

GAHC010082422023



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

Case No. : Crl.Pet./376/2023

TAOI TANIANG AND ANR
S/O LATE TAI TAJUK
R/O ANYA VILLAGE, NIRJULI
P.O. AND P.S. NIRJULI
DIST PAPUM PARE,
ARUNACHAL PRADESH, PIN-791109

2: SHRI TAI DIPUK
S/O LATE TAI TAPUK
R/O 5/1 BANDERDEWA
P.O.AND P.S. BANDERDEWA
DIST. PAPUMPARE
ARUNACHAL PRADESH
PIN-79112

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:FOREST RANGE OFFICER

R/O HARMUTTY RANGE

HARMUTTY
P.S. BIHPURIA
P.O. HARMUTTY
DIST. LAKHIMPUR

PIN-78416

Advocate for the Petitioner : MR N N UPADHYAYA

Advocate for the Respondent : PP, ASSAM

B E F O R E
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

21.03.2024

Heard Mr. N.N. Upadhyaya, learned counsel for the petitioners. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor, for the State respondent.

2. The petitioners being aggrieved by the FIR dated 15.05.2018 filed by the complainant, which is received and registered as Bihpuria P.S. Case No. 262/2018, under Section 56 of the Wild Life Protection Act, 1972, R/w Section 27 (2) of the Arms Act, 1959 (corresponding to G.R. Case No. 1159/2018), being Charge-sheet No. 209/2020 dated 31.07.2020 has preferred this criminal petition for setting aside and quashing the said FIR and charge-sheet.

3. The case of the prosecution is that the jurisdictional Forest Officer lodged an FIR on 15.05.2018, alleging inter-alia that on 15.05.2018 at about 5.20 P.M. two persons mentioned in the FIR were apprehended as caught red handed at the time of hunting wild dove and myna bird using their 0.22 born rifle along with their used I20 vehicle at Pathalipahar. It is the further case of the prosecution that two bullets were recovered at the spot and accordingly, a case has been registered. The FIR dated 16.05.2018, is reproduced hereunder for ready reference:-

“To,

*The Officer-In - Charge,
Bihpuria Police Station.
Bihpuria*

Dated: 16-5-18

Subject :F.I.R

Sir,

With reference to the subject as mentioned above, I have to inform you that, on 15-05-2018, at about 5.30 pm, two person of below mentioned name and address are apprehended as caught red handed at the time of hunting wild dove & Myna bird using their 0.22 bore rifle along with their used 120 vehicle at Pathalipahar area. As because, the said rifle having No. 163101990 with scope and two bullets are able to detect at the spot, hence, I would like to hand over the same to book case in Arms Act against the person. In this connection, they have Injured two local in trying to escape which is hereby informed for your further investigation.

The name of the persons:

1. Sri Tay Taniang, Age 31 yrs

S/o Late Tay Tayuk

Vill: Rik Pobey, P.O & P.S: Sangram

Dist: Kurung Kumey, A.P

2. Sri Tai Dipuk, Age 31 Yrs

S/o: Late Tai Tapak

Vill: Rik Pobey, P.O & P.S: Sangram

Dist: Kurung Kumey, A.P

*The seizure list is hereby produce before for onward seize of arms & Ammunition with.
This is for favour of your kind information and necessary action.*

*Yours Faithfully,
Sd/- Illegible
(P. Katoky, APS, FR)
Forest Range Officer,
Harmutty Range, Harmutty."*

4. Upon receiving the aforesaid FIR, Bihpuria P.S. Case No. 262/2018 was registered under Section 56 Wild Life (Protection) Act, 1972, R/w Section 279/337 IPC and R/w Section 27(3) Arms Act.
5. Upon completion of investigation, charge-sheet vide C.S. No. 209/2020 dated 31.07.2020 was submitted.
6. Mr. N.N. Upadhyaya, learned counsel for the petitioner submits that no case under the Wild Life (Protection) Act, 1972 has been made out in the body of the FIR, inasmuch as the Bird alleged to have killed is not a specified bird under the schedule I, II, III, IV of the Wild Life (Protection) Act, 1972. He further submits that the prohibition of hunting stipulated in Section-9 of the said Act is in reference to the wild animal specified in the aforesaid scheduled. He further submits that no ingredients of any offence under the provisions of the Arms Act, 1959 also is made out in the body of the FIR, as the petitioners were having valid arms license and all the relevant necessary documents.
7. In support of the aforesaid submissions, he relies upon Section-27 and Section-5 of the Arms Act, 1959.
8. He further submits that the post-mortem report of the two birds does not indicate any injury by use of arms rifle and as such, no offences under Section 279/337 of IPC is also made out.
9. Mr. P. Borthakur, learned Addl. P.P. for the State respondents on the other hand strongly opposes the petition for quashing the subject FIR and charge-

sheet. He submits that the reading of the FIR itself manifestly shows that the allegations made therein constitutes an offence under the provisions of the Wild Life (Protection) Act, 1972, IPC and the Arms Act.

10. I have heard the submissions at the Bar and I have perused the materials available on record.

11. The parameters of this Court in exercise of the inherent power under Section 482 Cr.P.C for quashing an FIR is well settled. Reference is made to the case of State of Haryana & Ors Vs. Bhajan Lal & Ors. reported in 1992 Supp(I) SCC 335, wherein, the Apex Court has laid down the following principles:-

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the

accused and with a view to spite him due to private and personal grudge."

