

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 242 OF 2019

WAHIDUZZAMAN MOHAMMAD YASEEN AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANR.

Ms. Madhaveshwari Mhase, Advocate for the petitioners.
Mr. S.R. Yawalkar, AGP for State.

**(CORAM : DIPANKAR DATTA, CJ AND
RAVINDRA V. GHUGE, J.)**

HEARD ON : JUNE 17 & 18, 2021
JUDGMENT ON : JUNE 30, 2021

DIPANKAR DATTA, CJ:

1. By presenting this criminal writ petition dated 13th February, 2019 before this Court, the petitioners have mounted a challenge to Pachora Police Station FIR No. 37 of 2018, registered against them under sections 9, 39, 48A and 51 of the Wild Life Protection Act, 1972 (hereafter 'the WLP Act', for short) and sections 3 and 25 of the Arms Act, 1959 (hereafter "the Arms Act", for short), and seek quashing thereof on the ground of the same being an abuse of the process of law as well as the court.

2. Investigation of the FIR, as registered, was under progress on the day this writ petition was presented. At the time of consideration of the same by us, we have been informed by Mr. Yawalkar, learned AGP for the State that investigation has since culminated in submission of a police report dated 31st January, 2020 (charge-sheet) under section 173(2) of the Code of Criminal Procedure (hereafter 'the Cr.P.C.', for short) before the jurisdictional magistrate. In such police report, all the petitioners have been shown as

accused; however, since the first petitioner has passed away recently, his name figures with the remark "dead".

3. It is revealed from the records that the first information of the alleged offence under the WLP Act and the Arms Act was given by Prakash Gokuldas Patil (PHC/1423), a head constable of police (hereafter the informant), leading to registration of FIR No. 37 of 2018. The FIR further reveals that Shamkant Somwanshi (PI), Police Inspector of Pachora Police Station had called the informant and other police officers on 13th May, 2018 at about 21.00 hours and apprised them of he (the PI) having received information from a source that a white coloured SUMO Victa bearing registration no. MH-15/BW 5423 was proceeding towards Pachora city from Wadhera and that it was carrying 5 to 7 persons, who were suspected of commission of offences against the WLP Act and the Arms Act and, therefore, were required to be apprehended by arranging barricade on the road. Immediately thereafter, the informant as part of a police team led by Shamkant Somwanshi left for Wadhera 'naka' in a Government vehicle bearing registration no. MH-19/M 0656. Other police personnel followed on motor cycles. Having reached the 'naka', they arranged barricade and started verifying the passing vehicles. Since it was dark, the police team had to use torch lights. One vehicle bearing registration no. MH-15/BW 5423 was seen approaching Pachora city and on being stopped, it was found to have 7 persons including the driver in it. The occupants of the vehicle refused to disclose their identity whereupon the vehicle was escorted to a lighted place and 2 Government panchas were sent for. Upon their arrival and in the presence of such panchas, the vehicle was searched and a double bore gun, 16 bullets, 5 empty cartridges, 2 search lights, 2 iron axes and 2 knives of such description, as are mentioned in the FIR as well as appearing from the Panchnama, and approximately 195 kg. of meat and pieces of a wild animal (nilgai) were seized along with the vehicle. Replying to a query as to whether they had a licence for using the gun, the occupants of the vehicle/accused

replied in the negative. Personal search of the accused was conducted and articles found on their person were seized, and they were taken into custody. After an FIR was registered by the informant on 14th May, 2018, investigation of the same was thereafter taken up by Anil C. Shinde, Police Inspector. On completion of investigation, charge-sheet bearing no. 20 of 2020 dated 31st January, 2020 under section 173(2) of the Cr.P.C. has been filed before the jurisdictional magistrate by the investigating officer, Anil C. Shinde.

4. According to Ms.Mhase, learned advocate for the petitioners, registration of the said FIR, investigation that followed and submission of a police report under the Cr.P.C. are illegal having regard to the provisions of section 55 of the WLP Act and are, therefore, liable to be quashed.

