

(2012) 08 KAR CK 0298
In the Karnataka High Court
Case No : Criminal Petition No. 3945 of 2012

Prakash Shetty and Itha Harijana

APPELLANT

Vs

The Forest Guard Albadi Division Someshwara Wildlife
Division Hebri, The Deputy Range Forest Officer Someshwara
Wildlife Division Hebri and The Range Forest Officer
Someshwara Wildlife Division and Hebri

RESPONDENT

Date of Decision : 10-08-2012

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 468, 482

Citation : (2012) 08 KAR CK 0298

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : Pavana Chandra Shetty H, for the Appellant; P. Karunakar, HCGP., for the Respondent

Judgement

V. Jagannathan

1. The petitioners, said to be A-6 and A-7 in the case pending on the file of the learned J.M.F.C., Karkala, in O.S. No. 22/1998-99, seek quashing of the proceedings against them. The learned counsel for the petitioners submits that the F.I.R. was lodged in the case on 15.11.1998 against seven accused persons and long after that date, almost after 11 years, charge sheet came to be submitted and, even after the submission of the charge sheet on 3.8.2010, till date, there is no progress in the case and on account of the inordinate delay in filing the charge sheet, at the first instance, the trial court is also delaying in taking cognizance of the offence under the Wildlife Protection Act and A-1 and A-2 are no more alive and the present petitioners have been attending the court for all these years and in view of the inordinate delay of 11 years in submitting the charge sheet and the trial court also further delaying in taking cognizance, almost by two years, and no progress having been made in the case, the petitioners, therefore, cannot be subjected to unnecessary harassment and,

therefore, the proceedings be quashed on this score alone. Reliance is placed in this regard on a Five Bench decision of the Supreme Court, reported in Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc.,

2. Another ground put forward is that, even as per the charge sheet material, the petitioners herein were present at the alleged spot from where the forest officials are said to have recovered 10 k.gs. meat of sambar (kadave) and other items like torch light cells, one torch, one iron sword and plastic bottle and capes. It is, therefore, argued that even the petitioners were not present at the spot and the charge sheet material also reveals that the meat in question was the act of one Dayananda Poojari, who had shot the animal and the meat was then shared among the other accused persons. Merely because the aforesaid items were found in the land of the first petitioner, the question of any of the Offences alleged under the Wildlife Protection Act, 1972 viz., Sections 9, 27, 49 and 51, get attracted to the case.

3. Lastly it is submitted that in view of Section 468 of the Cr.P.C., all the offences alleged being not punishable with more than three years except in respect of Section 51(1)(i), for this reason also, the proceedings be quashed.

4. On the other hand, the learned Government Pleader for the respondents-State also argued that the first petitioner was not present at the spot and the alleged act of shooting the animal was by one Dayananda Poojari. However, it is submitted that the first proviso to Section 51 gets attracted to this case as the punishment is upto seven years.

5. Having thus heard both sides, the petitioners, as rightly submitted by the learned counsel for the petitioners, have been subjected to harassment for almost 14 years and in the case referred to by the learned counsel for the petitioners viz., Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., the Apex Court has observed that the delay in the prosecution will lead to the prosecution case itself getting affected inasmuch as the witnesses will not be available, the evidence will disappear by lapse of time and all these will work against the interest of the prosecution. At the same time, it was also observed by the Apex Court that, right to speedy trial is the right of the accused, which is implied in Article 21 of the Constitution and the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction and further, the very worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial also should be kept at the minimum, Apart from this, the undue delay may also result in the impairment of the ability of the accused to defend him; etc.

6. Considering the aforesaid principle laid down by the Apex Court, in the instant case, not only there was a delay of more than 11 years in submitting the charge sheet and even the trial court also did not act quickly, but has allowed the matter to lie in cold storage by adjourning the case from time to time for over two years and not even taking cognizance of the offence against the petitioners. For the

aforesaid reasons, the petitioners have made out a case for this court to interfere u/s 482 of the Cr.P.C. and accordingly, the petition is allowed and the F.I.R. and the subsequent proceedings in O.R. No. 22/1998-99, including the charge sheet that is filed, pending on the file of the J.M.F.C., Karkala, stand quashed insofar as these petitioners are concerned.