

(2024) 02 J&K CK 0015

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case No. 67, 248, 2231 Of 2021

Arjun Balraj Mehta

APPELLANT

Vs

UT Of Ladakh And Others

RESPONDENT

Date of Decision : 12-02-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 54, 482
Wild Life (Protection) Act, 1972 — Section 5, 8, 50, 51
Arms Act, 1959 — Section 7, 27

Citation : (2024) 02 J&K CK 0015

Hon'ble Judges : MA. Chowdhary, J

Bench : Single Bench

Advocate : Ankur Sharma, Vishal Sharma

Final Decision : Dismissed

Judgement

MA Chowdhary, J

1. Petitioner through the medium of this petition under Section 482 CrPC seeks quashment of FIR No. 15/2016 dated 13.04.2016 registered at Police Station Leh against him for commission of offences punishable under Section 08/51 of Wildlife Protection Act, and Sections 07/27 of Arms Act and consequential proceedings arising therefrom.

2. Petitioner has asserted that he is a national level shooter and has won many awards and accolades in National Level Shooting Competitions and that in the month of April 2016, he had gone to Ladakh for vacation and had taken along his licensed gun for repairing purpose through one of his friend who is an Army Officer and also a National Level Shooter and expert in repairing the same, under due authorization as he had an All India Arms License vide No. SWDN/12/2011/2.

3. It is stated that on 13.04.2016, he went for a ride in the official vehicle of his friend who was in Army along with his driver and was having in his legal possession his licensed weapon and while at Pathar Sahib Gurudwara road, he

asked the driver to stop the vehicle and went out of the vehicle and in the said vehicle there were his cartridges as well as that of his friend and while he was walking there, around 8-9 persons in civil dress, while shouting reached the stop and started putting false allegations upon him that he had come there for shooting animals. He tried to make all of them understand that he was not doing anything wrong but they started abusing and beating him, causing several internal and external injuries. As a result, he got frightened and tried to run away in order to protect his life and liberty. However, the said unknown persons wrongfully restrained him and illegally detained him and when he threatened them to lodge a police complaint, they hatched a conspiracy against him and he and the army driver were forcibly boarded in the Scorpio vehicle and taken to a local Police Station. It was alleged that the Police under the influence of unknown local residents did not register a case against those persons and instead a complaint was entertained against him by the SHO Police Station concerned and an FIR was lodged against him for commission of offences punishable under Section 8/51 of Wildlife Protection Act and the petitioner was wrongfully and deliberately arrested.

4. The petitioner has challenged the impugned FIR No. 15/2016 registered at Police Station Leh for commission of offences therein and sought quashment thereof on the ground that the allegations in the impugned FIR are so absurd and inherently improbable; that no prudent person can ever reach at just conclusion that there is sufficient ground for proceeding against him; that he has never killed and never attempted to hunt any wild animal; that in view of the observation made by learned Chief Judicial Magistrate, Leh in his order 20.04.2016, granted bail in his favour that the accused had not violated the provisions of Wildlife Act, as such, no offence is made out against him; that no dead animal or meat of animal had been recovered by the Police and that FIR has been registered about four years back and since then the matter is still at the investigation stage as there was no substance in the impugned FIR and is being used just as a tool of harassment to him.

5. Pursuant to notice, respondents filed their objections to the petition in which they have asserted that on 13/04/2016 one-Tsering Angchuk, Wild Life Warden Leh, filed a written complaint to the effect on that day while he was returning from the field tour of Basgoo & Nimoo area, he received a telephonic call from Sh. Sonam Nurbu, Deputy Forester, Leh at around 4:30 p.m., informing him that he along with other wild life officials were on anti poaching tour near Magnetic Hill area, where they found some persons were poaching Ladakhi Urial (wild sheep) on the hill side with telescopic gun; that he rushed to the spot where he found three persons; one of them was in army uniform, and other one was in civies, carrying a telescopic rifle, and the third person was also in army uniform who was waiting beside Military vehicle No. 14 B 113935-M parked near the main road towards nullaha side and suddenly they fired three rounds to Ladakhi Uriaals which can be frequently seen around magnetic hill and its surrounding areas but the wild life officials could not identify the numbers of injured or killed wild life

animals on spot; that the wild life officials present on the spot, chased the poachers and were able to seize one telescopic rifle bearing no:076102993, with three live cartridges, an ammunition box containing full unused ammunitions and the aforementioned vehicle, which was being used for illegal poaching of Ladakh Urals from the above said poachers and requested for lodging of FIR.

6. It was further pleaded that the Investigating Officer visited the scene of crime, took its photograph, prepared the site plan, and recorded the statements of complainant and other witnesses acquainted with facts and circumstances and thereafter, in presence of Additional Magistrate, Leh and the officials of Wild Life Department Leh, one sniper telescopic rifle, one army vehicle (Gypsy) and some object appearing to be fur of animal, stained with blood, stuck on the rubber/Jute found on back seat of the above seized army vehicle and seized on spot and sealed in presence of the Magistrate and some blood stained stones of different sizes and animal furs were also seized from Hosing Nullha, Rumbak hemis National Park on 19.04.2016; that based on the statements of the witnesses and the recoveries made, two persons- Arjun Balraj Mehta (petitioner herein) and Hav. Kate Parshant were arrested under Section 54 CrPC.

