

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF SEPTEMBER, 2026



BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

WRIT PETITION NO.9069 OF 2023 (GM-RES)

C/W

CRIMINAL PETITION NO.9420 OF 2022

IN WP NO.9069/2023:

BETWEEN:

1. SRI. RAMESH N.,
S/O LATE NANJUNDACHARI,
AGED ABOUT 42 YEARS,
R/AT 383, BANASHANKARI 6TH STAGE,
6TH BLOCK, DASEGOWDANAPALYA,
BENGALURU-560060.

...PETITIONER

(BY SRI. PRAVEEN S., ADVOCATE)

AND:

1. STATE BY
ARAKERE POLICE STATION,
REPRESENTED BY HCGP,
HIGH COURT BUILDING,
BENGALURU-560001.
2. SRI. SATHEESHA,
POLICE SUB-INSPECTOR,
ARAKERE PS,
SRIRANGAPATNA CIRCLE,
MANDYA DISTRICT-571401.

...RESPONDENTS

(BY SRI. SUHAS GOWDA, HCGP FOR R1)

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Location: HIGH
COURT OF
KARNATAKA

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W 482 OF CR.PC PRAYING TO SET ASIDE THE ORDER DATED 02.08.2022 PASSED IN C.C.NO.1216/2021 BY THE HON'BLE PRL. CIVIL JUDGE (JR. DN.) AND JMFC COURT, SRIRANGAPATNA AT ANNEXURES-F AND F-1 AND DIRECT THE COURT BELOW THE PASS SUITABLE ORDERS TO RELEASE THE AIRGUN PRECIHOLE SPORTS CAL 4.5(177) SERIAL NO.AHO-01581 SEIZED IN P.F.157/2019 AND SPORTING RIFLE NO.176100134 RFI-IH.2017 AND ETC.

IN CRL.P NO. 9420/2022:

BETWEEN:

1. SRI. RAMESH N.,
S/O LATE NANJUNDACHARI,
AGED ABOUT 42 YEARS,
RESIDING AT
CHANNASANDRA COLONY,
R.R.NAGAR,
BENGALURU-560060.
2. SRI. C. NAGESHA,
S/O CHIKKALINGAIAH,
AGED ABOUT 42 YEARS,
RESIDING AT MOLEKOPPALU VILLAGE,
KATTATHI HOBALI,
MANDYA-571403.
3. SRI BHAIRAPPA S/O GALLAPPA,
AGED ABOUT 51 YEARS,
RESIDING AT KARBAILE VILLAGE,
MUNESHWARA BHAVANA,
KENGARI HOBALI,
BENGALURU CITY-560060.
4. SRI. THIMMARAYA SWAMY,
S/O THIMMAIAH,

AGED ABOUT 35 YEARS,
RESIDING AT VARAHASANDRA,
VIDHYAPEETA, NEAR NICE ROAD,
KENGARI HOBALI,
BENGALURU-560060.

...PETITIONERS

(BY SRI. PRAVEEN S., ADVOCATE)

AND:

1. STATE BY ARAKERE POLICE STATION,
REPRESENTED BY HCGP,
HIGH COURT BUILDING,
BENGALURU-560001.
2. SRI. SATHEESHA,
POLICE SUB-INSPECTOR,
ARAKERE PS,
SRIRANGAPATNA CIRCLE,
MANDYA DISTRICT-571403.

...RESPONDENTS

(BY SRI. SUHAS GOWDA, HCGP FOR R1;
R2 – SERVED - UNREPRESENTED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH THE CHARGE SHEET AGAINST THE PETITIONER IN C.C.NO.1216/2021 IN CR.NO.141/2019 ON THE FILE OF PRINCIPAL CIVIL JUDGE (JR.DN.) AND JMFC, SRIRANGAPATNA, MANDYA DISTRICT, FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 3, 25(1), 27 OF ARMS ACT, SECTIONS 9 AND 51 OF WILDLIFE PROTECTION ACT AND SECTIONS 146 AND 196 OF INDIAN MOTOR VEHICLE ACT BY ARAKERE POLICE AND ETC.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED
FOR ORDERS ON 15.09.2026, THIS DAY, THE COURT
PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV ORDER

The Crl.P.No.9420/2022 is filed praying this Court to quash the criminal proceedings initiated against the petitioners in C.C.No.1216/2021 arising out of Crime No.141/2019 on the file of Principal Civil Judge (Jr. Dn.) and JMFC Court, Srirangapatna, Mandya District for the offences under Sections 3, 25(1), 27 of Arms Act, 1959 (for short 'the Act of 1959') along with Sections 9 and 51 of Wild Life (Protection) Act, 1972 (for short 'the Act of 1972') and Sections 146 and 196 of Indian Motor Vehicles Act, 1988 (for short 'IMV Act').