5. Ms. Mhase invited our attention to the various provisions in Chapter VI of the WLP Act titled "Prevention and Detection of Crimes" and in particular to sections 50 and 55. Referring to section 55, she submitted that it is the clear statutory mandate that no court is empowered to take cognizance of any offence against the WLP Act if the complaint is not lodged by any of the officers mentioned therein. A head constable of police is not one of the specified officers who could lodge a complaint and, therefore, it is her contention that the first information of an offence against the WLP Act given by such constable could not have been reduced to an FIR and the offence investigated by the police exercising powers under the Cr.P.C. She further contended that section 50 of the WLP Act is a complete code in itself and any investigation of offence other than in the manner prescribed thereby would not only be in contravention of the statutory mandate but also without jurisdiction. Referring to sub-section (4) of section 50, it has been argued that no intimation has been given to the Chief Wild Life Warden or the officer authorized by him in this regard. Finally, it was urged that the issue raised in this writ petition is no longer res integra. She submitted that the law laid down by this Court in several of its decisions [viz. Mannu Kaduba Gavane & anr. vs. State of

Maharashtra, reported in 2016 (1) Bom. C.R. (Cri.) 800 and Gulam Mustafa Malik vs. State of Maharashtra & anr. (Writ Petition No. 4213 of 2015), wherein the decision of the Supreme Court in State of Bihar vs. Murad Ali Khan, reported in (1988) 4 SCC 655, were relied on] is clear: in the absence of a complaint before the Magistrate by any of the officers specified in section 55, no cognizance of any complaint of an offence against the WLP Act can be taken and hence, investigation of an FIR registered on the basis of information given by a head constable is an abuse of the process of court. Based on such conclusion, which was reached also on the basis of the decision in State of Haryana & ors. vs. Bhajan Lal & ors., reported in 1992 Supp (1) SCC 335, the relevant Benches proceeded to quash the FIRs before them. She, thus, prayed that we should also follow the same course of action.

6. Appearing for the State, Mr. Yawalkar placed before us the FIR in its entirety. He contended that although Prakash Gokuldas Patil, a head constable, was the informant/author of the written complaint, perusal thereof would leave none in doubt that such constable was part of a police party led by Shamkant Somwanshi, an inspector of police, and all throughout the process of police action commencing with interception of the vehicle, acting on a source information that it was carrying meat of a 'nilgai' and culminating in seizure of such meat with unauthorized arms, suspected to have been used in illegal acts, and arrest of the occupants of the vehicle, the said Shamkant Somwanshi was present. That apart, he contended that the investigation of the relevant FIR was made by Anil C. Shinde, police inspector, who subsequently submitted the police report on conclusion of investigation. Relying on a notification dated 21st July, 2013 issued by the Government of Maharashtra in the Revenue and Forests Department, it was shown to us that police officers not below the rank of police sub-inspector have been authorized to take action under section 55 of the WLP Act. It has, thus, been contended that investigation at the instance of a police inspector and submission of police

report (charge-sheet) by such officer ought not to be nullified on the ground as urged by Ms. Mhase and that law be allowed to take its own course.

7. Due to paucity of time, the hearing had spilled over to the next day. We had called upon Ms.Mhase at the outset to look into the decision of the Supreme Court in *Moti Lal vs. Central Bureau of Investigation*, reported in (2002) 4 SCC 713. Having read such decision before the resumption of hearing, prima facie it appeared to us to be clear that for three reasons the statement of law therein would have an obvious impact on the issue under consideration notwithstanding the decisions in *Mannu Kaduba Gavane* (supra) and *Gulam Mustafa Malik* (supra) rendered by coordinate Benches of this Court. First, the coordinate Benches did not have the benefit of considering the decision in *Moti Lal* (supra), and thereby the efficacy of such Bench decisions as binding precedents could stand eroded. Secondly, the Supreme Court considered a contention which appears to be similar to the contention raised before us by Ms. Mhase and, thus, the law laid down upon consideration of such contention would apply with equal force here. Thirdly and finally, the decision in *Moti Lal* (supra) was in no way in conflict with the decision in *Murad Ali Khan* (supra) and, therefore, would guide us in rendering an appropriate decision.

