

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 268 OF 2015

1] Mannu Kaduba Gavane,
Age: 45 Years, Occu. Business,
R/o. Kahar Wadi, Tq. Paithan,
Dist. Aurangabad.

2] Sagar Mannu Gavane,
Age: 22 Years, Occu. Business,
R/o. as above.

PETITIONERS

VERSUS

The State of Maharashtra,
Through Paithan Police Station,
Tq. Paithan, District: Aurangabad

RESPONDENT

...
Mr. V.D.Salunke, Advocate h/f. Mr. G.R.Syed, Advocate for
the Petitioners

Mr. S.B.Pulkundwar, APP for the Respondent – State

...
**CORAM: S.S.SHINDE &
A.I.S.CHEEMA, JJ.**

Reserved on: 25.06.2015
Pronounced on: 14.07.2015

JUDGMENT: [Per S.S.Shinde, J.]:

1] Rule. Rule made returnable forthwith and
heard finally with the consent of the learned counsel
appearing for the respective parties.

2] This Criminal Writ Petition is filed, under Article

226 of the Constitution of India, for quashing and setting aside the First Information Report bearing Crime No. 58/2014 registered with Paithan Police Station, Taluka Paithan, District Aurangabad, and consequential criminal proceeding bearing Regular Criminal Case No. 100/2015, pending on the file of Judicial Magistrate First Class, Paithan, under Sections 9, 39, 50 and 51 of the Wild Life [Protection] Act, 1972 [for the sake of brevity, hereinafter referred to as '*said Act*'].

3] It appears that, on 1st December, 2014, Nandu Sakharam Sonowane, Police Constable, Paithan Police Station, Taluka Paithan, District Aurangabad, lodged a complaint with the Paithan Police Station, stating that, on receipt of secrete information that a meat of Rabbit [hare] was being cooked with an intention to sell and on conducting raid, the cooked meat etc. is found, and therefore, an offence, as stated above, came to be registered.

4] It is the contention of the petitioners that, the law does not permit filing of such complaint by the Police Constable, in view of the legal bar engrafted under the

provisions of the said Act. The Police Officer, who was / is not authorized to file even complaint, went up to investigate the matter and submitted report under Section 173 of the Code of Criminal Procedure, and the case is registered as Regular Criminal Case No.100/2015. Not only this the Magistrate was pleased to direct issuance of summons against the accused persons. Hence this Petition filed by the petitioner, seeking quashment of the First Information Report and proceedings thereof pending on the file of the Judicial Magistrate First Class, Paithan, District Aurangabad.

5] The learned counsel appearing for the petitioners submits that, no cognizable case is made out against the petitioners. The petitioners are no way connected with the alleged commission of offence. The learned counsel appearing for the petitioners submits that, the concerned Police Officer was not competent to lodge the First Information Report and institute the proceedings before the Judicial Magistrate First Class, Paithan, in view of the legal bar contained in Section 55 of the said Act. It is submitted that, the Magistrate cannot take cognizance of any of the offence under the said Act. Therefore, the

learned counsel appearing for the petitioners, relying upon the following Judgments of the various High Courts and the Supreme Court namely, i] Shekh Nek Mohammad Vs. The State of Maharashtra in Criminal Misc. No. 39279/2009 decided on 4th January, 2010 [Patna High Court], ii] Sri S. Bylaiah Vs. State by Bannerghatta Police decided on 8th February, 2008 [Karnataka High Court], iii] State by Rural Police Chinthamani Vs. Ramakrishna Reddy s/o Ramareddy in Criminal Appeal No.2313/2006 decided on 29th May, 2012 [Karnataka High Court], iv] Jaffar @ Noorahmed Jaffarhussein Vs. The State of Karnataka in Criminal Petition No. 10695/2012 decided on 27th February, 2013 [Karnataka High Court], v] Banshilal Vs. The State of Madhya Pradesh in Miscellaneous Criminal Case No.8582/2013 decided on 5th September, 2013 [Madhya Pradesh High Court], vi] Shri Harishchandra Prasad Vs. State of Karnataka decided on 26th August, 2009 [Karnataka High Court], vii] Ashok Vs. State in Cri. M.A.No. 9130/2009 decided on 9th May, 2012 [Gujarat High Court], viii] Prabhakar s/o Keshav Gajakosh Vs. The State of Karnataka decided on 14th July, 2011 [Karnataka High Court], ix] Ashwini Kumar Bhardwaj Vs. State of Rajasthan reported in 2002 Cri.L.J. 179, and x] State of Bihar Vs. Murad Ali Khan

and others reported in AIR 1989 SC 1 [1], submits that, the Petition deserves to be allowed.

