

(2009) 10 GAU CK 0033
In the Gauhati High Court
Case No : Criminal Petition No. 324 of 2009

Pallav Das @ Kero Young

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 23-10-2009

Acts Referred:

Assam Wildlife Protection Rules, 1997 — Rule 52, 52
Criminal Procedure Code, 1973 (CrPC) — Section 156(1), 156(2), 482
Specific Relief Act, 1963 — Section 41
Wild Life (Protection) Act, 1972 — Section 2(11), 2(16)(C), 39, 39(1), 40
Wild Life (Protection) Amendment Act, 1996 — Section 39(1)

Citation : (2010) 3 GLR 834 : (2010) 2 GLT 535

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Advocate : A.K. Goswami, for the Appellant; K. Munir, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Sarma, J.—This Criminal Petition is directed challenging the legality and validity of the Offence Report dated 30.6.2009 submitted by the Forest Ranger cum Investigating Officer, the respondent No. 2 herein, as well as the orders dated 24.7.2009 and 27.8.2009 by which the learned CJM(K) has issued summon to the accused in connection with Case No. 2973C/ 2009 under Sections 40/44/49/9/39/42 read with Section 2(16)(C) and 2(11) and Section 57 of the Wild Life (Protection Act), 1972.

2. Heard Mr. A.K. Goswami, learned senior counsel appearing for the petitioner and Mr. K. Munir, the learned Addl. P.P., Assam.

3. The brief facts necessary for disposal of this petition inter alia are that on 25.3.2009 at about 4 p.m. a few forest officials fed by the Divisional Forest Officer, Guwahati Wild Life Division appeared in the business premises of the petitioner located at Manipuri Basti, Guwahati and searched the premise. During search certain articles were seized by the respondent No. 2 and the seizure list

was prepared by him listing the articles so seized. Thereafter by notice dated 27.3.2009 issued under Rule 52 of the Assam Wild Life Protection Rules, 1927 and Section 39(1) of the Wild life (Protection) Amendment Act, 1996 the petitioner was called upon to produce his legality of proof in original of the animal articles/forest produce seized by the Seizing Officer from his business premises on 26.9.2009 u/s 50 of the Wild Life Protection Act, 1972, within 10 days from the date of issuance of notice. Upon receipt of the said notice the petitioner prayed for time to reply due to his illness. Thereafter subsequent notices dated 8.4.2009 and 12.4.2009 were also issued with similar directions by the respondent No. 2. Upon receipt of said notice dated 12.5.2009 the petitioner raised a preliminary objection on 29.5.2009 stating that the said notice is not validly issued as the same was not issued by the seizing officer, the respondent No. 2 but was issued by the DFO, Guwahati Wild Life Division and such a notice is required to be issued under Rule 52 by the seizing Officer only. Accordingly the petitioner did not reply on merit of the said notice and prayed for a decision on the issue so raised by him. In the meantime, the petitioner by filing WP(C) No. 2926/2009 challenged the legality and validity of the said notice dated 12.5.2009 wherein an interim order was passed by the writ court on 29.7.2009 not to take any penal action pursuant to the said notice, in the meantime. However, thereafter, the authorized officer, the respondent No. 2 filed an offence report in the form of complaint in the court of the Chief Judicial Magistrate, Kamrup, Guwahati, dated 30.6.2009 which was received in the office of the CJM on 24.7.2009. The said complaint was registered as CR Case No. 2973/ 2009 and the learned CJM vide order dated 24.7.2009 directed to issue summon to the petitioner, fixing 27.8.2009. On 27.8.2009 the summon not having returned after service, it was directed to be re-issued fixing 23.9.2009. At this stage, the petitioner has approached this Court by filing this petition for quashing of the aforesaid complaint case including summon issued to him. In the complaint filed by the investigating officer, the respondent No. 2, it is alleged as follows:

On 25th March, 2009 at about 4.00 p.m., (on the basis of the information received from a team of Income Tax, Officials Unit 1(I), NER Guwahati) I, Sri Dilip Kalita, Forest Ranger Guwahati Wild Life Division, in presence of Divisional Forest Officer, Guwahati Wild Life Division and Divisional Forest Officer, H/Qtr. O/o. the Chief Conservator of Forests, Wild Life, Assam, Basistha, Guwahati - 29 have seized some Wild Life belonging to the parts of schedules I, II, III & IV animals as enlisted in Wild Life (Protection) Act, 1972. The seizure list is enclosed herewith as Annexure I.