7. It is being stated further that during the investigation, Col. Bhanu Partap Singh, produced the gun licenses of the seized rifle on 18.04.2016 and as per the licenses, the seized rifle was in the name of Arjun Balraj Mehta-petitioner herein which was renewed up to 13.10.2018; that the seized rifle had been examined by the Ballistic expert at J&K FSL, Jammu and as per his report, the same was found in working condition and the test fired cartridge was compared with Crime fired cartridge and both were found to have been fired from the same weapon. It has also been recorded by the respondents that court of enquiry was conducted against the army official and administrative action of severe displeasure was conveyed to Col. Bhanu Partap Singh for having facilitated his civilian friend, petitioner herein; that the investigating agency has resulted investigation of the case and reached to a conclusion that the petitioner was found to have committed offences punishable under Sections 8/51 Wild Life Protection Act, and Sections 7/27 of Arms Act and accordingly the investigation has been concluded into a charge-sheet.

8. Learned counsel for the petitioner has submitted that it was not a prosecution case that any killed animal had been found either by the Wildlife Authority or by the Police and that there was no direct proof with regard to killing of any of the animal by the petitioner, who was a national level shooter and was falsely implicated in the case by the locals, may be under a misconception that he was holding rifle in his possession, as such, he had killed any protected wildlife animal. He has further argued that the cognizance of an offence under the Wildlife Protection Act, cannot be taken by a Court without the written complaint of an authority under the Wildlife Act and the case against the petitioner has been registered and investigated by the Police, as such its cognizance cannot be taken by the Court. He has also argued that it is a clear cut case of the petitioner

that he has been falsely implicated and a process of law is being misused to harass him, as such, it is a case where inherent jurisdiction of this Court is required to be exercised to quash the impugned FIR in view of the principles of the law laid down in Bhajan Lal's case and prayed that the petition be allowed and the impugned FIR be quashed.

9. Mr. Vishal Sharma, learned counsel appearing for the respondents, on the other hand, vehemently argued that the investigation has been conducted against the petitioner, wherein the Investigating Agency has reached to a conclusion that the offences punishable under Wildlife Protection Act as well as Arms Act have been sufficiently proved, the charge-sheet is awaited to be laid before the Court of law for its just determination. He has further argued that the contention of the petitioner that cognizance cannot be taken in this case by the Court as the cognizance can be taken by the Court on a complaint lodged in terms of the Wildlife Protection Act, on a complaint by the Wildlife authorities as that stage is yet to come as the charge-sheet is to be laid and the petitioner shall have every right to agitate any such plea before the Trial Court. He has further argued that it is not necessary as raised by learned counsel for the petitioner that the dead animal or its remains should have been seized as it will be a case of trial involving factual issues which cannot be decided by this Court in this petition. In support of his argument, he has stated that the issue of cognizance is no longer res integra as the co-ordinate Bench in CRM(M) No. 52/2023 involving the same question of law, has laid down that cognizance of a case/complaint, investigated by Police can be taken by the Court. He has relied upon many judgments of the High Courts and the Supreme Court whereby it has been held that the Police Officer is also empowered to investigate the offences under the Wildlife Protection Act 1972.

10. Learned counsel for the respondents has also brought to the notice of this Court that an advisory issued on investigation of offences under the Wild Life (Protection) Act, 1972, by Wildlife Crime Control Bureau of Government of India vide no. 10-27/WCCB/2014/Part-I/No. 03-14/1627 dated 10.10.2024, clearly explained that "The Scheme of Section 50 of the Wild Life Act makes it abundantly clear that Police Officer is also empowered to investigate the offences and search and seize the offending articles". This observation has been made while discussing Section 50 of the Wild Life Act which deals with the powers to investigate the matter under this Act

11. Heard both the sides, perused the record and considered the matter.

12. The Apex Court in a case titled "Moti Lal vs CBI and another; (2002) 4 SCC 713 has been pleased to hold as under:

"The scheme of Section 50 of the Wildlife Act makes it abundantly clear that Police Officer is also empowered to investigate the offences and search and seize the offending articles. For trial of offences, Code of Criminal procedure is required to be followed and for that there is no other specific provision to the

contrary. 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 of recording statement”

13. The contention of learned counsel for the petitioner that the dead or remains of the animal killed had not been recovered or seized makes no sense, as even an attempt to kill is also an offence and otherwise also, this shall be a factual matter to be considered during the trial. So far as the plea for cognizance raised is concerned that also seems to be premature in view of the fact that the charge-sheet is yet to be laid before the competent court of law and the petitioner shall have every right to raise all those pleas including that of cognizance before that Court.

14. On consideration of the matter on all its fours, there is no merit in the case, the petition, being misconceived, is liable to be rejected.

15. Viewed thus, the petition is dismissed. Interim direction, if any, shall stand vacated.