2. In W.P.No.9069/2023 though sought for quashing of the order at Annexure-F and F1, the counsel restricted his prayer only in respect of Annexure-F and prayed this Court to direct the Trial Court to pass suitable orders to release the air gun PRECIHOLE SPORTS CAL.4.5(177) Serial No.AH0-01581 seized in PF No.157/2019 and grant such other relief as deems fit in the circumstances of the case.

3. The factual matrix of case of the prosecution is that on 25.08.2019, the accused persons in the early morning at 04.30 a.m. and previous timings with a common intention committed the offence of hunting of wild boar using 30.06 Sporting rifle 176100134 RFI.IN.2017 single barrel using SPRG cartridges without any license from the government. Based on the information of CW1, police have conducted the raid along with CW8 to CW11 and secured CW2 and CW3 as panch witnesses and seized the articles and initiated the criminal proceedings against the petitioners herein and investigated the matter and filed the charge sheet for offences under Sections 3, 25(1), 27 of the Act of 1959 along with Sections 9 and 51 of the Act of 1972 and Sections 146 and 196 of IMV Act. During the raid, also seized the goods vehicle belongs to accused No.1 bearing Reg. No.KA42/A6589 and found that there was no insurance to the said vehicle, thus, violated the rules under Sections 146 and 196 of IMV Act.

4. The counsel for the petitioners in criminal petition while seeking the relief under Section 482 Cr.P.C has contended that having considered the factual aspects of the case, it does not disclose the ingredients of the offences under Sections 3, 25(1) and 27 of the Act of 1959. In support of his

contention, the counsel for the petitioners extracted the provisions of Sections 3, 25 and 27 of the Act of 1959 that is with regard to the licence for acquisition and possession of firearms and ammunition; punishment for certain offences and punishment for using arms. The counsel referring the said offences would vehemently contend that the plain reading of Sections 3, 25 and 27 of the Act of 1959 which have been reproduced above, points to contravention of Section 5 of the Act of 1959 which deals with valid licence for sale, manufacture of the arms and ammunition. The petitioners herein are not alleged to have indulged in either sale or manufacture of arms or ammunition. Hence, the said offences are not attracted.

5. The counsel also taken note of sub-section (2) and (3) of Section 27 of the Act of 1959 and contend that the alleged offences do not fall under the ambit of both sub-sections (2) and (3) as both these sub-sections deal with using of prohibited arms and ammunition. It is also contended that petitioner No.2 is a farmer and that the said wild boar was destroying the paddy crop of petitioner No.2 and petitioner No.2 is a marginal farmer having very little land and was constrained to protect his paddy crop which was due for harvest from the menace of the wild boar.

6. In support of his claim, the counsel would contend that RTC of the land belongs to petitioner No.2 is also attached. It is also contended that the killing or wounding of wild animals is permitted in defence of oneself as per Section 11(2) of the Act of 1972. Hence, the same may be extended to the defence of the petitioner's crop as well. The counsel would contend that in the neighbouring district of Ramanagara, the Forest Department had issued notification declaring wild boar as vermin and permitted for hunting. It is also contended that the alleged offences have been committed in a paddy field and not in any reserved forest or any restricted area notified by the Forest Department for hunting. The counsel also vehemently contend that continuation of further proceedings in the said case will only be an abuse of process of law, thus, the charge sheet filed against the petitioners requires to be quashed.

7. The counsel appearing for the respondent/State would submit that even though license was obtained, the said license was also given subject to conditions and holder of the license cannot contravene the conditions of the license. The counsel would vehemently contend that there cannot be any protection in respect of the crop is concerned by hunting the wild boar though it causes menace to the harvesting of the

crop. No permission is granted to hunt the wild boar in order to protect the crop from damage and no permission is also sought for hunting in order to protect the crop. The counsel also vehemently contend that whether the offence under Section 3, 25 and 27 of the Act of 1959 attracts or not is a matter of trial. Therefore, there cannot be any proceedings under Section 482 of Cr.P.C.