On the arrival of the Forest Officials, the Income Tax Team shown the animal articles recovered from the chamber of Sri Pallab Das. On query by the Forest Officials, the employee of Ratna Kuber Gems and Jewellery failed to produce any valid documents in support of the animal articles recovered from his chamber. The statement of one Smt. Sonali Basu, an employee of Ratna Kuber, Gems and Jewellery is enclosed herewith as Annexure II. At the time of seizure Sri Pallab Das @ Kero Young was absent in the premises of Ratna Kuber Gems and

Jewellery, Manipuri Basti, Ulubari, Guwahati.

Sri Pallab Das @ Kero Young was called upon vide notice dated 27.3.2009 (Annexure III) to furnish the documents in original in support of the legality of animal articles, if any, before the authorized officer cum Divisional Forest Officer, Guwahati Wild Life Division, Guwahati - 9 fixing date 6n 6.4.2009. But the accused had neither appeared nor furnished any documents in support of the seized Wild Life articles on 6.4.2009 instead he submitted a petition through one of his employee seeking some more time as he stated himself ill at that time vide petition dated 6.4.2009 (Annexure IV).

We continued our investigation in search of Sri Pallab Das @ Kero Young and as a part of this investigation we searched his house premises at Nilkunj Apartment on 9.4.2009 (Annexure VI) but could not find him there. The statement of his wife Smt. Pranati Das was recorded which is enclosed as (Annexure V).

Further, Sri Pallab Das @ Kero Young was called upon to produce valid document in original in support of the seized articles before the authorized officer cum Divisional Forest Officer, Guwahati Wild Life Division, Guwahati-9 on 20.4.2009 vide Notice dated 8.4.2009 (Annexure VI). This time also he did not appeared but submitted a petition dated 20.4.2009 asking for another 20 days time stating his illness (Annexure VII).

Subsequently, he was given opportunity to proof his legality, if any, by serving another two notices vide Notice Memo No. B/GWL/77/532-34 dated 29.4.2009 (Annexure VIII) and Notice Memo No. B/GWL/77/561-63 dated 12.5.2009 (Annexure IX).

But, this time also he failed to appear and produce any document in support of the seized articles rather submitted one doctor's certificate (Annexure X) asking for more time in reply of Annexure VII and filed one preliminary reply by his Advocate against Annexure DC (Enclosed as Annexure XI).

We have searched his business premises also at Ratna Kuber Gems and Jewellery, at Manipuri Basti and again at his residence at Nilkunj Apartment, P.P. Road, Rehabari on 4.6.2009 but he could not be found. The statement of his staffs and wife also was recorded which are enclosed as Annexures XII and XIII.

Meanwhile, I have sent some samples of the aforesaid seized Wild Life articles to the Forensic Laboratory, Kahilipara, and Wild Life Institute of India, Dehradun for expert opinion on the seized article (Annexures XIV and XV).

Under the aforesaid facts and circumstances it appears that Sri Pallab Das @ Kero Young has contravened the provision lay down under Sections 40, 44, 49, 9, 39, 42 and read with Section 2(16)(C), 2(II) and Section 57 of the Wild Life (Protection) Act, 1972 and as such liable to prosecute and punish in accordance with the provisions lay down u/s 51 of the Wild Life (Protection) Act, 1972.

4. Mr. Goswami, learned senior counsel submits that the aforesaid criminal

proceeding suffers from certain inherent and incurable defects, inasmuch as, although under Rule 52 of the Assam Wild Life Protection Rules as well as the prescribed Form No. XIX provides that such a notice is required to be issued by the seizing officer. In the instant case the notice is not issued by the seizing officer but by the D.E.O., Guwahati Wild Life Division. It is next contended that although the samples of the seized articles were forwarded to the forensic Laboratory at Kahilipara and Dehradun on 16.6.2009 even before receipt of the such report, the complaint case was filed by the respondent authority and accordingly the case is a pre-matured one. Referring to the seizure list made by the I/O, it is further contended by the learned Counsel that the said seizure list though contain four pages, the name of the seizing witnesses appear only on the last page containing only one seized item being serial No. 29 and on that count the said seizure cannot be held to be authentic or legal.

