
(2015) 03 JH CK 0121

In the Jharkhand High Court

Case No : Cri. M.P. No. 106 of 2002

Naw Chandra Singh and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Wild Life (Protection) Act, 1972 — Section 38J, 44, 49 (A), 49 (B), 49(A)

Citation : (2015) 5 FLT 581

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : A.K. Chaturvedi, for the Appellant

Final Decision : Allowed

Judgement

Rongon Mukhopadhyay, J—Heard the parties. In this application, the petitioners have prayed for quashing the entire criminal proceeding in connection with Crime Report No. 1 (P) dated 20.3.2001, corresponding to C-II 5/2000 including the order dated 29.6.2001, passed by Shri J.K. Dubey, learned Judicial Magistrate at Simdega, whereby and whereunder cognizance has been taken for the offence punishable under sections 9/44/49(A)/49(B) of the Wild Life (Protection) Act, 1972.

2. A written report was given to the Divisional Forest Officer, Gumla Forest Division by the Forest Officer, Bano, in which it was alleged that he had come to know from one forest guard namely Mahadeo Nayak, Bano that on 1.5.2000 a Leopard had killed a bull of petitioner No. 1 and as a retaliatory measure, the villagers had killed the Leopard and had kept the skin of Leopard with them. On such information, a task force was constituted, which proceeded to the place of occurrence and the statement of petitioner No. 1 was recorded and on the basis of the said statement, the house of one Vijay Surin (petitioner No. 5) was raided, from where, skin of two Leopards were found on a rock nearby the house of petitioner No. 5.

3. The statements of some witnesses were recorded, in which it was alleged that the villagers had closed the entrance of a cave with woods and leaves and set fire to them, which resulted into the Leopards being suffocated to death. Subsequently, the dead bodies of Leopards were recovered and after removal of their skin, their meats were distributed.

4. Based on the aforesaid allegations, Crime Report No. 1 (P) dated 20.3.2001, corresponding to C-II5/2000 was instituted.

5. Learned Counsel for the petitioners has submitted that although the occurrence is said to have taken place on 20.5.2000 but the case was instituted on 20.3.2001 and there is no explanation with respect to instituting the case after so much delay. It has been submitted that the complainant was not authorized to institute the complaint and as such in terms of section 55 of the Wild Life (Protection) Act, 1972 (The Act for short), the learned Court below could not have taken cognizance for the offences mentioned therein.

6. Learned Counsel for the State, on the other hand, while relying on the counter-affidavit filed by the Range Officer, Karumgarh Range, Chainpur under Gumla Forest Division, Gumla, has submitted that the Notification dated 16th May, 2001 clearly specifies that the Divisional Forest Officer, Gumla is also empowered to institute a case. It has also been submitted that section 50 of the Act gives the power of entry, search, arrest and detention and in such circumstances, the search as well as the subsequent institution of the complaint case was done by the persons duly authorized under the Act.

7. After hearing the learned Counsel for the petitioners and after going through the records, I find that for the allegations made therein the complaint case was instituted by the Range Forest Officer, Bano, Simdega on 10.10.2010. It is to be seen as to whether the Range Forest Officer was authorized in terms of the notification issued by the State Government and whether under section 55 of the Act, the Magistrate was empowered to take cognizance for the alleged offences punishable under the Wild Life (Protection) Act.

Section 55 of the Wildlife (Protection) Act reads as follows :

[55. Cognizance of offences.--No Court shall take cognizance of any offence against this Act 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) 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.]"

8. The State Government had come up with a notification on 16.5.2001, in which persons were authorized under the Wild Life (Protection) Act, 1972 and with respect to Palkot Wild Life Sanctuary, the Divisional Forest Officer, Gumla Forest Division was empowered under the Act. It has been strenuously argued by learned Counsel for the opposite parties that since there was already an empowerment by the State Government by virtue of the Notification dated 16.5.2001 and as such it cannot be contended by the petitioners that the complaint was not lodged by an authorized person. Admittedly, the complaint was lodged on 20.3.2001 for the alleged offence committed on 20.5.2000. Although the notification dated 16.5.2001 does not speak in so many words that it is the Divisional Forest Officer, who is otherwise empowered to make the complaint but in view of the fact that the complaint was itself lodged prior to the Notification dated 16.5.2001, in such circumstances, the contention of learned Counsel for the opposite parties with respect to authorization/empowerment is fit to be rejected.

9. The counter-affidavit filed on behalf of opposite parties does not disclose as to whether on the date on which the complaint was made, the Range Forest Officer, Bano was competent to institute a complaint or not. Whatever has been stated in the counter-affidavit with respect to issuance of notification by the State Government is subsequent to the filing of the complaint petition and in such view of the matter, the Notification dated 16.5.2001 appears to be of no help to the State in the facts and circumstances of the present case. Section 55 of the Act clearly bars a Court from taking cognizance of any offence under the Wild Life (Protection) Act except on a complaint by the persons mentioned or by a person authorized and in absence of any averment in the counter-affidavit it has to be accepted that on the date of institution of the complaint case by the Range Forest Officer, Gumla, he was not empowered or authorized under the provisions of Wild Life (Protection) Act and Rules to institute a complaint and in such circumstances since the very inception of the case is an illegality the criminal proceedings against the petitioners cannot be allowed to continue. Accordingly, there being merit in this application, the same is allowed and the entire criminal proceeding in connection with Crime Report No. 1 (P) dated 20.3.2001, corresponding to C-II 5/2000 including the order dated 29.6.2001, passed by Shri J.K. Dubey, learned Judicial Magistrate at Simdega, whereby and whereunder cognizance has been taken for the offences punishable under sections 9/44/49 (A)/49 (B) of the Wild Life (Protection) Act, 1972, is hereby quashed.