HC-KAR

NC: 2026:KHC:63735
CRL.A No. 820 of 2014

CNR: KAHC010367032014

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 820 OF 2014 (C)

BETWEEN:

1. MUTHAPPAYYA SWAMY
AGED ABOUT 64 YEARS,
S/O LATE SHIVAPPA,
RESIDING AT NO.205, 11TH CROSS,
GAVIPURAM WEST,
BANGALORE-560 019.

...APPELLANT

(BY SRI. PRAVEEN C.,ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY HANUMANTHNAGAR POLICE STATION,
HANUMANTH NAGAR,
BANGALORE-560 019.

...RESPONDENT

Digitally signed by
LAKSHMINARAYAN N
Location: High Court
of Karnataka

(BY SRI. K. NAGESHWARAPPA, HCGP.)

CRL.A. FILED U/S. 374(2) CR.P.C BY THE ADV., FOR THE APPELLANT PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE ORDER DATED:5.9.14 PASSED BY THE P.O., FTC-XV, BANGALORE CITY IN S.C.NO.230/11 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 51 OF WILD LIFE (PROTECTION) ACT, 1972. AND THE APPELLANT/ACCUSED IS SENTECED TO UNDERGO S.I. FOR A PERIOD OF 3 YEARS WITH FINE OF RS.10,000/-. FOR THE OFFENCE P/U/S 51 OF WILD LIFE (PROTECTION) ACT, 1972. AND THE APPELLANTA/ACCUSED PRAYS THAT HE BE ACQUITTED.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

1. The appellant has preferred this appeal against the judgment of conviction and order on sentence passed by the Presiding Officer, Fast Tract Court-XV, Bengaluru, in SC No.230/2011 dated 05.09.2014.

2. For the sake of convenience, the parties herein are referred to as per their status before the trial Court.

3. Brief facts leading to this appeal are that, Hanumanthanagara Police have filed the charge-sheet against the accused for the offences punishable under Sections 9, 39, 40, 49(b and c) of the Wild Life (Protection) Act, 1972 and Section 379 of IPC and Section 86 and 87 of Karnataka Forest Act. It is alleged by the prosecution that on 28.01.2009 at about 02:30 p.m., the accused was found in illegal possession of one leopard (Panther) skin, 3 skins of spotted deer, 2 teeth of wild pig

and 2 other parts of Kasturi Mruga, in his house-cum-real estate office situate at No.205/2013, 11th Cross, Rudra Swamy Temple Road, Gavipuram West, Bengaluru. Further, it is alleged that on the said date, time and place, the accused was found in illegal possession of 2.800 grams of sandal wood billets worth of Rs.8,25,000/-. Thus, the accused has committed the offence punishable under Section 51 of the Wildlife Protection Act, 1972 and Section 86 of the Karnataka Forest Act and Section 379 of IPC.

4. The accused appeared before the Court and enlarged on bail. Upon hearing on charges, the trial Court has framed the charges against the accused for the alleged commission of offences. Same were read over and explained to the accused. Having understood the same, the accused pleaded not guilty and claimed to be tried.

5. To prove the guilt of the accused, prosecution has examined, in all, 9 witnesses as PW1 to PW9, 9 documents were marked as Exhibits P1 to P9 and 13

material objects were marked as MOs.1 to 13. On closure of prosecution side evidence, statement under Section 313 of Cr.PC was recorded. Accused has totally denied the evidence of prosecution witnesses, however, he did not choose to lead any defence evidence on his behalf.

6. Having heard the arguments on both sides, the trial Court has acquitted the accused for the offence punishable under Section 86 of Karnataka Forest Act, 1963 and Section 379 of IPC. However, the trial Court has convicted the accused for the offence punishable under Section 51 of the Wild Life (Protection) Act, 1972 and passed sentence to undergo simple imprisonment for a period of 3 years with fine of Rs.10,000/-. Being aggrieved by this judgment of conviction and order on sentence, the appellant/accused has preferred this appeal.

7. Learned counsel for the appellant would submit that the judgment of the trial Court is bad in law. The entire articles were seized under the mahazar Exhibit P1.

The mahazar is not proved in accordance with law, as the seized articles such as sandalwood is not at all tallying with the articles produced before the trial Court during the time of evidence. As such, the entire mahazar itself casts a serious doubt about its existence. The learned Sessions Judge has not at all considered this matter while dealing the case on merits, but gives a finding that there are small discrepancies which has to be overlooked. This itself is sufficient to acquit the accused.

8. Exhibit P1 mentions that 2,800 grams of sandalwood was being seized but in the trial the marked object would be only 2,000 grams. This is glaring discrepancy and speaks volumes of the Investigating Officer and motive behind implicating this appellant in a false and frivolous case. Among the independent witnesses, the prosecution examined one witness who turned hostile and other one supported the case of the prosecution. The said witness is examined as PW3. This witness is a stock witness of the Investigating Officer. An

application was filed before the learned Sessions Judge to confront the other witness. The learned Sessions Judge has refused to allow the application, but has believed the version of PW3. This has led to serious miscarriage of justice at the hands of the Court.

9. Further**,** it is submitted that as to alleged commission of offence under Section 51 of Wildlife Protection Act, the trial Court has no jurisdiction to take cognizance on the basis of the police report, in view of bar under Section 55 of the Wildlife Protection Act, 1972. In the case on hand, the police have submitted the charge-sheet against the accused, and the same is not maintainable under law. On all these grounds, sought for allowing this appeal.