5. Referring to certain sequence of events such as, initially the Income Tax officials raided the business premises of the petitioner and thereafter the Forest Deptt. Officials also searched his premises and prepared the seizure list vide Annexure I and in the meantime, the petitioner has approached the High Court by filing WP(C) No. 2926/2009 and the High Court having passed the interim order on 22.7.2009 not to harass the petitioner and not to take any penal action pursuant to the notice dated 12.5.2009 on 29.7.2009, such events and circumstances go to show that the criminal case launched against the petitioner by the respondent authorities is not a bona fide one, but is intended only to harass him.

On the aforesaid submissions, Mr. Goswami, prays for quashing of the entire proceeding pending before the learned trial court.

6. The principal of quashing of the criminal case is by now well settled. If the allegation levelled against the accused is accepted to be correct and still it does not disclose any criminal offence, the High Court in exercise of its inherent power u/s 482, Cr.PC can quash a proceeding. A criminal case can also be quashed if there is statutory bar in respect of institution and/or continuation of the case before a particular class or classes of court or under any provision of the statute such a criminal case can be quashed. So far as quashing of an FIR is concerned, the Apex Court in the case reported in M. Narayandas Vs. State of Karnataka and Others, has sounded a note of caution that such inherent power is to be exercised sparingly with circumspection and that too in rarest of the rare cases. Again in the case of Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, the Apex Court held that the allegation of mala fide against the informant is itself no ground for quashing a criminal case. The purpose of exercising the inherent power to quash a criminal case is for the reason that an innocent person is not unnecessarily harassed by an unscrupulous litigant. Surveying all the earlier decisions in the field, the Apex Court in the case of State of Haryana v. Bhajanlal 1992 Suppl 1 SCC at paragraph 122 has laid down certain guidelines for quashment of the criminal proceeding as follows:

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 u/s 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 arid to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report 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 FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR 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 accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR 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 provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide 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.

7. Turning to the submissions of the learned Counsel, it is found that seizure of the articles has been made by the seizing officer in presence of the witnesses. All the pages of the seizure list contain signature of the seizing officer. The seized articles have been mentioned in four continuous pages. That apart the statements of Sonali Basu an employee of the petitioner, made in presence of two other witnesses, disclose that the articles were seized in her presence from

the premises of the petitioner. It is further noted that the said seizure was made in presence of the DFO, Guwahati Wild Life Division, who also put his signature therein. In such a situation, prima facie the aforesaid list, on the face of it, cannot be said to be invalid so as not to take cognizance by the court of law. However, the other facts as contended by Mr. Goswami, can be elicited during the course of trial only from the mouth of the witnesses. Prima facie I find that the said seizure list cannot be said to be a documents which could not be taken note of by the learned trial court in course of the proceeding. On the ground as alleged by the learned Counsel out of the aforesaid seizure list only six items have been forwarded for chemical examination by the Forensic Science Laboratory, Assam, as well Central Laboratory at Dehradun To both the authorities identical samples of six numbers have been forwarded for examination.

8. A bare perusal of the seizure list discloses that most of the items are identifiable even without such chemical examination by any laboratory. The relevant statute namely the Wild Life (Protection Act) as well the Assam Wild Life Protection Rules, 1997 do not cast any statutory obligation upon the complainant to obtained report from the Forensic Science Laboratory before making any complaint in the court as regards violation of provisions mentioned in the Act.

9. In support of his other contentions. Mr. Goswami submits that Rule 52 of the Assam Wild Life Protection Rules prescribes a statutory form being Form No. XIX for issuance of notice to an accused and such notice is required to be issued by the seizing officer, whereas in the instant case in violation of the aforesaid provisions, the notices including the notice dated 12.5.2009 have been issued by the DFO, Guwahati Forest Division. The said DFO is admittedly not a seizing officer and accordingly the said notice is assailed to be without jurisdiction. It is contended by Mr. Goswami that as the said notice is required to be issued by the seizing officer only, hence, the petitioner did not consider it necessary to submit his reply as set forth in the said notice but raised a preliminary objection as regards the validity of the notice by his application dated 29.5.2009.

10. By the aforesaid notices the DLO has called upon the petitioner to provide the legality of proof in original of the articles/forest produce seized by the seizing officer from the premises of the petitioner on 25.3.2009 u/s 50 of the Wild Life Protection Act, 1972, but the petitioner questioning the authority of the DFO to issue the notice did not submit his reply. It is pertinent to mention that the DFO himself was also present at the time of seizure of articles who has put his signature in the seizure list.

