

The State Rep By Vs. Harris Mohammad

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Court : Karnataka

Decided On : Jul-22-2021

Judge : Dr.H.B.Prabhakara Sastry

Appeal No. : CRL.RP 1642/2016

Appellant : The State Rep By

Respondent : Harris Mohammad

Judgement :

IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE 22D DAY OF JULY, 2021 BEFORE THE HONBLE Dr. JUSTICE H.B. PRABHAKARA SASTRY CRIMINAL REVISION PETITION No.1642 OF 2016 BETWEEN: The State Rep. by State Public Prosecutor, High Court of Karnataka, Bengaluru.01 ..Petitioner (By Smt. K.P. Yashodha, High Court Govt. Pleader) AND: Harris Mohammad, S/o. Abdul Lathif, Aged 26 years, R/at Sheik Manzil House, Ullal, Baila Bottu, Mangaluru Taluk - 575 020. .. Respondent (By Sri. Suyog Herele E, Advocate) **** This Criminal Revision Petition is filed under Section 397 and 401 of the Code of Criminal Procedure, 1973, praying to call for the records in Criminal Revision Petition No.5036/2015 on the file of the V Additional District and Sessions Judge, D.K., Mangaluru, sitting at Puttur, D.K.; set aside the order dated 20-02-2016 passed in Criminal Revision Petition No.5036/2015 by the learned V Additional Crl.R.P.No.1642/2016 2 District and Sessions Judge, D.K. Mangaluru, sitting at Puttur, D.K. by allowing this criminal revision petition; confirm the order of

taking cognizance by the order dated 30-01-2014 for the offences punishable under Sections 9, 39, 44, 49-B read with Section 51 of the Wild Life (Protection) Act, 1972 read with Section 71-A of the Karnataka Forest Act in C.C.No.1210/2014 on the file of the Additional Senior Civil Judge and JMFC, Puttur, D.K.; and pass appropriate orders as this Court may deem fit and proper in the facts and circumstances of the case, in the interest of justice and equity. This Criminal Revision Petition having been heard through Physical Hearing/Video Conferencing Hearing and reserved on 15-07-2021, coming on for pronouncement of orders this day, the Court made the following:

ORDER

The Additional Civil Judge and J.M.F.C. Puttur (hereinafter for brevity referred to as the Trial Court) by its order dated 30-01-2014 took cognizance of the offences punishable under Sections 2(5), 9, 39, 44, 50, 51, 57 read with Schedule III of the Wildlife (Protection) Act, 1972 (hereinafter for brevity referred to as the W.L.P. Act) read with Section 71(1) of the Karnataka Forest Act, 1963 (hereinafter for brevity referred to as the Forest Act) in P.C.No.4/2014 (C.C.No.1210/2014) pending before it, instituted by the present petitioner - State against the present respondent/ accused. CrI.R.P.No.1642/2016 3 Aggrieved by the said order of taking cognizance, the present respondent who was the accused in the Trial Court preferred a Criminal Revision Petition in the Court of the learned V Additional District and Sessions Judge, Dakshina Kannada, Mangaluru, sitting at Puttur, Dakshina Kannada (hereinafter for brevity referred to as the Sessions Judges Court) in Criminal Revision Petition No.5036/2015 filed under Section 397 of the Code of Criminal Procedure, 1973 (hereinafter for brevity referred to as the Cr.P.C.). The learned Sessions Judges Court, by its order dated 20-02-2016, partly allowed the revision petition filed by the present respondent and set aside the impugned order dated 30-01-2014 passed by the Trial Court taking cognizance of the offences as aforesaid. It is challenging the said order of the learned Sessions Judges Court, the petitioner - State which was the complainant in the Trial Court has preferred the present revision petition.

2. The brief facts of the case of the complainant in the Trial Court is that, on 27-01-2014, at 3:00 p.m., the Police Sub- Crl.R.P.No.1642/2016 4 Inspector (PSI) by name Jagadeesh Reddy of the complainant Police Station, on receiving a credible information that, the respondent/accused was illegally in possession of and transporting in a Car some pieces of Antilers/Horns, without any licence or permit, proceeded to the spot along with his staff and Forest Department Police Squad and on verification of the suspected vehicle bearing Registration No.KA-19/MB-9744 at 4:30 p.m., which was proceeding from Puttur to Kumbra, found that the present respondent and other accused persons were in possession of and transporting three pieces of antilers/horns. The Police Sub- Inspector (PSI) seized those articles and also the vehicle in the presence of the panchas and produced the accused persons before the Court along with the complaint under Section 200 of the Cr.P.C., for the offences punishable under Sections 2(5), 9, 39, 44, 50, 51, 57 read with Schedule III of the W.L.P. Act, read with Section 71(1) of the Forest Act. L3 The Trial Court and Sessions Judges Courts records were called for and the same are placed before this Court. Crl.R.P.No.1642/2016 5 4. Learned High Court Government Pleader for the revision petitioner - State is appearing physically in the Court and learned counsel for the respondent/accused is appearing through video conference.

