

GAHC040006472023

2024:GAU-AP:1023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Petn./88/2023

Mapikam Tega
Son of Sri JingliangTega,
a Permanent Resident of Chaklagam, District Anjaw, AP. and present address New
Court Road, Hijuguri, PS and District. Tinsukia, Assam.

VERSUS

THE STATE OF AP and 2 Ors.
Represented by its Public Prosecutor.

2:Drone Linggi
Age: 0
Occupation :
(President) (AIMSU)
Add Roing
Dist. Lower Dibang Valley
AP

3:Chonga Linggi
Age: 0
Occupation :
(General Secretay)
(AIMSU)
Add Roing
Dist. Lower DIBang Valley
Arunachal Pradesh

Advocate for the Petitioner : M K Singh,

Advocate for the Respondent : L. Hage, P P of AP,

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

JUDGMENT

Date : 20.11.2024

Heard Ms. M. K. Singh, learned counsel for the petitioner. Also heard Ms. L. Hage, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 482 of the Cr.P.C, 1973, is filed by the petitioner praying for quashing of the FIR, registered as Anini P.S Case No. 04/2023, under Sections 9/39/51(C) of Wild Life (Protection) Act, 1972, against the petitioner.

3. The case, in brief, is that a written FIR has been lodged against the petitioner before the Officer-in Charge, Roing, Police Station, by one Er. Drone Linggi and Shri Chonga Linggi, the President and General Secretary of All Idu Mishmi Student's Union (AIMSU) on 07.03.2012, *inter alia*, alleging that Shri Mapikam Tega (petitioner herein), and his accomplice Md. Jakir Hussain are partners and hunters by profession, engaged in hunting and killing of Kasturi (Musk Deer), Tiger and Elephant for many years. During the raid, Shri Mapikam Tega had jumped from the vehicle and escaped the arrest, thereafter, he has lodged an FIR in Tezu, Police Station, stating that his vehicle bearing registration No. AS-23 V2160 was stolen, whereas, as per the information, it is his second hand personal car and just to mislead the police department, the said FIR has been lodged by the accused. He had also threatened his accomplice to keep mum promising that he would get him out of the jail. Accordingly, a zero FIR

was registered at Roing P.S vide Roing P.S Case No. 00/2023, under Sections 9/39/51(C) of Wild Life (Protection) Act, 1972, on 09.03.2023 at 1700 hrs. and forwarded to Anini Police Station. On receipt of zero FIR, the case has been converted into regular case vide Anini P.S Case No. 04/2023, Under Sections 9/39/51(C) of Wild Life (Protection) Act, 1972.

4. It is contended that the complaint under Section 55 of Wild Life (Protection) Act, 1972, has also been lodged before the Sub-Divisional-Judicial Magistrate, Sadiya, Chapakhowa, Assam on 25.02.2023, by one Shri Churamoni Gajurel, Forest Range Officer, Sadiya Range Chapakhowa, which is extracted as under:

“With due respect I have the honour to report before you that 1(one) accused person named Md. Jakir Hussain, S/o Md. Abdul Goni, Vill-Hogun Toli P.O-Datiyal Bori P.S Lahorighat Dist. Nagoan was arrested at around 4:00 PM on 24/02/2023 at Mahababu Dhaba near Dholla Sadiya bridge under provision of Section 50 of W.P.A, 1972 and authorized to complain U/S 55 of the said Act. The accused was arrested in connection with an wild life offence i.e., trading of a full grown adult Royal Bengal Tiger skin, bones of the tiger viz. Rebs, spines, legs, Paws, thigh and the full skull with canines which is violation of W.P.A 1972 U/S 9,49(B), 52 and R/W Section 39, punishable U/S 57 (1-C) of W.P.A 1972 R/With the above directions and observations, this writ petition stands disposed of. Section WRIT PETITION Assam Amendment 2009. A case has been registered against the arrested accused is ORM- SD/15 of 2022-23 dated 24/02/2023.

5. The aforesaid complaint was in pursuance to the Preliminary Offence Report and forwarding of accused against Offence report No. SD/15 of 2022-2023 dated 24.02.2023. In the said case, one accused person, namely, Md. Jakir Hussain, was arrested under Section 9/49(B)/52 punishable under Section 51(1-C) of Wildlife (Protection) Act, 1972, read with Wildlife Protection (Assam Amendment) Act, 2009.

6. The petitioner has filed an application under Section 438 of the Cr.P.C for grant of pre-arrest bail in Anini P.S Case No. 04/2023, Under Sections 9/39/51(C) of Wild Life (Protection) Act, 1972, however, same has been rejected vide order 04.04.2023, by the learned Sessions Judge, Tezu, on the ground that Tiger carcasses were found in the vehicle of the accused and prima facie puts the accused responsible for such possession in connection with Anini P.S. Case No. 04/2023 under Sections 4/39/51(C) of Wildlife (Protection) Act, 1972. In C.R. (Forest) Case No. 02/2023 under Section 51(1-C) of Wildlife (Protection) Act, 1972, the Additional Sessions Judge, Tinsukia, has granted interim pre-arrest bail to the petitioner on 28.03.2023.

