

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SANJAY DWIVEDI
ON THE 8th OF MAY, 2025
MISC. CRIMINAL CASE NO. 7351 OF 2025
SANTOSH KUMAR PATEL
VS.
THE STATE OF MADHYA PRADESH

Appearance:

Shri Arun Kumar Nema – Advocate for the petitioner.

Shri B.K. Upadhyay – Government Advocate for the respondent-State.

ORDER

Since case diary is available with the counsel for the State, therefore, with the consent of both the parties, this petition is finally heard.

2. Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking quashing of proceedings initiated against him vide Criminal Case No. 2513/2022-State of M.P. vs. Santosh Kumar Patel pending before the Court of Judicial Magistrate First Class, Jabalpur arising out of the Forest Crime Case No. 281/04.

3. The respondent-prosecution has registered a complaint against the petitioner vide Forest Crime Case No. 281/04 under Section 9, 39 and 50 of the Wild Life (Protection) Act, 1972 (hereinafter referred to as 'Act, 1972') alleging that on 05.01.2022, the petitioner, while driving a car i.e. Maruti Suzuki Nexa IGNIS ZETA bearing registration No. MP-20-CH-1830, struck a male Ghutri (Barking Deer) at Ama Nala Basti, Dumna Road and as a result, the said animal sustained fatal injuries and subsequently succumbed to it. Upon enquiry, it was found that the offending vehicle was registered in the name of one Ashutosh Garg which was being used by his wife Smt. Jyoti Garg.

4. When the said incident took place, an information in that regard was received by the Forest Officers and they reached the spot and started investigation and came to know that the said vehicle was being driven by the present petitioner. Thereafter, he was arrested and his statement was recorded and afterwards he was produced before the Court of Judicial Magistrate First Class, Jabalpur and was released on bail.

5. It is submitted by the learned counsel for the petitioner that the trial is pending and the statement of the witnesses is yet to be recorded, but the charge has been framed against the petitioner before examining the witnesses and as such no charge is made out against him. He has also filed the order sheets of the trial court to substantiate that no evidence is recorded before framing of charge and as such no charge for the offence under which the case is registered is made out and the proceedings thereof are sought to be quashed mainly on the ground that it was merely an accident, which took place as a male Barking Deer suddenly came on

the road and before the petitioner could stop his car, it got struck . He has submitted the petitioner had no intention to kill the said wild animal. He has submitted that since the said Barking Deer is a wild animal and specified in Schedule-III of the Act, 1972, therefore, the offence has been registered against the petitioner, but, even otherwise, on the basis of material available, the case does not fall within the ambit of Sections 9, 30 and 50 of the Act, 1972 and as such proceedings initiated consequent upon the said incident are liable to be quashed. In support of his submission, counsel has placed reliance upon a judgment rendered by the Kerala High Court in **Shaju Paul & others vs. State of Kerala and another - CRL. MC No. 527 of 2022** decided on 22.02.2022.

6. Learned counsel for the State has opposed the submission made by the learned counsel for the petitioner and submitted that on the basis of material available in the case diary, it can be easily gathered that no wrong is committed by the authority and the offence has rightly been registered against the petitioner. He has submitted that it is a matter of trial and the statements of the witnesses are yet to be recorded and as such, at this stage, it is not proper to quash the proceeding and the petition is liable to be dismissed.

7. I have heard the submissions made by the learned counsel for the parties and perused the record as well as the case diary. As per the description of incident given by the prosecution, on 05.01.2022, at about 9.30 am, an information was received that on Dumna Road near Ama Nala Basti, a Barking Deer got injured because of being hit by a Maruti car. In the enquiry, it was found that the said vehicle i.e. MP-20-

CH-1830 Maruti Suzuki Nexa IGNIS-ZETA was registered in the name of Ashutosh Garg and was being used by his wife namely, Smt. Jyoti Garg residents of South Civil Lines, Jabalpur. Smt. Jyoti Garg is serving in IIIT Jabalpur, which is situated in the area where the incident occurred. The present petitioner is a driver of the said vehicle and when he was going to drop Smt. Jyoti Garg, suddenly a Barking Deer came running from the left side and got struck unknowingly by the car and sustained injuries and subsequently succumbed to it. In the enquiry, it was found that there was some dents on the left side of the car. Thereafter, the petitioner was arrested, his statement was recorded and he was produced before the court and granted bail by the court.