5. Though this matter is listed for Admission, with the consent from both parties, the matter was taken up for arguments on main on merits.

6. Heard the arguments from both side. Perused the materials placed before this Court including the impugned orders passed by both the Courts and also the Trial Court and Sessions Judges Courts records.

7. For the sake of convenience, the parties would be henceforth referred to as per their rankings before the Trial Court.

8. After hearing the learned counsels for the parties, the only point that arise for my consideration in this revision petition is: Whether the impugned order passed by the learned V Additional District and Sessions Judge, D.K. Mangaluru dated 20-02-2016 passed in Criminal Revision Petition No.5036/2015, warrants any interference at the hands of this Court?. Crl.R.P.No.1642/2016 6 9. The learned

High Court Government Pleader for the revision petitioner/State submitted that, though the Trial Court had rightly taken cognizance of the offences against the respondent/ accused, but the learned Sessions Judges Court, by wrongly interpreting the Notification of the Government of Karnataka dated 26-08-2010 held that, a Police Sub-Inspector (PSI) cannot file a complaint for the offences punishable under the provisions of the W.L.P. Act, which resulted in the said Court allowing the revision petition filed by the respondent/accused, by setting aside the impugned order passed by the Trial Court. She further submitted that, the Notification issued by the Government of Karnataka dated 26-08-2010 empowers even a Police Sub-Inspector also to file a complaint for the alleged offences. Learned High Court Government Pleader for the revision petitioner relied upon an order dated 25-03-2019 passed by a co- ordinate bench of this Court in Criminal Petition No.7136/2018 in the case of Sajith A.K. and others Vs. State of Karnataka. Crl.R.P.No.1642/2016 7 10. Learned counsel for the respondent/accused in his argument submitted that, under Section 55 of the W.L.P. Act, the Police Sub-Inspector has no authority to file a complaint. Learned counsel further submitted that, the Police Sub- Inspector has also committed an error by arresting the accused before the learned Magistrate could take cognizance of the offences under the provisions of the W.L.P Act read with the Forest Act. In his support, learned counsel relied upon a judgment of a co-ordinate bench of this Court in the case of R. Shivakumar and others Vs. The State of Karnataka in Criminal Appeal Nos.1175 and 1220 of 2010 disposed of on 13-07-2018 and also an order of the very same co-ordinate bench of this Court dated 16-03-2020 passed in Criminal Revision Petition No.479/2014 in the case of Boraiah Vs. State of Karnataka.

11. Section 55 of the W.L.P. Act speaks about the cognizance of the offences, which reads as below: 55. Cognizance of offences.- No court shall take cognizance of any offence against this Act on the complaint of any person other than- Crl.R.P.No.1642/2016 8 (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.

12. A reading of the above Section would go to show that, any Officer authorised by the State Government also can file a complaint under the said Section. Now, it has to be seen whether the Police Sub-Inspector (PSI) who has filed the complaint in this matter, under Section 200 of the Cr.P.C., was authorised by the State Government under Section 55 of the W.L.P. Act. CrI.R.P.No.1642/2016 9 13. In R. Shivakumars case (supra), where the matter was pertaining to an offence punishable under Section 39 of the Indian Electricity Act, 1910, and under Section 9 punishable under Section 51 of the W.L.P. Act, a co-ordinate bench of this Court was pleased to observe at para-25 as below: 25. This Court in CrI.P.No.4968/2014 vide order dated 07.11.2014 has held that the Magistrate can only take the cognizance of the offence only if the complaint is strictly in compliance with Section 55 of the Wild Life (Protection) Act. The present case also come under similar footing. The PSI is not authorized to do so as contemplated under Section 55 of the Act. He is neither entitled to file any report before any court of law nor he can seek the permission of Magistrate to convert the said charge sheet into a complaint under Section 2(d) explanation is concerned, as held by this court in the case referred above.

14. In Boraiahs case (supra), which was also a matter pertaining to the offences punishable under Sections 39, 40, 44, 49-A, 49-B, 50, 51 of the W.L.P. Act and where the Police Sub- Inspector had filed the complaint, a co-ordinate bench of this Court at para-7 of its order, was pleased to observe that, the complaint had not been filed by a competent person. Hence, without a complaint from a competent person, the Court cannot take cognizance of the offences alleged under the W.L.P. Act and taking CrI.R.P.No.1642/2016 10 the cognizance without there being any complaint, has vitiated the entire proceedings. It is relying upon

these two orders of the co-ordinate benches of this Court, the learned counsel for the respondent/accused has sought for confirmation of the order passed by the learned Sessions Judges Court.