7. Mr. M. K. Singh, learned counsel for the petitioner submits that both Anini P.S Case No. 04/2023 and C.R. (Forest) Case No. 02/2023, are arising out of same incident in respect of same nature of offences. Therefore, it is not permissible to file a second FIR on the same facts and incident. He further submits that the impugned FIR being Anini P.S Case No. 04/2023, is filed by a person who is not authorised under Wildlife (Protection) Act, 1972, as Section

55 of the said act provides the authorities who can file a complaint before the appropriate Court for offence under the provisions of the said act. Therefore, he submits that the second FIR being Anini P.S Case No. 04/2023, is not maintainable, not only in view of the settled position of law that no second FIR can be filed but also the FIR being filed by an unauthorised persons.

8. Per contra, Ms. L. Hage, learned Additional Public Prosecutor submits that although the persons who has filed an FIR may not be an authorized persons but the offences alleged to have committed are in respect of different places having different jurisdictions and the allegations are of poaching and hunting of wildlife animals and the complaint in C.R. (Forest) Case No. 02/2023, is in respect of seizure of full grown adult Royal Bengal Tiger skin, bones of the tiger viz Ribs, Spines, Legs, Paws, thigh and the full skull with canines in the State of Assam, therefore, except for negligible aberration, the petitioner has committed an offence, therefore, in the strict sense, it cannot be said to be a second FIR, as the same are of different nature of offences in different places having different jurisdiction. Therefore, Anini P.S Case No. 04/2023, Under Sections 9/39/51(C) of Wild Life (Protection) Act, 1972, is not liable to be quashed.

9. I have considered the submissions of the learned counsel for the parties and also perused the materials on record.

10. On consideration of the complaint dated 25.02.2023, filed under Section 55 of Wildlife (Protection) Act, 1972, by the Range Forest Officer, Sadiya Rang Chapakhowa, Assam, it reflects that one Md. Jakir Hussain was arrested around 4:00 PM on 24.02.2023 at Mahababu Dhaba near Dholla Sadiya bridge. The said

accused was arrested in connection with an offence of trading of a full grown adult Royal Bengal Tiger skin, bones of the tiger viz Ribs, Spines, Legs, Paws, thigh and the full skull with canines under Sections 9/49(B)/52/39 punishable under Section 57(1-C) of Wildlife (Protection) Act, 1972, read with Wildlife (Protection) (Assam Amendment) Act 2009. It further reveals from the record that the petitioner is also an accused in the said complaint case which is pending before the competent Judicial Magistrate, Sadiya, Chapakhowa in the State of Assam.

11. The impugned FIR dated 07.03.2012, was filed by the president and the General Secretary of the All Idu Mishmi Students' Union (AIMSU) of Lower Dibang Valley District Roing, Arunachal Pradesh alleging that the petitioner and his accomplice Md. Jakir Hussain are partners and hunters by profession, engaged in hunting and killing of Kasturi (Musk Deer), tiger and elephant. When the raid was laid the petitioner had jumped out from the vehicle and escaped the arrest, thereafter, the petitioner/accused lodged an FIR at Tezu Police Station, stating that his vehicle bearing registration No. AS-23 V2160 was stolen, which, as per the information, is his second hand personal car and the same has been made to mislead the police. It also alleged that the petitioner and his accomplice has malign the image of the Idu Mishmi society at large and the media houses and the officials have tried to gain mileage and propaganda out of criminal act of the petitioner in twin districts of Dibang Valley and Lower Dibang Valley. It also stated that the Idu Mishmi Community regards Tiger as brother having born out of same mother as per their mythology with scientific researchers proving that the Idu Mishmi Community to have co-existed with the mother nature and its inhabitants. The Tigers are considered to be brothers of

the Idu Mishmi Community as per the mythology and therefore, there is no question of poaching by the community people in general for whatever reasons as the same is against the rituals of the culture and tradition of the Idu Mishmi Community.

12. Having considered both the complaint dated 25.02.2023, filed by the Range Forest Officer in the State of Assam on seizure of full grown adult Royal Bengal Tiger skin, bones of the tiger viz Ribs, Spines, Legs, Paws, thigh and the full skull with canines and the impugned FIR being Anini P.S. Case No. 04/2023, this Court is of the view that same does not qualify the test of sameness as both the complaint and the FIR does not relates to the same incident in respect of the same occurrence or are in regard to the same incident although appears to be somewhat connected to each other. This Court finds that the version in the impugned FIR is different as the same are in respect of 2(two) different incidents particularly to the poaching of tigers and other animals. The complaint dated 25.02.2023, filed by the Rang Forest Officer in the State of Assam, is pending before the appropriate Court, having different version, although the petitioner is also an accused. The investigation of the impugned FIR is required to be conducted as the version in the impugned FIR is different in respect of different crimes although it appears to be somewhat connected to and the complaint in C.R. (Forest) Case No. 02/2023.

