

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4213 OF 2015

Gulam Mustafa Malik

...Petitioner

Versus

State of Maharashtra & Anr.

...Respondents

Mr. Tushar Sonawane, for the Petitioner.

Mrs. S.V. Sonavane, APP for the State.

CORAM : RANJIT MORE &
S.C. GUPTE, JJ.

DATE : 4th February 2016

P.C. :

1. Rule.

2. Rule is made returnable forthwith. Since, the issue involved in the present Petition is in a very narrow compass, by consent, the Petition is taken up for final hearing.

3. Heard Mr. Sonawane, learned counsel for the Petitioner

and Ms. Sonavane, learned APP for the State.

4. The Petition is filed for quashing and setting aside FIR bearing II-3024 of 2015 registered at City Police Station, Malegaon, at the instance of Respondent No. 2, Satish Sudam Patil under Section 51 of the Wild Life (Protection) Act, 1972. The Petitioner has also sought direction to Respondent No. 1, the City Police Station, Malegaon to return forthwith the 22 bore SBBC rifle by Brono No. 311270 purchased by him on 21st December 2011, which was seized by Respondent No. 1 on 28th August 2015.

5. As stated above, the FIR is filed by the Respondent No. 2, Satish Sudam Patil, Police Naik on 27th August 2015 on the allegation that the Petitioner/Accused No. 2 hunted a deer and disposed of the body by cutting into pieces. It is further alleged that approximately 5 kg of deer meat from the residence of Accused No. 1- Mohammad Tabrez Abdul Qadir was seized. The allegation that the weapon, namely, 22 bore rifle belonging to Petitioner/Accused No. 2 was used in the law of crime. The Petitioner/Accused No. 2 has approached this Court for quashing the subject FIR solely relying on the provisions of Section 55 of the Wild Life (Protection) Act, 1972. The Petitioner heavily relied upon the decision of the Division Bench

delivered on 14th July 2015 in Criminal Writ Petition No. 268 of 2015 in the matter of Mannu Gavane Vs. The State of Maharashtra.

6. We have gone through the subject FIR. We have also gone through the provisions of Wild Life (Protection) Act, 1972 and the Division Bench Judgment cited supra. We find that the issue involved in the present case and the issue involved in Criminal Writ Petition No. 268 of 2015, are exactly same.

7. The Division Bench of this Court in Mannu Gavane's case supra has relied upon the decision of the Hon'ble Apex Court in State of Bihar Vs. Murad Ali Khan, Farukh Salauddin in 1988 SCR (3) page 455. Considering the provisions of Section 55 of the said Act, and the said decision of the Apex Court, the Division Bench has made following observations in paragraphs 9 and 10 which read follows :-

“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, the 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.”*

8 . In the present case, the complaint is filed by Respondent No. 2, Satish Sudam Patil, Police Naik. He is attached to City Police Station, Malegaon and he is not the person on whose complaint the Court can take cognizance of offence punishable under provisions of Wild Life (Protection) Act, 1972. The Division Bench in **Mannu Gavane**'s case has held that only statutory authorities, who are recognized under the provisions of Section 55 of the Wild Life (Protection) Act, 1972, can file the complaint.

9 . Thus, the Petitioner's case is covered by clause 6 of the categories enumerated by the Apex Court in **State of Haryana Vs. Bhajanlal** in **AIR 1992 SC 604**, inasmuch as Respondent No. 2 is not the authority enumerated under Section 55 of the Wild Life (Protection) Act, 1972.

10. We, therefore, quash the proceedings of subject FIR bearing II-3024 of 2015 registered at City Police Station, Malegaon. Rule is made absolute accordingly and the petition stands disposed of.

11. So far as the relief regarding return of the 22 bore SBBC rifle is concerned, the Petitioner is at liberty to apply to the concerned Magistrate under Section 451/457 of the Cr.P.C. In the event, such an application is made within a period of four weeks from today, the concerned Magistrate shall dispose the same within four weeks thereafter.

14. All concerned to act upon a copy of this order duly authenticated by the Registry of this Court.

[S.C. GUPTE, J.]

[RANJIT MORE, J.]