

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 77 of 2014**

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MANISH BHUPENDRABHAI PANWALA

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR.ADITYA J PANDYA(6991) for the Applicant(s) No. 1

MR. HARDIK DAVE, PP WITH MR. CHINTAN DAVE, APP for the

Respondent(s) No. 1

RULE SERVED BY DS for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI**Date : 05/08/2025****ORAL ORDER**

1. By way of the present petition, petitioner has sought for the following reliefs:-

“A) YOUR LORDSHIPS be pleased to quash and set aside the Forest Offence First Report No. 2/2009-10 dated 6.11.2009 and the charge-sheet filed thereunder before the learned Judicial Magistrate First Class, Talala.

(B) Pending admission, hearing and final disposal of the Application, YOUR LORDSHIPS be pleased to stay further proceedings of the impugned Forest Offence First Report, in the interest of justice;”

BRIEF FACTS OF THE CASE:-

2. The petitioner, a journalist associated with NDTV for over 14 years and a South Gujarat correspondent, had visited the Gir National Park and Sanctuary on 4th and 5th November 2009 along with two others—Ajay Patel and Bhavik Gonnavaala, who are affiliated with the NGO “Prayas” working in the field of animal and

environmental welfare. The group had entered the forest with valid permits and in the company of an official guide. Later that night, while refueling his vehicle in the city area, the petitioner was informed by local villagers that a lion was seen consuming its prey in an agricultural field outside the sanctuary limits. Out of curiosity, the petitioner and his companions proceeded towards the said location, which falls within the revenue area and not within the forest boundary. Several villagers had already gathered at the site to witness the scene.

2.2. At that juncture, the petitioner and his companions were intercepted by the local Range Forest Officer, who, upon learning of the petitioner's journalistic credentials, suspected him of conducting a sting operation. Consequently, a Forest Offence First Report was registered in the early hours of 6th November 2009 under Sections 2(16)(b), 2(33), 9, 39 and 51 of the Wildlife (Protection) Act, 1972, alleging that the petitioner had disturbed a lion while it was feeding. Notably, there was no allegation or evidence of hunting, nor were any weapons or contraband recovered from the petitioner. The incident location being outside the forest limits was corroborated by the Gram Panchayat's Rojkam. The petitioner was released on bail on the same day, and thereafter a charge-sheet was filed. The petitioner contends that the continuation of the criminal proceedings in such circumstances would amount to abuse of the process of law.

SUBMISSION OF THE PETITIONER:-

3. Learned advocate Mr. Aditya J. Pandya, appearing for the petitioner, submitted that the allegations levelled against the petitioner do not attract the essential ingredients of the offences punishable under Sections 2(16)(b), 2(33), 9, 39, and 51 of the Wildlife (Protection) Act, 1972. It was pointed out that the factual matrix emerging from the FIR reveals that on 04.11.2009, at around 5:00 a.m., the petitioner, along with certain other individuals, was allegedly found flashing a light upon a lion and clicking photographs while the animal was consuming its prey. On the basis of these allegations, it is submitted that, even if taken at their face value and accepted in their entirety, the statutory ingredients of the alleged offences are not satisfied.

3.1. It is further submitted that the proceedings suffer from a fundamental legal infirmity. Attention is drawn to the provisions of Section 55 of the Wildlife (Protection) Act, 1972, which clearly prescribe a statutory bar against cognizance being taken by the Court unless a complaint, as contemplated therein, is filed by the persons or authorities specified under the said provision. The contention is that, in the present case, no such complaint has been filed, and instead, the prosecution has proceeded on the basis of a chargesheet arising out of an FIR, which is impermissible in law. Thus, the entire criminal prosecution is alleged to be without jurisdiction and in violation of the mandatory statutory scheme.

3.2. Without prejudice to the above submissions, learned advocate

Mr. Pandya fairly submitted that the petitioner does not dispute that his conduct led to some degree of disturbance to the lion in question. It was candidly submitted that the petitioner, having realized the impropriety of his conduct, has expressed remorse and, as a token of his regret and concern for wildlife preservation, has voluntarily donated a sum of ₹1,00,000/- to the Gujarat State Lion Conservation Society, Junagadh. A receipt evidencing the said donation has been tendered on record. On the strength of these submissions, the learned advocate urged the Court to exercise its inherent jurisdiction under Section 482 of the CrPC and quash the proceedings to prevent the abuse of the process of law.