8. In W.P.No.9069/2023, the counsel for the petitioner also extracted the very same provisions of Sections 3, 25 and 27 of the Act of 1959. The counsel would vehemently contend that the said provisions of Arms Act cannot be invoked and similar ground that of the criminal petition was attributed. In addition to that, it is contended that the air gun was sought to be released by the petitioner since the same is an exempted weapon and does not require any license to possess. The weapon sought to be released is an air rifle having muzzle energy less than 20 joules or 15 feet LBS and/or bore less than 0.177" or 4.5 mm which is classified under category III(f)(ii) and does not require any arms license whatsoever to possess. This is clear from the recitals of Schedule Nos.I and II of the Arms Rules, 2016. The counsel further contend that the petitioner is the lawful owner of the air gun and copy of the bill

of the said air gun stands in the name of petitioner and the same is attached as Annexure-G and petitioner has not filed any similar petition before this Court and claims that the Trial Court committed an error in rejecting the application. Hence, prayed this Court to direct the Trial Court to release the air gun.

9. The counsel appearing for the respondent/State would submit that the said weapon was also seized when the raid was conducted along with licensed gun. The counsel also vehemently contend that the Trial Court while passing an order for rejecting the application filed for the release of the air gun taken note of the registration of the case and also held that on perusal of the records it reveals that applicant has produced tax invoice/cash/credit bill dated 11.12.2019 which reflects that applicant has purchased the Air Rifle from the Bangalore Armoury. The same was seized in contravention of Sections 3, 25(1), 27 of the Act of 1959 and Sections 9 and 51 of the Act of 1972 as well as violation of Sections 146 and 196 of IMV Act. In connection of this case, they have seized the air gun and the same is reported as per Item No.2. As per the materials available on record, it discloses that the air gun has been used by accused No.1 who is the applicant in this case for hunting

the wild animal. The apprehension of the prosecution is that accused No.1 may use the said air gun for commission of similar type of offence and also may alienate the same to the third person or alter the nature of the said air gun. The charge sheet has already been filed and held that there is a force in the contention of the learned APP and hence, rejected the application. Hence, it does not require interference.

10. Having heard the learned counsel appearing for the respective parties and also on perusal of the material on record, the Points that would arise for consideration of these petitions before this Court are:

1. Whether the proceedings initiated against the accused persons requires to be quashed as contended by the petitioners that Arms Act cannot be invoked and initiation of proceedings is against Section 55 of the Act of 1972?
2. Whether the Trial Court committed an error in rejecting the application filed under Section 457 of Cr.P.C and whether it requires

interference of this Court in releasing of the air
gun as sought?

3. What order?

Point No.1:

11. Having considered the grounds urged in the petitions and also on perusal of the material on record, it discloses that the main contention of the counsel for the petitioners is that the very filing of charge sheet is bad in law and also invoking of Sections 3, 25 and 27 of the Act of 1959 is also erroneous since no such contravening act has been done by the petitioners. The main contention is that the ingredients of the alleged offences do not discloses in the charge sheet.

12. The counsel appearing for the petitioners in support of his arguments relied upon judgment of the Apex Court reported in **(2009) 16 SCC 80** in the case of **DEOMUNI SHARMA vs STATE OF JHARKHAND** wherein scope and applicability of Section 27 of the Act of 1959 has been discussed. In the instant case also since it was a licensed gun, hence, comes to the conclusion that there was no question of Section 7 coming in.

13. The counsel for the petitioners is also relies upon the judgment of the High Court of Bombay reported in **2016 SCC ONLINE BOM 1577** in the case of **GULAM MUSTAFA MALIK vs STATE OF MAHARASHTRA AND ANOTHER** wherein also discussion was made with regard to invoking of Section 55 of the Act of 1972. The counsel also relies upon the judgment reported in **2008(2) AJHAR (NOC) 554 (ALL.)** in the case of **RAJAN AND OTHERS vs STATE OF U.P.** wherein the Allahabad High Court also taken note of with regard to the sanction is concerned in respect of Section 3 of the Act of 1959. This Court already comes to the conclusion that there are no ingredients to invoke Section 3 of the Act of 1959 and thus, the said judgment will not comes to the aid of the petitioners.