10. To substantiate his arguments he relied on the decision of the Hon'ble Apex Court in the case of Elvish Yadav @ Siddharth v. State of U.P and Another reported in

2026 Supreme (SC) 355, wherein at para No.20 of the judgment it is observed as under:

> *"20. A bare perusal of the provision makes it clear that under Section 55 of the 1972 Act, cognizance of an offence can be taken by a Court only on the basis of a Complaint made by the officers/authorities mentioned therein. It is trite law that when a statute provides for a special procedural mechanism to be followed, the same shall be adhered to, by excluding the general statutory provisions. It is an equally well-settled rule of interpretation of status that strict and literal interpretation shall be applicable to penal law."*

11. As against this, learned HCGP, Sri K.Nageshwarappa, has not disputed as to the non-compliance of provision of Section 55 of the Wildlife Protection Act, and sought for passing suitable orders.

12. Having heard the arguments on both sides and on perusal of materials, the following points would arise for my consideration:

1. Whether the trial Court is justified in convicting the accused for the offence punishable

under Section 51 of the Wild Life Protection Act, 1972?

2. What order?

13. My answer to the above points as under:

Point No.1 : In the Negative.

Point No.2 : As per the final order.

Regarding Point No.1:

14. I have examined the materials placed before this Court.

15. The Investigating Officer has submitted the charge-sheet against the accused for the offence under Section 9, 39, 40, 49(b and c) of the Wild Life (Protection) Act, 1972 read with Section 379 of IPC and Section 86 and 87 of Karnataka Forest Act. After filing the charge-sheet, the I Additional Chief Metropolitan Magistrate, Bengaluru, has taken cognizance and registered the case against the accused for the offences punishable under Sections 9, 39, 40, 49(b and c) of Wildlife Protection Act, read with 379 of

IPC and Sections 86 and 87 of Karnataka Forest Act and thereafter, case was committed to the Court of Sessions and was registered in SC No.230/2011. The learned Sessions Judge has framed the charges against the accused for the offences punishable under Section 51 of Wild life Protection Act and Sections 86 and 87 of the Karnataka Forest Act, 1963 read with 379 of IPC and same were read over and explained to the accused. The accused pleaded not guilty and claimed to be tried.

16. To prove the guilt of the accused, prosecution has examined, in all, 9 witnesses as PWs1 to 9 and 9 documents were marked as Exhibits P1 to P9 and 13 material objects were marked as MOs.1 to 13. The trial Court has acquitted the accused for the offence punishable under Section 86 of Karnataka Forest Act, 1963 and Section 379 of IPC, however, the trial Court has convicted the accused for the offence under Section 51 of Wildlife Protection Act, 1972.

17. Now the question is, whether the learned I ACMM can take cognizance against the accused for the commission of offence under Section 51 of the Wildlife Protection Act. In this regard, I have gone through the provision of Section 55 of the Wildlife Protection Act, which reads as under:

> *"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 authorized in this behalf by the Central Government; or*
>
> *[(aa) the Member-Secretary, Central Zoo Authority in matters relating to violation of the provisions of Chapter IVA; 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 38J; 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.]"

18. In the decision of Hon'ble Apex Court in the case of Elvish Yadav @ Siddharth (Supra), it is held as under:

"(1) Psychotropic Substance - Recovery of anti-bodies of snake venom from accused will not fall within purview of a psychotropic substance of NDPS Act.

(2) Exercise of power by an authority who is not competent/authorised to do so, results in vitiation of its foundation - Once a power is exercised without jurisdiction, it is void ab initio, and any subsequent action or proceedings which stems from it, would be rendered void."

19. A bare perusal of provisions makes it clear that under Section 55 of the Wildlife Protection Act, 1972, cognizance of an offence can be taken by a Court only on the basis of a complaint made by the officers/authorities mentioned therein. It is trite law that when a statute provides for a special procedural mechanism to be followed, the same shall be adhered to by excluding the general statutory provisions. It is an equally well settled rule of interpretation of statute that strict and literal interpretation shall be applicable to penal law.

20. In the case on hand, the learned I ACMM has taken cognizance on the basis of the police report/charge sheet submitted by the PSI of Hanumanthanagara Police Station. The concerned officer has not filed any complaint as defined under Section 2(d) of Cr.PC, 1973. In view of Section 2(d) of Code of Criminal Procedure, "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown, has

committed an offence, but does not include a police report.

21. The learned First Additional CMM and the learned Session Judge have not considered the provision of Section 55 of the Wildlife Protection Act, 1972. The learned Sessions Judge has not discussed anything about the mandatory provision of Section 55 of the Wildlife Protection Act, 1972. The learned I ACMM has no power to take cognizance for the offence under Section 51 of the Wildlife Protection Act, 1972, on the basis of police report in view of bar under Section 55 of the Wildlife Protection Act, 1972. Once a power is exercised without jurisdiction, it is "void ab initio' and any subsequent action or proceedings which stems from it, would be rendered void, in view of the aforesaid decision relied upon by the learned counsel for the appellant. Hence, the learned Sessions Judge is not justified in convicting the accused for the offence under Section 51 of the Wildlife Protection Act. Hence, I answer Point No.1 in the ***Negative***.

Regarding Point No.2:

22. For the aforestated reasons and discussions, I proceed to pass the following:

ORDER

i. Appeal is allowed.

ii. The judgment of conviction and order on sentence passed by the Presiding Officer, Fast Track Court-XV, Bangalore, in Sessions Case No.230/2011, dated 05.09.2014, is set aside.

iii. Accused is acquitted of the offence under Section 51 of the Wildlife Protection Act, 1972.

iv. The order of confiscation of MOs.1 to 13 is unaltered.

v. The trial Court is directed to refund the fine amount, if any, deposited by the accused/appellant.

vi. Bail bond of the accused/appellant shall stand cancelled.

Registry is directed to send the copy of the judgment along with TCR to the trial Court.

Sd/-
(G BASAVARAJA)
JUDGE

KBM
List No.: 1 Sl No.: 38