SUBMISSION OF THE RESPONDENT:-

4. Learned Public Prosecutor Mr. Hardik Dave, assisted with learned Additional Public Prosecutor Mr. Chintan Dave for the State, was not in a position to dispute the legal position arising from Section 55 of the Wildlife (Protection) Act, 1972, nor could he point out any enabling provision under which the Court below could have lawfully taken cognizance on the basis of a chargesheet, in the absence of a complaint filed by the competent authority in accordance with the statutory mandate. In view of the above, the learned APP submitted that appropriate orders may be passed.

FINDINGS, ANALYSIS AND CONCLUSION OF THE COURT:-

5. It is an undisputed position on record that the First Information

Report came to be registered at the instance of the Range Forest Officer, and the alleged offences have been invoked under Sections 2(16)(b), 2(33), 9, 39, and 51 of the Wildlife (Protection) Act, 1972. The applicability of these provisions to the facts of the present case has been seriously contested. However, before adverting to the merits of such contention, it would be apposite to extract and examine the relevant statutory provisions, which form the foundation of the present prosecution. These provisions are reproduced hereinbelow for ready reference and analytical consideration:-

Section 2(16) (b) in The Wild Life (Protection) Act, 1972:-

(b) capturing, coursing, snaring, trapping, driving or baiting any wild or captive animal and every attempt to do so;

Section 2 (33) in The Wild Life (Protection) Act, 1972:-

(33) vehicle” means any conveyance used for movement on land, water or air, and includes buffalo, bull, bullock, camel, donkey, elephant, house, and mule;

Section 9 in The Wild Life (Protection) Act, 1972:-

Prohibition of hunting. -No person shall hunt any wild animal specified in [Schedules I and II] except as provided under section 11 and section 12.

Section 39. Wild animals, etc., to be Government property. - (1)Every -

(a) wild animal, other than vermin, which is hunted under section 11 or sub-section (1) of section 29 or sub-section (6) of section 35 or kept or bred in captivity or hunted in contravention of any provision of this Act or any rule or order made thereunder or found dead, or killed by [* * *] mistake;

and

(b) animal article, trophy or uncured trophy or meat derived from any wild animal referred to in clause (a) in respect of which any offence against this Act or any rule or order made thereunder has been omitted;

(c) ivory imported into India and an article made from such ivory in respect of which any offence against this Act or any rule or order made thereunder has been committed;

(d) vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act, shall be the property of the State Government, and, where such animal is hunted in a sanctuary or National Park declared by the Central Government, such animal or any animal article, trophy, uncured trophy or meat derived from such animal or any vehicle, vessel weapon, trap or tool used in such hunting shall be the property of the Central Government.

(2) Any person who obtains, by any means, the possession of Government property, shall, within forty-eight hours from obtaining such possession, make a report as to the obtaining of such possession to the nearest police station or the authorised officer and shall, if so required, hand over such property to the officer-in-charge of such police station or such authorised officer, as the case may be.

(3) No person shall, without the previous permission in writing of the Chief Wild Life Warden or the authorised officer-

(a) acquire or keep in his possession, custody or control, or

(b) transfer to any person, whether by way of gift, sale or otherwise, or

(c) destroy or damage, such Government property.

[(4) Where any such Government property is a live animal, the State Government shall ensure that it is housed and cared for by a recognised zoo or rescue centre when it can not be released to its natural habitat.

(5) Any such animal article, trophy or uncured trophy or

meat derived from any wild animal, as referred to in sub-sections (1) and (2) may be disposed of by the State Government or the Central Government, as the case may be, in such manner as may be prescribed by the Central Government:

Provided that such disposal shall not include any commercial sale or auction and no certificate of ownership shall be issued for such disposal.].