6] The learned APP appearing for the Respondent – State, relying upon the investigation papers collected by the concerned Police Officer, submits that, the alleged offence is committed by the petitioners. The Police Officer has filed charge sheet. There is sufficient material against the petitioners to try the case against them. Therefore, learned APP submits that, this Court may not entertain in the Writ Petition. Alternatively, he submitted that, as the matter is on stage of presentation of charge-sheet even if it is returned or quashed, State be given chance to refile the same removing defect.

7] We have given careful consideration to the submissions advanced by the learned counsel appearing for the Petitioners, and also the learned APP appearing for the Respondent – State. With their able assistance, we have perused the provisions of the said Act, and also the investigation papers and the Judgments cited across the bar by the learned counsel appearing for the petitioners.

8] At the outset, it would be apposite to reproduce herein below the provisions of Section 55 of the Wild Life [Protection] Act, 1972, which reads thus:

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.]

9] Upon careful perusal of the provisions of Section 55 of the said Act, reproduced herein above, it is abundantly clear that, only the Officers mentioned in the said section, are authorized to file the complaint and only upon filing such complaint by those authorized Officers mentioned in Section 55, the Court can take cognizance of the complaint. In the present case, the First Information Report is registered with the Police Station, Paithan by the complainant namely Mr. N.S.Sonowane, who is working as Police Constable in the said Police Station. In the said complaint, the complainant has mentioned Sections 9, 39, 50 and 51 of the said Act. The Supreme Court, in the case of State of Bihar cited *supra*, while considering / interpreting the provisions of Section 9 [1] and Section 51 of the said Act, vis-a-vis the exercise of inherent powers by the High Court under Section 482 of Criminal Procedure Code, has taken a view that, the cognizance can be taken by the Court only on a complaint of particular statutory functionary mentioned in Section 55 of the said Act. The

respondents have not brought anything on record to suggest that, the said Police Constable was authorized to lodge the FIR and then file the charge sheet before the Judicial Magistrate First Class, Paithan. In the various Judgments, the various High Courts have also taken a view that, only statutory authorities, who are recognized under the provisions of Section 55 of the said Act, can file the complaint and the Court can take cognizance of such complaint.

10] In the present case, the charge sheet is already filed and the case is pending before the Judicial Magistrate First Class, Paithan. Even if, the Court is not taken cognizance yet, however, considering that there is a bar as prescribed under Section 55 of the said Act, for taking cognizance, continuance of the proceedings against the petitioners would amount to an abuse of the process of the Court. The said proceedings do not deserve to be continued further. The Supreme Court in the case of **"State of Haryana V/s Bhajanlal" [AIR 1992 SC 604]** held that, in following categories the Court would be able to quash the F.I.R. :

- 1 Whether the allegations made in the F.I.R. 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 F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code, except under an order of Magistrate within the purview of Section 155(2) of the Code;
3. Where the uncontroverted allegations made in the F.I.R. 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 applicant;
4. Where the allegations in the F.I.R. do not constitute a 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 F.I.R. 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 provisions in the Code of the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with malafide 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.

11] In the present case, category no. 6 gets attracted inasmuch as the proceedings initiated by the Head Constable of the concerned Police Station are not by the statutory / authorized Officer, as contemplated under Section 55 of the said Act, and therefore, such initiation of the proceedings would be barred. Petitioners relied on the case of *Jaffar @ Noorahmed Jaffarhussein Vs. The State of Karnataka [Criminal Petition No.10695/2012, decided on 27.02.2013 Dharwad Circuit Bench]* in which in similar situation while quashing charge-sheet Forest Officers were given liberty to take action in accordance with law. Therefore, Petition deserves to be allowed and same is allowed in terms of prayer clause-B. State however is at liberty to rectify defects in the light of above and take suitable steps as per law.

12] Rule made absolute in above terms. Accordingly, Writ Petition is disposed of.

Sd/-
[A.I.S.CHEEMA, J.]

Sd/-
[S.S.SHINDE, J.]