14. No doubt, the counsel for the petitioners is also relies upon the judgment of Apex Court reported in **1992 SUPP (1) SCC 335** in the case of **STATE OF HARYANA AND OTHERS vs BHAJAN LAL AND OTHERS** with regard to invoking of Section 482 of Cr.P.C is concerned and no dispute with regard to principle is concerned.

15. Having considered the grounds urged in the petitions, this Court would like to extract Sections 3, 25 and 27 of the Act of 1959 which reads thus.

3. Licence for acquisition and possession of firearms and ammunition.— (1) No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder:

Provided that a person may, without himself holding a licence, carry any firearms or ammunition in the presence, or under the written authority, of the holder of the licence for repair or for renewal of the licence or for use by such holder.

(2) Notwithstanding anything contained in sub-section (1), no person, other than a person referred to in sub-section (3), shall acquire, have in his possession or carry, at any time, more than two firearms:

Provided that a person who has in his possession more firearms than two at the commencement of the Arms (Amendment) Act, 2019, may retain with him any two of such firearms and shall deposit, within one year from such commencement, the remaining firearms with the officer in charge of the nearest police station or, subject to the conditions prescribed for the purposes of sub-section (1) of section 21, with a licensed dealer or, where such person is a member of the armed forces of the Union, in a unit armoury referred to in that sub-

section after which it shall be delicensed within ninety days from the date of expiry of aforesaid one year:

Provided further that while granting arms licence on inheritance or heirloom basis, the limit of two firearms shall not be exceeded.

(3) Nothing contained in sub-section (2) shall apply to any dealer in firearms or to any member of a rifle club or rifle association licensed or recognised by the Central Government using a point 22 bore rifle or an air rifle for target practice.

(4) The provisions of sub-sections (2) to (6) (both inclusive) of section 21 shall apply in relation to any deposit of firearms under the proviso to sub-section (2) as they apply in relation to the deposit of any arm or ammunition under sub-section (1) of that section.

25. Punishment for certain offences.—[(1)
Whoever—

(a) manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer, or has in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of section 5; or

(b) shortens the barrel of a firearm or converts an imitation firearm into a firearm [or convert from any category of firearms mentioned in the Arms Rule, 2016 into any other category of firearms] in contravention of section 6; or

[* * *]

(d) brings into, or takes out of, India, any arms or ammunition of any class or description in contravention of section 11,

shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

(1A) Whoever acquires, has in his possession or carries any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to fourteen years and shall also be liable to fine.

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(1AB) Whoever, by using force, takes the firearm from the police or armed forces shall be punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

(1AA) whoever manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer or has in his possession for sale, transfer, conversion, repair, test or proof, any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall

not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

(1AAA) Whoever has in contravention of a notification issued under section 24A in his possession or in contravention of a notification issued under section 24B carries or otherwise has in his possession, any arms or ammunition shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to seven years and shall also be liable to fine.

(1B) Whoever—

(a) acquires, has in his possession or carries any firearm or ammunition in contravention of section 3; or

(b) acquires, has in his possession or carries in any place specified by notification under section 4 any arms of such class or description as has been specified in that notification in contravention of that section; or

(c) sells or transfers any firearm which does not bear the name of the maker, manufacturer's number or other identification mark stamped or otherwise shown thereon as required by sub-section (2) of section 8 or does any act in contravention of sub-section (1) of that section; or

(d) being a person to whom sub-clause (ii) or sub-clause (iii) of clause (a) of sub-section (1) of section 9 applies, acquires, has in his possession or carries any firearm or ammunition in contravention of that section; or

(e) sells or transfers, or converts, repairs, tests or proves any firearm or ammunition in contravention of clause (b) of sub-section (1) of section 9; or

(f) brings into, or takes out of, India, any arms or ammunition in contravention of section 10; or

(g) transports any arms or ammunition in contravention of section 12; or

(h) fails to deposit arms or ammunition as required by sub-section (2) of section 3, or sub-section (1) of section 21; or

(i) being a manufacturer of, or dealer in, arms or ammunition, fails, on being required to do so by rules made under section 44, to maintain a record or account or to make therein all such entries as are required by such rules or intentionally makes a false entry therein or prevents or obstructs the inspection of such record or account or the making of copies of entries therefrom or prevents or obstructs the entry into any premises or other place where arms or ammunition are or is manufactured or kept or intentionally fails to exhibit or conceals such arms or ammunition or refuses to point out where the same are or is manufactured or kept,

shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to five years and shall also be liable to fine:

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a

sentence of imprisonment for a term of less than two years.