12. In the present case what transpires from the averments made in the FIR is that the petitioners were apprehended at the time of hunting wild dove and myna bird by using their rifle. It further appears that the two bullets were detected at the spot. The aforesaid allegation if taken on the face value to be true, an offence under the provision of the Wild Life (Protection) Act, 1972 prima facie is made out. Section-9 of the Wild Life (Protection) Act, 1972 is reproduced herein below for ready reference:-

[9. Prohibition of Hunting.- No person shall hunt any wild animal specified in Schedules, I,II,III and IV except as provided under Section 11 and Section 12.]

Section-51 of the said Act is also reproduced here for ready reference:-

51. Penalties. (1) Any person who [contravenes any provision of this Act (except Chapter VA and section 38J)] or any rule or order made thereunder or who commits a breach of any of the conditions of any licence or permit granted under this Act, shall be guilty of an offence against this Act, and shall, on conviction, be punishable with imprisonment for a term which may extend to three years) or with fine which may extend to twenty-five thousand rupees] or with both:

[Provided that where the offence committed is in relation to any animal specified in Schedule I or Part II of Schedule II or meat of any such animal or animal article, trophy or uncured trophy derived from such animal or where the offence relates to hunting in a sanctuary or a National Park or altering the boundaries of a sanctuary or a National Park, such offence shall be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years and also with fine which shall not be less than ten thousand rupees:

Provided further that in the case of a second or subsequent offence of the nature mentioned in this sub-section, the term of imprisonment shall not be less than three years but may extend to seven years and also with fine which shall not be less than twenty-five thousand rupees.]

[(1A) Any person who contravenes any provisions of Chapter VA, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and also with fine which shall not be less than ten thousand rupees].]

(1B) Any person who contravenes the provisions of section 38] which may extend shall be to six months punishable with imprisonment for a term Provided that in the case of a second or subsequent offence the term of imprisonment may extend to one year, or with fine which

may extend five thousand rupees.

[(1C) Any person, who commits an offence in relation to the core area of a tiger reserve or where the offence relate to hunting in the tiger reserve or altering the boundaries of the tiger reserve, such offence shall be punishable on first conviction with imprisonment for a term which shall not be less than three years but may extend to seven years, and also with fine which shall not be less than fifty thousand rupees but may extend to two lakh rupees; and in the event of a second or subsequent conviction with imprisonment for a term of not less than seven years and also with fine which shall not be less than five lakh rupees but may extend to fifty lakh rupees.]

[(1D) Whoever abets any offence punishable under sub-section (1C) shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided for that offence.]

2) When any person is convicted of an offence against this Act, the court trying the offence may order that any captive animal, wild animal, animal article, trophy, luncured trophy, meat, ivory imported into India or an article made from such ivory, any specified plant, or part or derivative thereof) in respect of which the offence has been committed, and any trap, tool, vehicle, vessel or weapon, used in the commission of the said offence be forfeited to the State Government and that any licence or permit, held by such person under the provisions of this Act, be cancelled.

(3) Such cancellation of licence or permit or such forfeiture shall be in addition to any other punishment that may be awarded for such offence.

(4) Where any person is convicted of an offence against this Act, the court may direct that the licence, if any, granted to such person under the Arms Act, 1959 (54 of 1959), for possession of any arm with which an offence against this Act has been committed, shall be cancelled and that such person shall not be eligible for a licence under the Arms Act, 1959 (54 of 1959), for a period of five years from the date of conviction.

[(5) Nothing contained in section 360 of the Code of Criminal Procedure, 1973 (2 of 1974) or in the Probation of Offenders Act, 1958 (20 of 1958) shall apply to a person convicted of an offence with respect to hunting in a sanctuary or a National Park or of an offence against any provision of Chapter VA unless such person is under eighteen years of age.]

13. It appears that myna bird is specified in the Schedule-IV of the said Act at serial No. 47. As such, there is prohibition of hunting of the said bird under the said act.

14. The contention of the learned counsel for the petitioner that the post-mortem report of the two birds does not indicate injury by use of rifle and hence, no case as alleged is made out cannot be accepted. The post-mortem

report indicates that the left wing of the bird was broken due to impact of blunt object and the cause of death is respiratory failure due to excessive bleeding. At this stage, it is difficult to ascertain whether the birds were hurt due to the bullet injury or not. The same is also not the domain of this Court while exercising jurisdiction under Section 482 Cr.P.C. These are matters which have to be proved during the trial before the learned trial Court. Reference is made to the case of **Ms. X vs. Mr. A. and others**, reported in **2024 0 INSC 216**, wherein the Apex Court in para-18 has held as hereunder:-

“18. We find that the present case would squarely fall under categories (1), (3) and (5) as reproduced hereinabove for the reasons which we have already recorded in the earlier paragraphs. No doubt, that the power of quashing the criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases, it is also equally settled that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. However, in the present case, even if the allegations made in the FIR and the material on which the prosecution relies, are taken at its face value, we find that there are no sufficient grounds for proceeding against the accused. We find that no error has been committed by the learned Single Judge of the High Court by holding that permitting further proceedings to continue would be an abuse of process of law and result in miscarriage of justice. The High Court has correctly applied the law on the issue and come to a just finding warranting no interference.”

15. Therefore, this Court will not be justified in embarking upon enquiry as to reliability or genuineness or otherwise of allegations made in the FIR.

16. In the present case, it appears that the petitioners were caught red handed while hunting myna birds which is prohibited under the provisions of the said Act. Accordingly, if the averments made in the FIR are taken at their face value and accepted in their entirety, an offence is prima facie constituted.

17. As such, this Court is of the considered view that the FIR cannot be quashed at this stage.

18. Accordingly, this criminal petition stands dismissed.

19. With the above observation and direction, this criminal petition stands disposed of.

JUDGE

Comparing Assistant