigate the case or no. As provided under sub section (1) of Section 50, ‘police officers’ are not excluded for the purpose of investigation including inspection, search and seizure of the offending articles. No doubt, special powers are conferred

to other officers but that is in consonance with sub section (2) of Section 4 of Cr.PC.”

14 It is relevant to mention here that the judgments of Single Bench cited by learned counsel for the petitioners on the aforesaid point is of no help in view of the Supreme Court decision rendered in Moti Lal’s case (supra).

15 In view of the foregoing discussion based on the case law enunciating the correct proposition of law, the police officer is also empowered to investigate the offences under the Act of 1972. Accordingly, instant petition is dismissed. The interim directions dated 25.01.2023 shall stand vacated.

Jammu
22.12.2023
Sanjeev



Whether order is reportable: Yes/No