(1C) Notwithstanding anything contained in sub-section (1B), whoever commits an offence punishable under that sub-section in any disturbed area shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation.— For the purposes of this sub-section, “disturbed area” means any area declared to be a disturbed area under any enactment, for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order, and includes any areas specified by notification under section 24A or section 24B.

(2) Whoever being a person to whom sub-clause (i) of clause (a) of sub-section (1) of section 9 applies, acquires, has in his possession or carries any firearm or ammunition in contravention of that section shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(3) Whoever sells or transfers any firearm, ammunition or other arms—

(i) without informing the district magistrate having jurisdiction or the officer in charge of the nearest police station, of the intended sale or transfer of that firearm, ammunition or other arms; or

(ii) before the expiration of the period of forty-five days from the date of giving such information to such district magistrate or the officer in charge of the police station,

in contravention of the provisions of clause (a) or clause (b) of the proviso to sub-section (2) of section 5, shall be punishable with imprisonment for a term which may extend to six months, or with fine of an amount which may extend to five hundred rupees, or with both.

(4) Whoever fails to deliver-up a licence when so required by the licensing authority under sub-section (1) of section 17 for the purpose of varying the conditions specified in the licence or fails to surrender a licence to the appropriate authority under sub-section (10) of that section on its suspension or revocation shall be punishable with imprisonment for a term which may extend to six months, or with fine of an amount which may extend to five hundred rupees, or with both.

(5) Whoever, when required under section 19 to give his name and address, refuses to give such name and address or gives a name or address which subsequently transpires to be false shall be punishable with imprisonment for a term which may extend to six months, or with fine of an amount which may extend to two hundred rupees, or with both.

27. Punishment for using arms, etc.—(1)
Whoever uses any arms or ammunition in contravention of section 5 shall be punishable with imprisonment for a

term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

(2) Whoever uses any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

(3) Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of section 7 and such use or act results in the death of any other person, shall be punishable with imprisonment for life, or death and shall also be liable to fine.

16. Having considered Section 3 of the Act of 1959, it is very clear that no person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a license issued in accordance with the provisions of this Act and the rules made thereunder. The provisions under subsection (2), (3), (4) of Section 3 of the Act of 1959 is also very clear in respect of the persons who is not having any licence. But in the case of hand, the Court has to take note of the document of licence issued by the competent authority as per Annexure-E1 and the same was issued for SBBL rifle. At the first instance, it was given within the jurisdiction of Bengaluru District and thereafter given to the jurisdiction of Karnataka

State. Thus, this document is very clear that there is a license. But whether it was contravened the conditions of the license is a matter of trial.

17. This Court also would like to consider Section 25 of the Act of 1959 which deals with the punishment for certain offences if manufacturer violates the condition under this Section. But in the case on hand, there is no such indulging of any act either in sale or manufacture of arms or ammunition and so also the sub-section (2) and (3) of Section 25 is also very clear in respect of using of any arms or ammunition in contravention of Section 5 and so also Section 7 and invoking of Sections 3, 25 and 27 of the Act of 1959 is not in connection with hunting of the wild boar since that is with regard to the violation of provisions under Section 3 and also the punishment for certain offences as contemplated under Section 25. Hence, there is a force in the contention of the counsel appearing for the petitioners that invoking of the said provisions against the petitioners is bad in law.

18. This Court would like to refer Section 30 of the Act of 1959 that is for punishment for contravention of license or rule that whoever contravenes any condition of a license or any

provision of this Act or any rule made thereunder, for which no punishment is provided elsewhere in this Act shall be punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to Rs.2,000/- or with both. The Investigating Agency has fails to take note of the very Section 30 of the Act of 1959 before invoking Sections 3, 25 and 27 of the said Act.