13. Having regard to the submission made by the learned counsel for the petitioner that the impugned FIR has been filed by the persons who are not authorized under Section 55 of Wildlife (Protection) Act, 1972, this Court is in agreement with such submission, as admittedly under Section 55 of Wildlife

(Protection) Act, 1972, certain designated authorities have been authorized to lodge a complaint, as it provides that no court shall take cognizance of any offence against act 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). the 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 (ad). the Management Authority or any officer, including an officer of the Wild Life Crime Control Bureau, authorised in this behalf by the Central Government; 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-in-charge 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. However, considering that the offence alleged to have committed is against the wildlife which is to be protected and preserved under law, I am of the view that a proper investigation is required to be made in accordance with law.

14. Regard being had to the filing of second FIR, it would be apposite to refer to the law laid down by the Hon'ble Supreme Court. In the case of **T. T. Antony vs. State of Kerala & Ors.** reported in **(2001) 6 SCC 181**, the Hon'ble Supreme Court has held that there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence and same occurrence giving rise to one or more cognizable

offences.

15. In the case of **Shivshankar Singh vs. State of Bihar & Anr**, reported in **(2012) 1 SCC 130**, the Hon'ble Supreme Court has observed that the law does not prohibits registration and investigation of two FIRs in respect of the same incident in case the versions are different. The tests of sameness has to be applied, otherwise, there would not be cross cases and counter cases. Thus, filing another FIR in respect of the same incident having different version of events is permissible.

16. In the case of **Babubhai vs. State of Gujarat** reported in **(2010) 12 SCC 254**, the Hon'ble Supreme Court has held which is quoted herein under:

“20. Thus, in view of the above, the law on the subject emerges to the effect that an FIR under Section 154 Cr.P.C. is a very important document. It is the first information of a cognizable offence recorded by the Officer In-Charge of the Police Station. It sets the machinery of criminal law in motion and marks the commencement of the investigation which ends with the formation of an opinion under Section 169 or 170 Cr.P.C., as the case may be, and forwarding of a police report under Section 173 Cr.P.C. Thus, it is quite possible that more than one piece of information be given to the Police Officer In-charge of the Police Station in respect of the same incident involving one or more than one cognizable offences. In such a case, he need not enter each piece of information in the Diary. All other information given orally or in writing after the commencement of the investigation into the facts mentioned in the First Information Report will

be statements falling under Section 162 Cr.P.C.

21. In such a case the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is affirmative, the second FIR is liable to be quashed. However, in case, the contrary is proved, where the version in the second FIR is different and they are in respect of the two different incidents/crimes, the second FIR is permissible. In case in respect of the same incident the accused in the first FIR comes forward with a different version or counter claim, investigation on both the FIRs has to be conducted."

17. Reverting back to the present case, as noted hereinabove, the impugned FIR being Anini P.S. Case No. 04/2023, pending investigation before Anini Police Station at Dibang Valley District in the State of Arunachal Pradesh and the complaint case pending before the competent Court at Sadiya, Chapakhowa, filed by the Range Officer in the State of Assam are different and they are in respect of the two different incidents or crimes, which fails the test of sameness although both appears to be somewhat connected. Thus, I am of the view that the impugned FIR being Anini P.S. Case No. 04/2023, would be permissible, therefore, same cannot be quashed merely on the ground that the accused are same and the matter are somewhat connected. Not only the allegation and the version of both the impugned FIR and the complaint case are not same or out of same transaction as the impugned FIR relates to poaching of Wildlife and the complaint case pending in the State of Assam relates to seizure of trading of a

full grown adult Royal Bengal Tiger skin, bones of the tiger viz Ribs, Spines, Legs, Paws, thigh and the full skull with canines but also the case filed against are in 2(two) States having different jurisdictions. As noticed above, the impugned FIR has been filed by the President and the General Secretary of All Idu Mishmi Student's Union (AIMSU), which may not be the designated and authorized persons to make any complaint. However, that would not preclude the investigating authority to conduct the enquiry as to the poaching of the wildlife in the State.

18. Having viewed above, this Court is of the considered opinion that merely because of the FIR being filed by an unauthorized persons under the Act, same would not be a ground for quashing of the impugned FIR as the same alleges offence of poaching of wildlife in the State which needs to be curbed and wildlife has to be protected and preserved under any circumstances in accordance with law.

19. In view of the above, this Court finds no ground to quash the impugned FIR registered as Anini P.S. Case No. 04/2023 under Sections 4/39/51(C) of Wildlife (Protection) Act, 1972.

20. Accordingly, the present criminal petition is hereby rejected and dismissed. The authorities including the Investigating Authority are directed to proceed with the case in accordance with law.

JUDGE

Comparing Assistant