Section 51. Penalties. -

(1) Any person who contravenes any provision of this Act (except Chapter V-A and section 38-J) or any rule or order made thereunder or who commits a breach of any of the conditions of any licence or permit granted under this Act, shall be guilty of an offence against this Act, and shall, on conviction, be punishable with imprisonment for a term which may extend to three years or with fine which may extend to [one lakh rupees] or with both:

Provided that where the offence committed is in relation to any animal specified in Schedule I [****] or meat of any such animal or animal article, trophy or uncured trophy derived from such animal or where the offence relates to hunting in a sanctuary or a National Park or altering the boundaries of a sanctuary or a National Park [or where the offence relates to a specimen of a species listed on Appendix I of Schedule IV], such offence shall be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years and also with fine which shall not be less than [twenty-five thousand rupees]: Provided further that in the case of a second or subsequent offence of the nature mentioned in this sub-section, the term of the imprisonment shall not be less than three years but may extend to seven years and also with fine which shall not be less than [one lakh rupees].(1-A) Any person who contravenes any provisions of Chapter V-A, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and also with fine which shall not be less than [twenty-five

thousand rupees].

(1-B) Any person who contravenes the provisions of section 38-J shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that in the case of a second or subsequent offence, the term of imprisonment may extend to one year or with fine which may extend to five thousand rupees.

(1-C) Any person, who commits an offence in relation to the core area of a tiger reserve or where the offence relate to hunting in the tiger reserve or altering the boundaries of the tiger reserve, such offence shall be punishable on first conviction with imprisonment for a term which shall not be less than three years but may extend to seven years, and also with fine which shall not be less than fifty thousand rupees but may extend to two lakh rupees; and in the event of a second or subsequent conviction with imprisonment for a term of not less than seven years and also with fine which shall not be less than five lakh rupees but may extend to fifty lakh rupees.

(1-D) Whoever, abets any offence punishable under sub-section (1-C) shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided for that offence.

(2)When any person is convicted of an offence against this Act, the Court trying the offence may order that any captive animal, wild animal, animal article, trophy, uncured trophy, meat, ivory imported into India or an article made from such ivory, any specified plant, or part or derivative thereof in respect of which the offence has been committed, and any trap, tool, vehicle, vessel or weapon, used in the commission of the said offence be forfeited to the State Government and that any licence or permit, held by such person under the provisions of this Act, be cancelled.

(3)Such cancellation of licence or permit or such forfeiture shall be in addition to any other punishment that may be awarded for such offence.

(4)Where any person is convicted of an offence

against this Act, the Court may direct that the licence, if any, granted to such person under the Arms Act, 1959 (54 of 1959), for possession of any arm with which an offence against this Act has been committed, shall be cancelled and that such person shall not be eligible for a licence under the Arms Act, 1959 (54 of 1959), for a period of five years from the date of conviction.

(5) Nothing contained in section 360 of the Code of Criminal Procedure, 1973 (2 of 1974), or in the Probation of Offenders Act, 1958 (20 of 1958) shall apply to a person convicted of an offence with respect to hunting in a sanctuary or a National Park or of an offence against any provision of Chapter V-A unless such person is under eighteen years of age.

6. In the backdrop of the aforementioned statutory framework and the factual circumstances emerging from the record, it becomes pertinent to examine the sequence of events as discernible from the Rojkam (official case diary) prepared contemporaneously by the Forest Officer, which formed the foundational basis for the registration of the FIR against the present petitioner. The material particulars, as recorded therein, may be summarised as under:-

“On 05/11/2009, when we were on Lion Counting duty during night, we went to visit the place of hunting done at 21.00 hrs on 04/11/2009 at the Madhupur Road. At that time, a vehicle and some people were seen there. When we approached the location, we saw a Scorpio vehicle, Reg.No.GJ-05-CG-4424 and three people inside the vehicle. These people were flashing their vehicle's headlights at a lion who was on the hunt. And they were taking photographs of the lion. The said people were disturbing the lion which was on the hunt. When they were inquired in this regard, they were all residents of Surat and their names were (1) Manish Bhupendra Panwala (2) Ajay Ishwarbhai Patel (3)

Bhavik Pravinchandra. On 06/11/2009 at 00:30 hrs in the night, they were arrested in the presence of the pancha and us and were brought to the Talala Range Office. Thereafter, upon inquiring them further, they admitted the offence. And the 2 (two) Cameras and the Scorpio vehicle they had with them were seized.