19. The other contention of the petitioners' counsel is that previous sanction of the District Magistrate is necessary in certain cases and the same is in a case of no prosecution shall be instituted against any person in respect of any offence under Section 3 without the previous sanction of the District Magistrate. The counsel for the petitioners cannot press Section 39 as there is no ingredients of Section 3 as invoked in this case as observed by this Court and the same will not comes to the aid of the petitioners.

20. However, this Court has to take note of invoking of the Arms Act as well as Special Enactment of Section 9 and 51 of the Act of 1972 and so also Section 146 and 196 of IMV Act. Section 9 deals with regard to prohibition of hunting of a wild animal and Section 51 deals with penalties for hunting of

wildlife animals. This Court would like to extract Sections 9 and 51 of the Act of 1972 which read thus:

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.

51. Penalties. - (1) 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 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 fine 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 the 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.

(1-A) Any person who contravenes any provisions of Chapter V-A, 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.

(1-B) Any person who contravenes the provisions of section 38-J shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

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 to five thousand rupees.

(1-C) 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.

(1-D) Whoever, abets any offence punishable under sub-section (1-C) 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, uncured 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 V-A unless such person is under eighteen years of age.

21. The proviso under Section 55 of the Act of 1972, debars the Court from taking cognizance of any offences except on the complaint of any person and under the Act, as prescribed the persons who are competent to file a complaint. This Court also would like to refer Section 55 of the Act of 1972 which reads as follows:

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 IV-A; 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-in-charge of the zoo in respect of violation of provisions of section 38-J; 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.

22. In the instant case, undisputedly, no complaint has been lodged by the officers as specified under Section 55 of the Act of 1972. On the other hand, the petitioners/accused were caught red handed while in possession of wild boar meat along with weapons and they were arrested and produced before the Court and subsequently, they were released on bail. It is also not in dispute that the weapon which was used i.e., rifle was also released.

23. In the case on hand, it has to be noted that Section 9 and 51 of the Act of 1972 was invoked while filing the charge sheet along with the Arms Act. No doubt, FIR can be registered and police can also investigate the case when the above

offences are invoked. But when the Special Enactment is invoked under Section 9 and 51 of the Act of 1972, a complaint has to be filed by an authorized person in terms of Section 55 of the Act of 1972. But the same has not been done in the case on hand. Even the Investigating Officer can make use of the material collected during the investigation. But there cannot be any prosecution by the Investigating Officer in respect of the violation of special enactment and punishment under Sections 9 and 51 of the Act of 1972 without the complaint. The said course has not been adopted by the Investigating Officer. When the proceedings initiated against the petitioners are in violation of the Provisions of Section 55 of the Act of 1972.

24. At this stage, this Court would like to refer the judgment of the Apex Court reported in **(1988) 4 SCC 655** in the case of **STATE OF BIHAR vs MURAD ALI KHAN AND OTHERS** wherein the Apex Court held that under Section 55 of the Act of 1972, there is a bar for taking of cognizance and it specifies that who is the authorized person to file a complaint in respect of the offence committed under the said Act. In this regard, this Court would like to extract paragraphs 12 and 13 of the said judgment which read thus:

12. Section 51 of the Act provides for penalties. Violation of Section 9(1) is an offence under Section 51(1). Section 55 deals with cognizance of offences:

“55. No court shall take cognizance of any offence against this Act except on the complaint of the Chief Wild Life Warden or such other officer as the State Government may authorise in this behalf.

13. What emerges from a perusal of these provisions is that cognizance of an offence under the “Act” can be taken by a court only on the complaint of the officer mentioned in Section 55. The person who lodged complaint claimed to be such an officer. In these circumstances even if the jurisdictional police purported to register a case for an alleged offence against the Act, Section 210(1) would not be attracted having regard to the position that cognizance of such an offence can only be taken on the complaint of the officer mentioned in that section. Even where a Magistrate takes cognizance of an offence instituted otherwise than on a police report and an investigation by the police is in progress in relation to same offence, the two cases do not lose their separate identity. The section seeks to obviate the anomalies that might arise from taking cognizance of the same offence more than once. But, where, as here, cognizance can be taken only in one way and that on the complaint of a particular statutory functionary, there is no scope or occasion for taking cognizance more than once and, accordingly, Section 210 has no role to play. The view taken by the High Court on the footing of Section 210 is unsupportable.