8. Since the offence under Sections 9, 39, and 50 of the Act, 1972 has been registered against the petitioner alleging that these provisions have been violated by him, therefore, it is appropriate to go-through the said provisions.

Section 9 of the Act, 1972 provides as under:

"9. Prohibition of hunting.—No person shall hunt any wild animal specified in Schedules I, II, III and IV except as provided under Section 11 and Section 12."

From the above, it is explicitly clear that Section 9 strictly prohibits hunting of any wild animal specified in Schedule I, II, III and IV except as provided under Sections 11 and 12 of the Act, 1972. A bare perusal of Schedule makes it clear that the Barking Deer comes under the entries made in Schedule-III.

However, to rule out as to whether the present incident was a case of hunting or it was simply an accident, it is necessary to go-through the relevant provision defining hunting, which is defined in sub-section (16) of Section 2 of the Act, 1972 and quoted hereinbelow:-

"(16) "hunting", with its grammatical variations and cognate expressions, includes,—

- (a) killing or poisoning of any wild animal or captive animal and every attempt to do so;
- (b) capturing, coursing, snaring, trapping, driving or baiting any wild or captive animal and every attempt to do so;
- (c) injuring or destroying or taking any part of the body of any such animal or, in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles, or disturbing the eggs or nests of such birds or reptiles;"

Likewise, Section 39 of the Act, 1972 prescribes the wild animals as government property, which reads as under:-

"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 or 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 committed,
- (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."

And, Section 50 denotes the procedure of exercising power of entry, search, arrest and detention by the prescribed authority. Section 50 reads as under:-

"50. Power of entry, search, arrest and detention.—(1) Notwithstanding anything contained in any other law for the time being in force, the Director or any other officer authorised by him in this behalf or the Management Authority or any officer authorised by the Management Authority or the Chief Wild Life Warden or the authorised officer or any forest officer or any police officer not below the rank of a sub-inspector or any customs officer not below the rank of an inspector or any officer of the coast guard not below the rank of an Assistant Commandant, may, if he has reasonable grounds for believing that any person has committed an offence against this Act,—

(a) require any such person to produce for inspection any captive animal, wild animal, animal article, meat, trophy or trophy, uncured trophy, specified plant or part or derivative thereof or scheduled specimen in his control, custody or possession, or any licence, permit or other document granted to him or required to be kept by him under the provisions of this Act;

(b) stop any vehicle or vessel in order to conduct search or inquiry or enter upon and search any premises, land, vehicle or vessel, in the occupation of such person, and open and search any baggage or other things in his possession;

[(c) seize any captive animal, wild animal, animal article, meat, trophy or uncured trophy, or any specified plant or part or derivative thereof or scheduled specimen, in respect of which an offence against this Act appears to have been committed, in the possession of any person together with any trap, tool, vehicle, vessel or weapon used for committing any such offence and, unless he is satisfied that such person will appear and answer any charge which may be preferred against him, arrest him without warrant, and detain him:

Provided that where a fisherman, residing within ten kilometres of a sanctuary or National Park, inadvertently enters on a boat, not used for commercial fishing, in the territorial waters in that sanctuary or National Park, a fishing tackle or net on such boat shall not be seized.

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(3) It shall be lawful for any of the officers referred to in sub-section (1) to stop and detain any person, whom he sees doing any act for which a licence or permit is required under the provisions of this Act, for the purposes of requiring such person to produce the licence or permit and if such person fails to produce the licence or permit, as the case may be, he may be arrested without warrant, unless he furnishes his name and address, and otherwise satisfies the officer arresting him that he will duly answer any summons or other proceedings which may be taken against him.

(3A) Any officer of a rank not inferior to that of an Assistant Director of Wild Life Preservation or an Assistant Conservator of Forests who, or whose subordinate, has seized any captive animal or wild animal under clause (c) of sub-section (1) may give the same for custody on the

execution by any person of a bond for the production of such animal if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

(4) Any person detained, or things seized under the foregoing power, shall forthwith be taken before a Magistrate to be dealt with according to law under intimation to the Chief Wild Life Warden or the officer authorised by him in this regard.