Thereafter, they were produced in the Court of Ld. J.M.F.C of Talala on 06/11/2009 at 14:40 hrs. Thereafter, Ld. Judge of Talala released them on a bail.”

7. Perusal of the Rojkam prepared by the Forest Officer reveals that, during the intervening night hours—at a time when the official lion census exercise was underway—the petitioner was found in the vicinity of a site where a lion - king of the jungle, was feeding upon its prey. As per the allegations noted in the FIR, the petitioner and his companions were allegedly flashing lights from a Scorpio vehicle, thereby disturbing the lion in the act of feeding.

8. However, even if the said facts, as recorded by the forest authorities, are taken at their face value, a bare comparison with the statutory definition of “hunting” under Section 2(16)(b) of the Wildlife (Protection) Act, 1972, clearly indicates that the act attributed to the petitioner does not fall within the scope of "hunting", nor within its grammatical variations or cognate expressions as envisaged under the said provision. The definition of "hunting" contemplates acts such as capturing, killing, poisoning, snaring, or trapping of a wild animal, or attempts thereof, or actions that cause physical harm or destruction. Merely disturbing a lion,

does not meet the threshold to constitute an offence of “hunting” under the Act.

9. Consequently, the residual provisions—namely, Sections 9, 39, and 51—which are premised upon the commission of an act of hunting or unlawful possession of wild animals or their parts, also fail to attract, in the absence of any foundational ingredient being satisfied. The conduct attributed to the petitioner, even if unwise or imprudent, does not satisfy the statutory prerequisites to constitute any cognizable wildlife offence under the scheme of the Act.

10. Be that as it may, even assuming *arguendo* that some offence were made out, the prosecution of the petitioner is vitiated on account of a jurisdictional infirmity. Section 55 of the Wildlife (Protection) Act, 1972, imposes a statutory bar on any Court taking cognizance of an offence under the Act except upon a complaint filed by the Director of Wildlife Preservation, the Chief Wildlife Warden, or any officer duly authorised in this behalf by the Central or State Government, or by a private person who has given a mandatory 60 days’ notice in the prescribed manner. In the instant case, it is an admitted position that the proceedings have been initiated solely on the basis of a police-style Forest Offence Report, and not by way of a complaint as required under Section 55. Section 55 of the Wildlife (Protection) Act, 1972 is as under:-

“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 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)

(ac) Director of the concerned tiger reserve; or!

[(ad) the Management Authority or any officer, including an officer of the Wild Life Crime Control Bureau, authorised in this behalf by the Central Government; 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.]”

11. Therefore in order to take the cognizance of offence the complaint has to be filed by person stated hereinabove. At this juncture, let me refer Section 2(d) of the Code of Criminal Procedure, 1973:-

"complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include

a police report.”

12. Section 2(1)(h) of the Bharatiya Nagarik Suraksha Sanhita, 2023 defines the complaint which is as under:-

““complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Sanhita, that some person, whether known or unknown, has committed an offence, but does not include a police report.”

13. It is manifest from a plain reading of Section 55 of the Wildlife (Protection) Act, 1972, that the legislative intent is clear—no court shall take cognizance of any offence under the Act except upon a complaint filed by the Director of Wildlife Preservation, the Chief Wildlife Warden, or any other officer duly authorised in this behalf by the Central or State Government. The term complaint assumes significance in this context and must be understood in light of Section 2(d) of the Code of Criminal Procedure, 1973, or its equivalent under Section 2(1)(h) of the Bharatiya Nagarik Suraksha Sanhita, 2023, which defines a complaint as an oral or written allegation made to a Magistrate with a view to his taking action, that some person, whether known or unknown, has committed an offence, but does not include a police report.

14. In his characteristic fairness, learned Public Prosecutor candidly submitted that though the FIR in the present matter was registered by the Range Forest Officer, Talala, Junagadh, and

subsequently culminated into a chargesheet filed by the Investigating Officer, the same would not fall within the ambit of a 'complaint' as defined under the aforesaid provisions. The initiation of proceedings by way of a police report—rather than a statutory complaint filed by the designated officer—renders the cognizance to be taken by the learned trial Court legally unsustainable in view of the express statutory embargo created under Section 55.