15. In Sajiths case (supra) with respect to filing of a complaint by the Inspector of Puttur Town Police Station for the offences punishable under the provisions of the W.L.P. Act, another co-ordinate bench of this Court, referring to the Notification of the Government of Karnataka dated 26-08-2010 observed that, the complaint in question having been filed by the Inspector of Police, who is an Officer above the rank of the Sub-Inspector of Police would fall within the definition as defined under column (c) of the Schedule to the Notification, as such, the criminal case filed against the accused does not deserve to be quashed.

16. The Government of Karnataka, through the Under Secretary, Forest, Environment and Ecology Department, has issued a Notification bearing No.FEE81FWL2009dated CrI.R.P.No.1642/2016 11 26-08-2010. The said Notification has given a Schedule, appointing certain Officers as authorised Officer/s under the W.L.P. Act. The said Notification, at Sl.No.16 shows that, for the purposes of Section 55(b) of the W.L.P. Act, the Officers specified therein have been declared to be authorised Officers, namely, all Forest Officers of and above the rank of Forester within their Territorial/Wildlife jurisdictions, all Police Officers of and above the rank of Sub- Inspector of Police, all Revenue Officers of and above the rank of Tahsildar, and all officers of the Customs Department of the rank of Assistant Commissioner and above within their jurisdictions (emphasis supplied). The said Notification clearly empowers not just the Police Officers above the rank of Sub-Inspector of Police, but it also authorises the Police Officers of the rank of Sub- Inspector of Police since the said Notification mentions all Police Officers of and above the rank of Sub-Inspector of Police. (emphasis supplied) In the instant case, since admittedly, the complaint under Section 200 of the Cr.P.C. is filed by a Police Officer of the rank of a Sub-Inspector of Police, he is an authorised Officer under Section 55(b) of the W.L.P. Act. It appears that the said Notification was CrI.R.P.No.1642/2016 12 not brought to the notice of the Court in Shiva Kumar's case (supra) and Boraiahs case (supra). Therefore, those two orders passed by the co-ordinate bench would not enure to the benefit of the

respondent/accused in this case. Since in Sajiths case (supra), the complaint having been filed by the Inspector of Police who is above the rank of Sub-Inspector, the said order also would not enure to the benefit of the petitioner-State. However, as analysed above, since the very Notification dated 26-08-2010 at Sl.No.16 has made it clear that, even a Police Sub-Inspector is also competent/authorised to file a complaint, the main contention of the respondent that, a Police Officer of the rank of a Police Sub-Inspector cannot file the complaint, is not maintainable. Since the learned Sessions Judges Court in the Revision Petition also has skipped the said aspect in the Notification dated 26-08-2010, the same has led it to give an erroneous finding, holding that a Police Sub-Inspector cannot file a complaint. As such the impugned order does not sustain. CrI.R.P.No.1642/2016 13 17. Learned counsel for the respondent/accused also took a contention that, the Police Inspector had no power to arrest the accused, as such, he arresting the respondent/accused is also an illegal act. The said aspect is not within the ambit of the Trial Court, passing the order of taking cognizance of the offence as well in the impugned order passed by the learned Sessions Judges Court. Still, it can be noticed that, Section 50(1)(c) of the W.L.P. Act, enables a Police Officer not below the rank of a Sub-Inspector to arrest a person on reasonable grounds for believing that such person has committed an offence against the W.L.P. Act. Therefore, the said point of argument of the learned counsel for the respondent/accused, is also not acceptable.

18. Since the above analysis would go to show that the petitioner-State has shown that, the impugned order passed by the learned Sessions Judges Court was erroneous, the same warrants interference at the hands of this Court. Accordingly, I proceed to pass the following:

ORDER

[i]. The Criminal Revision Petition is allowed. CrI.R.P.No.1642/2016 14 [ii]. The impugned order dated 20-02-2016 passed by the learned V Additional District and Sessions Judge, Dakshina Kannada, Mangaluru, sitting at Puttur, Dakshina Kannada, in Criminal Revision Petition No.5036/2015, is set aside; [iii]. The order dated 30-01-2014, passed by the Additional Civil Judge and J.M.F.C. Puttur,

Dakshina Kannada, in P.C.No.4/2014 (C.C.No.1210/2014), taking cognizance of the offences punishable under Sections 2(5), 9, 39, 44, 50, 51, 57 read with Schedule III of the Wildlife (Protection) Act, 1972 read with Section 71(1) of the Karnataka Forest Act, 1963, stands confirmed. Registry to transmit a copy of this order to both the Trial Court and also the learned Sessions Judges Court along with their respective records, immediately. Sd/- JUDGE BMV*

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