25. This Court also would like to rely upon judgment of the Apex Court reported in **(2021) 20 SCC 24** in the case of **SURINDER SINGH vs STATE (UNION TERRITORY OF CHANDIGARH)** wherein, the Apex Court discussed the scope of Section 27 in paragraph 29. In paragraph 30 also discussed with regard to Section 5 of the Act of 1959 relating to license for manufacture, sale and etc. of arms and ammunition and also discussed with regard to Section 27 of the Act of 1959 in respect of punishment for using arms. In paragraph 31 held that prior to the amendment of Section 27 of the Arms Act, vide Arms (Amendment) Act, 1988, the said provision penalized the use of any arms and ammunition for any "unlawful purpose". However, post its amendment, Section 27 of the Arms Act is strictly confined to violation of conditions mentioned either under Section 5 or 7 of the Arms Act and the "unlawful purpose" of using the arms and ammunition is no longer an inseparable component of the delinquency. In paragraph 32 also taken note that the appellant being in authorized possession of the weapon, cannot be said to have used an unlicensed weapon, as prohibited under Section 5 of the Arms Act.

26. This Court also would like to rely upon the judgment of the High Court of Gujarat at Ahmedabad in **Special Criminal Application (Quashing) No.77/2014** in the case of **MANISH BHUPENDRABHAI PANWALA vs STATE OF GUJARAT AND ANOTHER** wherein the said Court particularly taken note of Sections 2(16)(b), 2(33), 9, 39 and 51 of the Act of 1972 that is for prohibition of hunting in the prohibited area and wild animals, etc. to the Government property. Thus, it is very clear that no person shall without the previous permission in writing of the Chief Wild Life Warden or authorized officer acquire or keep in his possession, custody or control or transfer to any person, whether by way of gift, sale or otherwise or destroy or damages, such Government property. So also discussed Section 51 of the Act of 1972 wherein it is held that the offence committed is in relation to any animal specified in the schedule I 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 any other public space. Also discussed Section 55 in paragraph 10 that there cannot be any prosecution without compliance of Section 55.

27. This Court also would like to rely upon judgment of High Court of Kerala at Ernakulam in **Crl.M.C No.4247/2019** decided on **05.03.2025** in the case of **JOBY AND OTHERS vs STATE OF KERALA** wherein also discussion was made with regard to invoking of Section 27 of the Arms Act holding that the said offence would be attracted only in those cases where it is shown that the offender had used arms or ammunition in contravention of Section 5 of the Arms Act and also taken note that there is no allegation for the prosecution that the gun used by the accused was an unlicensed gun. Therefore, apparently, the use of the aforesaid gun for shooting a wild boar will not constitute any offence under the Arms Act, 1959.

28. This Court also would like to rely on the judgment of this Court reported in **ILR 2008 KAR 1892** in the case of **SRI S BYLAIAH vs STATE OF BANNERGHATTA POLICE** wherein this Court considering the notification comes to the conclusion that complainant is the Sub-Inspector of Forest Cell, is not the authorized person under Section 55 of the Act to lodge the complaint and hence, quashed the proceedings invoking Section 55 of the Act of 1972 that the person is not competent as contemplated.

29. In the instant case also, it is an admitted fact that proceedings have been initiated solely based on the registration of the case and not by way of complaint as required under Section 55 of the Act of 1972 and there is a clear bar under Section 55 of the Act of 1972 to take cognizance. Accordingly, answer the above point as affirmative.

Point No.2:

30. The prayer sought in the writ petition is to direct the Trial Court to release the air gun. It has to be noted that it is not in dispute that the air gun was also seized and the same was also subjected to FSL. The FSL report is very clear that the said air gun is an Article No.2. The Article No.2 air gun is subjected to FSL. It is very clear that weapon in Article No.2 is a 177 caliber air gun and the same is also the allegation and it is a company made weapon and 177 caliber air gun in Article No.2 is in working condition at the time of examination and the effective range of the 177 caliber air gun is about 25 yards. But no materials are placed before the Court to show that the same was used for hunting and there is no report to that effect. But in respect of Article No.1 i.e., 30.06 caliber rifle bears signs of discharge but no opinion is possible regarding the actual date and time of firing. In respect of this weapon is concerned,

except seizure of the same, there is no any other material. But only with regard to the capacity is concerned, the same is mentioned.