11. Rule 52 of the Assam Wild Life Protection Rules, 1997 makes the provision for effective implementation of the Act. As per said rule initiation of confiscating proceeding against seizure articles/animal articles/forest produce/trophy or uncured trophy, etc., are provided. Forms prescribed therein including the Form XIX are prescribed for administrative convenience in dealing with the offences by the authorized officers, the nature of duty and obligation cast as the said rule is

not mandatory but is a directory one. There is no provision under the Rule mentioning the resultant affect of violation of the said provision but on the other hand Section 57 of the Wild Life Protection Act, 1972 lays down that when prosecution for an offence is made, it establishes that a person is in possession, custody or control of any captive animal, animal article, trophy, etc., it shall be presumed that until the contrary is proved, the burden of proving which lie on the accused, that such person is in unlawful possession, custody or control of such captive animal, animal article, etc.

12. It is also not a condition precedent before filing a complaint before the court by the concerned officer that such a notice u/s 52 is to be issued prior to filing of the complaint. The said notice appears to be for the purpose of initiation of confiscating proceedings, for providing an opportunity to the petitioner to disclose his defence as to how he could possess such animal articles. The petitioner did not furnish any such explanation as regards the possession of such seizure articles.

13. The contention raised by Mr. Goswami as regards the illegality in preparing the seizure list and notice issued by the DFO, Wild Life Division, as grounds for quashing of the criminal proceeding are not acceptable. Although Mr. Goswami tried to raise an issue of lack of bona fide in filing complaint against the petitioner pointing out to the fact that although the complaint petition is dated 30.6.2009, the learned CJM took cognisance of the same on 24.7.2009, I do not consider the same to be a valid ground for quashing a proceeding, or raise any presumption of any mala fide against the complainant. The complaint petition though might have been sent by the complainant to the learned CJM on 30.6.2009 the same cannot be held to be bad for taking cognisance by the learned CJM on 24.7.2009 which is prior to the passing of the order dated 29.7.2009 in WP(C) No. 2926/2009. However, by the aforesaid order dated 29.7.2009 passed in the writ petition, the respondents were directed not to take any penal action against the petitioner and till now no penal action is shown to have been taken against the petitioner and the filing of the complaint against the petitioner cannot be said to be a penal action taken against the petitioner. There is no restrain from the court directing the respondent authorities not to initiate any proceeding against the petitioner and keeping in mind all the provisions of Section 41(b) of the Specific Relief Act the court has not pass any restrain order.

14. The present case is instituted against the petitioner is a complaint case initiated by a government officials and the rigors of the procedure prescribed in the Cr.PC for institution/trial of the complaint case would be applicable in the present proceeding. The complainant is bound to prove the case under the provisions of the Cr.PC or any condition precedent to make the complaint u/s 55 of the Act is provided in the Statute. Mr. Goswami, however, has not questioned the authority of the respondent No. 2, to seize the articles. Objection has been raised by the Id. counsel, as regards the irregularity of the seizure/non-issuance of notice by the seizing officer which pertain to the merit of the case which would

be considered during the course of trial if raised but prima facie those documents are found to be prepared during the course of investigation by the authority and are acceptable one at least for the purpose of filing of the complainant.

15. u/s 482, Cr.PC the inherent power of the High Court is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts can exercise the inherent power to prevent the abuse of the court or to secure the ends of justice. Such inherent power should be exercised sparingly with circumspection and when there is reason to believe that the process of law is being mis-used to harass a citizen. Section 482 of the Cr.PC envisages three circumstances under which the inherent jurisdiction may be exercised (i) to give an affect to the order of the court (ii) to prevent abuse of the process of court and/or (iii) otherwise to secure the ends of justice while exercising the power of inherent jurisdiction the code does not function as code of appeal or revision. The principle of law as laid down in the case of Bhajanlal (supra) do not attract in the present case justifying the quashing of the criminal proceeding launched against the petitioner.

Upon perusal of complaint petition as well as the seizure list, I am of the considered opinion that no case for quashing of the proceeding is made out against the petitioner nor initiation of criminal case is barred under any provisions of law.

16. In view of tile above discussions and reasons rendered, I do not find any merit in this revision petition and accordingly it stands dismissed.

17. The interim order dated 22.9.2009 stands vacated.