8. In *Moti Lal* (supra), a truck was intercepted by the Sales Tax Department carrying a bundle of cotton. According to the documents, it was being transported from Delhi to Siliguri. On opening the bundle, it was found that it contained 50 skins of leopard, 3 skins of tiger and 5 skins of jungle fox. On receipt of an information to this effect, officers of the Forest Department arrived on the spot and seized the skins of animals under section 50 of the WLP Act. The driver and the conductor of the truck were taken into custody. Thereafter FIR was lodged and a case was registered under the WLP Act and the Indian Penal Code. By a notification issued by the Central Government, the investigation of the case was subsequently transferred to the Delhi Special

Police Establishment. The short question that emerged for decision in the appeal before the Supreme Court was, whether Central Bureau of Investigation (CBI) was authorised to investigate an offence, which is punishable under the WLP Act, apropos a contention urged by the appellant that the WLP Act is a self-contained code. While ultimately holding that CBI had the authority to investigate based on notifications that were produced, the Court proceeded to examine the provisions of the WLP Act and the Cr.P.C. and held as follows :

"10. Further, considering sub-section (1) of Section 50, it is apparent that under the Wild Life Act, the Director or any other officer authorised by him in this behalf or the Chief Wild Life Warden or the authorised officer or any forest officer is empowered to exercise the powers mentioned in clauses (a), (b) and (c). Not only this, but it specifically empowers the police officer not below the rank of Sub-Inspector to inspect, conduct search or hold inquiry or seize articles, as provided in clauses (a), (b) and (c). This would certainly mean that the police officers are not excluded from investigating the offences under the Act. Sub-section (1) starts with a non obstante clause that 'notwithstanding anything contained in any other law for the time being in force' which would include the Code of Criminal Procedure and the officers mentioned therein are also entitled to inspect, search or seize the articles mentioned in clauses (a), (b) and (c). This would mean that apart from the police officers not below the rank of Sub-Inspector, other officers as mentioned above are given special powers for the purpose of prevention and detection of the offence under the Act.

11. Similarly, sub-section (8) empowers any officer not below the rank of an Assistant Director of Wild Life Preservation or Wild Life Warden for the purposes of making investigation into any offence against any provision of the Act: to issue search warrant; to enforce the attendance of witnesses; to compel the discovery and production of documents and material objects; and to receive and record evidence. Further, sub-section (9) provides that evidence recorded by such officer would be admissible in the trial if it is taken in the presence of the accused person. But this would have no bearing on the question whether the police officers are entitled to investigate the case or not.

14. * * * The scheme of Section 50 of the Wild Life Act makes it abundantly clear that a police officer is also empowered to investigate the offences and search and seize the offending articles. For trial of offences, the Code of Criminal Procedure is required to be followed and for that there is no other

specific provision to the contrary. The special procedure prescribed is limited for taking cognizance of the offence as well as powers are given to other officers mentioned in Section 50 for inspection, arrest, search and seizure as well as of recording statement. The power to compound offences is also conferred under Section 54. Section 51 provides for penalties which would indicate that certain offences are cognizable offences meaning thereby a police officer can arrest without warrant. Sub-section (5) of Section 51 provides that nothing contained in Section 360 of the Code of Criminal Procedure or in the Probation of Offenders Act, 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 5-A unless such person is under 18 years of age. The aforesaid specific provisions are contrary to the provisions contained in the Code of Criminal Procedure and that would prevail during the trial. However, from this, it cannot be said that operation of rest of the provisions of the Code of Criminal Procedure are excluded.

15. In this view of the matter, there is no substance in the contention raised by the learned counsel for the appellant that Section 50 of the Wild Life Act is a complete code and, therefore, CBI would have no jurisdiction to investigate the offences under the said Act. Hence, it cannot be said that the judgment and order passed by the High Court rejecting the petition filed by the appellant is in any way illegal or erroneous."

(underlined for emphasis)

9. The contention of Ms. Mhase that section 50 of the WPL Act is a complete code in itself and that power of investigation as conferred on police officers by the Cr.P.C. could not have been invoked, in our opinion, is squarely answered by the decision in Moti Lal (supra) and we find no substance in such contention; hence, the same is rejected.

10. In Murad Ali Khan (supra), the Supreme Court was considering whether the order under challenge passed by the relevant high court could be sustained on the grounds on which it was founded, viz.