31. It is also important to note that when the other SBBL gun was released, the Trial Court committed an error in rejecting the application which was filed seeking release of the said air gun in coming to the conclusion that the same may be used in future for hunting and may be committed the similar offences. But the same cannot be a ground to reject the application for release the air gun since the Court has to take note that if it is kept idle, the same becomes useless and also it has to be noted that when the air gun is below the 20 joules, no need of license also. The petitioner has produced the document for having purchased the same from the Armoury. When such being the case, the Trial Court ought not to have rejected the same and the reasoning given by the Trial Court is erroneous and fails to take note that its value also to be deteriorated if it is not released.

32. The Trial Court while rejecting the application fails to take note of the fact that the changes have been brought in the licensing regime for air guns in the Armed Rules made in

2016 and air guns fall under the definition of firearms under clause (e) of sub-section (1) of Section 2 of the Act of 1959 and were included under clause (d) of Category III in Schedule I of the Arms Rules, 1962. The air guns had been exempted from the licensing requirements as per specifications contained in entry 3 of GSR 991 dated 01.10.1962. The Arms Rules, 2016 have brought in two categories of air weapons in clause (f) of Category III of Schedule I of the Rules i.e., Air weapons including air rifles and air guns; having muzzle energy exceeding 20 joules or 15 feet, LBS and/or bore exceeding 0.177" or 4.5 mm, that is in respect of F1 and F2 is concerned and having muzzle energy less than 20 joules or 15 feet LBS and/or bore less than 0.177" or 4.5 mm. Hence, it is clear that air weapons falling under Category III(f)(i) shall be subject to the licensing requirements like any other firearm and shall be subject to the restriction of maximum 3 firearms as specified in Section 3 of the Act of 1959 and can be kept and sold only through authorized arms and ammunition dealers licensed under the Arms Rules, 2016, holding a licence in Form VIII. But in case of air weapons falling under Category III(f)(ii) shall not be subjected to the licensing requirements. Such air weapons may be kept and sold only through air weapon dealers holding

a licence in Form VIII-A under the Arms Rules, 2016 after obtaining identity and residence proof from the buyer.

33. But in the case on hand, the air gun which the petitioner is possessed falls within the category III(f)(ii) and the same does not require any licence. Admittedly, the petitioner was not having any license also. But prayed the Court to release the same. The Trial Court fails to take note of the FSL report wherein it is also very clear that the air gun is not used for hunting. Thus, the Trial Court committed an error in rejecting the application filed under Section 457 of Cr.P.C.

34. When this Court comes to the conclusion that there are no ingredients to invoke the offences under Sections 3, 25 and 27 of the Act of 1959 against the petitioners and requires to be quashed the proceedings, it is appropriate to order to release the same to the petitioner with the conditions that not to change or alter the nature of the same and whenever it requires to be produced, the same has to be produced. With that conditions, the air gun may be released. Hence, the order passed by Trial Court at Annexure-F is required to be set aside. Instead of directing the Trial Court to release the air gun as sought in the prayer, this Court can direct the concerned

Investigating Officer to release the same with the conditions as enumerated above and take an indemnity bond from the petitioner as the proceedings before the Court is seized in view of Section 55 of the Act of 1972. Hence, I answer the above Point as affirmative.

35. In view of the discussions made above, I pass the following:

ORDER

- (i) The Criminal Petition No.9420/2022 is allowed.
- (ii) Consequently, initiation of the criminal prosecution against the petitioners by taking the cognizance by the Trial Court in C.C.No.1216/2021 is hereby quashed as the same is in violation of Section 55 of the Act of 1972.
- (iii) The liberty is given to the Prosecuting Authority to invoke the provisions of Section 55 of the Act of 1972 to file a complaint through a Competent Officer and invoke the appropriate offences.
- (iv) The W.P.No.9069/2023 is allowed.
- (v) The order of the Trial Court as per Annexure-F dated 02.08.2022 is hereby quashed. Consequently,

the application filed under Section 457 of Cr.P.C is allowed.

- (vi) In view of quashing of the proceedings by this Court, Investigating Officer is directed to release the air gun as sought in the application obtaining the indemnity bond for Rs.1,00,000/- with one surety from the petitioner with the conditions that not to sell, alter the nature of the air gun and to produce the same whenever requires to be produced either before the authority or before the Court.

Sd/-
(H.P.SANDESH)
JUDGE

SN