15. In this view of the matter, the learned Magistrate was legally precluded from taking cognizance of the offence in the absence of a complaint filed by an authorised officer under the Act. Consequently, subjecting the petitioner to the rigours of criminal trial, in such circumstances, would be a travesty of justice and an abuse of the process of law.

16. This view finds fortified support from the decision of the Hon'ble Supreme Court in **State of Bihar v. Murad Ali Khan & Ors., (1988) 4 SCC 655**, wherein the sanctity of the statutory procedure prescribed under the Wildlife (Protection) Act, 1972, was emphatically upheld. Reliance is also placed on the decision of the Karnataka High Court in **Criminal Petition No. 3188 of 2014**, where the Court held that proceedings initiated in breach of Section 55 are liable to be quashed as being *non est* in the eye of law.

17. At the same time, this Court cannot remain oblivious to the undisputed conduct of the petitioner which, though not strictly

amounting to an offence under the Wildlife (Protection) Act, 1972, nonetheless reveals a disquieting insensitivity towards the natural habitat of a protected species. As admitted, the petitioners disturbed a lion while it was feeding upon its prey during the night hours by flashing lights from a vehicle, thereby intruding upon its habitat and causing disruption. Though not constituting “hunting” as defined under Section 2(16)(b) of the Act, such actions can only be described as reckless and antagonistic to wildlife conservation ethics.

18. Evidencing a degree of remorse, petitioner No.1 – Manish Bhupendrabhai Panwala has voluntarily donated a sum of Rs.1,00,000/- to the Gujarat State Lion Conservation Society, Junagadh, as a gesture of contrition and support for wildlife preservation. While this cannot retrospectively legalize an otherwise flawed prosecution, it is certainly indicative of a corrective and reformatory attitude deserving of due notice.

19. In view of the foregoing analysis, this Court is of the considered opinion that, in the face of an express statutory bar contained in Section 55 of the Wildlife (Protection) Act, 1972, the taking of cognizance on the basis of a police report is legally impermissible. Consequently, the continuation of the FIR and the filing of the chargesheet pursuant thereto, in absence of a complaint by an authorised officer as mandated by law, would be unsustainable in the eyes of law. As a natural corollary, the initiation or

continuation of criminal proceedings against the petitioner, premised solely on the police report, is vitiated and cannot be allowed to proceed.

20. It would be apposite to refer the judgment rendered by the Hon'ble Apex Court in the case of **State of Haryana v. Bhajan Lal, reported in 1992 Supp (1) SCC 335**, wherein, in Paragraph 102, it is held as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Ch. 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 Art. 226 or the inherent powers under sec. 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 and 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 under sec. 156(1) of the Code except under an order of a Magistrate within the purview of sec. 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 noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under sec. 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.”

21. Applying the said dictum to the facts of the present case, this Court finds that the bar contained under Section 55 of the Wildlife (Protection) Act, 1972 operates with full force, thereby rendering the very institution and continuation of the criminal proceedings against the petitioner unsustainable in law, inasmuch as cognizance could not have been taken by the learned Magistrate on the basis of a police report, in the absence of a complaint by the designated authority under the said provision.

22. For the reasons and discussion aforesaid, this Court is of the considered view that the impugned proceedings are vitiated by a fundamental legal infirmity, inasmuch as cognizance of the alleged offence stands barred by the express mandate of Section 55 of the Wildlife (Protection) Act, 1972.

ORDER:-

23. Accordingly, the petition is **ALLOWED**. The Forest Offence First Report No. 2/2009-10 and all further and consequential proceedings arising therefrom are hereby quashed and set aside.

24. It is, however, made clear that this order shall not preclude the authorized officer under the Wildlife (Protection) Act, 1972 from initiating or instituting appropriate proceedings against the petitioner, in accordance with law, on the basis of the material collected during the course of investigation. Rule is made absolute.

Direct service is permitted.

MANISH MISHRA

(J. C. DOSHI,J)