- (i) The investigation is still continuing and pending insofar as the petitioner is concerned and the investigation shall continue. Obviously the Judicial Magistrate acted beyond jurisdiction in taking cognizance against the petitioner when for the same allegation the investigation was proceeding and pending. He acted contrary to the

- provisions of Section 210 of the Code of Criminal Procedure. The complaint was filed after long delay....; and
- (ii) On the face of the complaint petition of the first information report itself the facts alleged do not constitute the offence. The petitioner was never named in the first information report. There is no eyewitness in this case and there is no identification of the petitioner in any manner whatsoever to sustain the allegation even prima facie for the offence alleged.

11. After examining the provisions of the WLP Act and the Cr.P.C., the Supreme Court dealt with the said grounds in the following words:

"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 dated 23-6-1986 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.

14. The second ground takes into consideration the merits of the matter. It cannot be said that the complaint does not spell out the ingredients of the offence alleged. A complaint only means any allegation made orally or in writing to a Magistrate, with a view to his taking action, that some person, whether known or unknown, has committed an offence."

(underlined for emphasis)

12. Ms.Mhase relied on the decision in Jeewan Kumar Raut vs. Central Bureau of Investigation, reported in (2009) 7 SCC 526, for the proposition that the Transplantation of Human Organs Act, 1994 (hereafter the "TOHO Act", for short) in section 22 has a similar provision like section 55 of the WLP

Act and the Supreme Court held there that section 167(2) of the Cr.P.C. is not attracted for offences under the TOHO Act, as a police report under section 173(2) of the Cr.P.C. is by necessary implication barred under section 22 of the TOHO Act. She, therefore, seeks to draw inspiration from the said observation to contend that if no police report under section 173(2) of the Cr.P.C. could be filed, there can be no investigation by a police officer.

13. We have heard the parties at some length. The sole question that we are tasked to decide is, whether the FIR lodged by the informant and the investigation into such FIR that has followed, culminating in filing of a police report under section 173(2) of the Cr.P.C., are liable to be quashed in view of the provisions in section 55 of the WLP Act.

14. Before we venture to answer the question as aforesaid, we may take note of the decision in Jeewan Kumar Raut (supra) to ascertain whether it advances the cause espoused by the petitioners. Applicability of section 167(2) of the Cr.P.C. in a case where cognizance has been taken under section 22 of the TOHO Act on a complaint filed by the respondent was the question involved in the appeal. Doubtless, the question was answered in the negative in paragraph 32. In so answering, the Court agreed with the views of the Kerala High Court in its decision in Moosakoya vs State of Kerala, reported in 2008 Cri. L.J. 2388 (Kerala) to the following effect:

"3. A plain reading of the above provision will show that even though by Section 24 all offences under the Act are made cognizable, no court can take cognizance of the offence except upon a written complaint made by a person authorised in this behalf by the Government or the District Collector or a Geologist of the Department of Mining and Geology. A 'complaint in writing' by the authorised officer, etc. is the only condition for taking cognizance as provided in Section 25. If a police officer is authorised by the Government, he may also file a complaint on the basis of which the court may take cognizance. But, the court cannot take cognizance of any offence punishable under the Sand Act on a police report filed under Section 173(2) CrPC after investigation by police."

(underlined for emphasis)

15. Having read the decision in Jeewan Kumar Raut (supra) carefully, we have, however, failed to comprehend as to how based on the law laid down therein the relief claimed in this writ petition can be granted. It would be apt to reproduce below a relevant observation from the said decision:

“35. *** If a complaint petition is filed, the procedure laid down under Chapter XV of the Code can be taken recourse to despite the fact that the same has been filed after full investigation and upon obtaining the remand of the accused from time to time by reason of orders passed by a competent Magistrate.”

16. Section 55 of the WLP Act ordains that cognizance of an offence against the WLP Act cannot be taken by a court unless a complaint is filed by any officer of the nature specified therein. It is, therefore, clear that cognizance by a court on a complaint by a specified officer is the sine qua non for further proceedings in respect of offences alleged against the WLP Act.

17. The word “complaint” is not defined in the WLP Act.

18. Definition of the word “complaint” is found in section 2(d) of the Cr.P.C. reading as follows:

“d) ‘complaint’ means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.—***”

19. The word ‘cognizance’ is not defined either in the Cr.P.C. or the WLP Act. In common parlance, ‘cognizance’ means ‘to take notice’. In the sense it is used in section 55 of the WLP Act, ‘cognizance’ indicates the point when a Magistrate first takes judicial notice of an offence against the WLP Act.

20. The word 'complaint' in section 55 of the WLP Act has been considered in Murad Ali Khan (supra) to mean any allegation made orally or in writing to a Magistrate, with a view to his taking action, that some person, whether known or unknown, has committed an offence. Thus, an oral or written allegation made to a Magistrate, having jurisdiction, by a specified officer that some person has committed an offence against the WLP Act is the first step to set the process of law in motion in the judicial arena. In this case, nothing much turns on filing of the police report dated 31st January, 2020 under section 173(2) of the Cr.P.C. alleging offences against the WLP Act so long the Magistrate does not take cognizance on the basis thereof. Importantly, it is not the case of the petitioners that cognizance of the offence against the WLP Act has been taken by the Magistrate on such police report and process has been issued. Thus, having regard to the law laid down in Moti Lal (supra) and Murad Ali Khan (supra) on consideration of the WLP Act and the Cr.P.C., read with the recent decision of the Supreme Court in Jayant & Ors. vs State of Madhya Pradesh, reported in (2021) 2 SCC 670 (a decision referred to by Ms. Mhase, after judgment was reserved), we see reason to hold that cognizance of an offence against the WLP Act can even be taken by a court on the basis of a petition of complaint lodged by any of the police officers, authorized for the purpose of section 55 of the WLP Act, after he has embarked on an investigation pursuant to registration of an FIR. Although exception could validly be taken if cognizance were taken by the Magistrate based on a police report in view of the bar in section 55 of the WLP Act, the question of interference at this stage does not arise since no cognizance has yet been taken in this case. It cannot be ignored that the accused are also charged with offences under sections 3 and 25 of the Arms Act. If the petition of complaint that is required to be filed under section 55 of the WLP Act contains allegations constituting offences against the WLP Act by the alleged offenders, based on the evidence and/or materials collected in course of investigation, and such

petition of complaint is filed by a police officer authorized by the State Government to do so, we are at a loss to comprehend how such procedure could tantamount to an abuse of law or of the process of the court warranting judicial interdiction.

21. In Mannu Kaduba Gavane (supra) and Gulam Mustafa Malik (supra), complaints lodged by a police constable and a police naik, respectively, gave rise to the FIRs which were ultimately quashed. While so quashing in exercise of extraordinary powers, the coordinate Benches considered the decision in Bhajan Lal (supra) and held that sub-paragraph 6 of paragraph 102 was attracted to the facts of the proceedings at hand. We may at this stage notice the relevant passage in Bhajan Lal (supra). It reads:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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.

***”

22. It could be so that sub-paragraph (6) of paragraph 102 was applicable to the proceedings dealt with by the coordinate Benches, and appropriate orders were made based on the law laid down by the Supreme Court. However, it is required to be noted that no case had been set up by the respondents in Mannu Kaduba Gavane (supra) and Gulam Mustafa Malik

(supra) of existence of a Government Resolution specifying the officers who could lodge complaint in terms of section 55 of the WLP Act. The Government of Maharashtra having issued the notification dated July 21, 2013, the decisions are distinguishable on facts.

23. Since it is the mandate of section 55 of the WLP Act that no court shall take cognizance of an offence against the WLP Act except on a complaint of the specified officer, it would amount to sufficient compliance of the statutory mandate if a petition of complaint were filed before the Magistrate by the officer, competent to so file, even on the basis of the evidence and/or materials collected during investigation of an FIR alleging offences punishable under the WLP Act together with offences punishable under any other law for the time being in force and the Magistrate may, in such a case, bearing in mind the proviso to section 200 and other relevant provisions of the Cr.P.C. proceed to pass appropriate order(s) in accordance with law.

24. For the reasons aforesaid, we find no merit to entertain this writ petition at this stage. The same stands dismissed, without any order for costs. Liberty is reserved to the respondents to act in accordance with law. The petitioners shall also be at liberty to seek their remedy according to law in the event of contravention of any law, affecting their rights.

(Ravindra V. Ghuge, J.)

(Chief Justice)