(5) Any person who, without reasonable cause, fails to produce anything, which he is required to produce under this section, shall be guilty of an offence against this Act.

(6) Where any meat, uncured trophy, specified plant or part or derivative thereof is seized under the provisions of this section, the Assistant Director of Wild Life Preservation or any other officer of a gazetted rank authorised by him in this behalf or the Chief Wild Life Warden or the authorised officer may arrange for the disposal of the same in such manner as may be prescribed.

(7) Whenever any person is approached by any of the officers referred to in sub-section (1) for assistance in the prevention or detection of an offence against this Act, or in apprehending persons charged with the violation of this Act, or for seizure in accordance with clause (c) of sub-section (1), it shall be the duty of such person or persons to render such assistance.

(8) Notwithstanding anything contained in any other law for the time being in force, any officer not below the rank of an Assistant Director of Wild Life Preservation or an officer not below the rank of Assistant Conservator of Forests authorised by the State Government in this behalf] shall have the powers, for purposes of making investigation into any offence against any provision of this Act—

- (a) to issue a search warrant;
- (b) to enforce the attendance of witnesses;
- (c) to compel the discovery and production of documents and material objects; and
- (d) to receive and record evidence.

(9) Any evidence recorded under clause (d) of sub-section (8) shall be admissible in any subsequent trial before a Magistrate provided that it has been taken in the presence of the accused person."

9. I have considered the circumstances under which the incident occurred; perused the record available and the case diary and also gone through the relevant provisions of law, as quoted above. In my opinion, first of all, it is to be seen whether the act of the petitioner comes within the ambit of Section 9 in view of the definition of hunting given in sub-section (16) of Section 2 of the Act, 1972.

10. Section 9 prohibits hunting of any wild animal specified in Schedule I, II, III and IV and sub-Section (16) of Section 2 of the Act, 1972 defines hunting with its grammatical variations and cognate expression specified in Clauses a, b and c of the said sub-section. It is also worth mentioning here that if hunting is proved then only Sections 39 and 50 of the Act, 1972 come into play.

11. In the case at Bar, as provided in Section 9 read with sub-section (16) of Section 2 of the Act, 1972, no attempt was made by the petitioner for hunting or killing the wild animal or causing any injury to it, but it was simply an accident. It is well known that Dumna road is a public road; it is an access to Airport and also to various institutions situate over the said area including the IIIT where Smt. Jyoti Garg, wife of the registered owner of the vehicle, is serving and at the time when the incident occurred, the petitioner was going to drop her in the said Institute. Thus, considering the facts and circumstances of the case as a whole, I am of the considered opinion that it cannot be said that it is a case, which comes within the definition of 'hunting' and the offence under Section 9 of the Act, 1972 is not made out.

12. It may be noted here that although the said animal can be considered to be a government property as defined in Section 39 of the Act, 1972 and the power, as provided under Section 50 of the Act, 1972, can be exercised by the prescribed authority, but, all such exercises are required to be done when it is found that there is a hunting of any wild animal. There is nothing available on record to indicate that the petitioner caused any injury to any wild animal intentionally. It is also well known that it was not the first accident; the accident on the said road happens often and the wild animals are also seen often on the said road. There is nothing available on record to establish that the petitioner had any intention to hunt any wild animal and under such a circumstance, incident, as occurred in the present case, cannot be said to be an offence, as defined under Section 9 of the Act, 1972.

13. The Kerala High Court in Shaju Paul (supra) has dealt with a similar issue wherein after boarding a captive elephant in a lorry for transporting it to its habitat, due to careless and negligent driving of the vehicle, the forehead of the elephant touched at the roof of the petrol pump and thereby it sustained injuries and as such the offence got registered against the accused under Sections 9 and 51 of the Act, 1972. The Kerala High Court considering the facts and circumstances of the case and the submission made by the counsel in the said case observed as under:-

"5. It was urged by Sri. Nirmal. S., the learned counsel that the offences for which the petitioners were arrayed as accused will not be attracted prima facie from the allegations. According to him, primarily, the offence alleged as committed by petitioners is one under Section 9

of the Act which provides that a person shall not hunt any wild animal specified in Schedules I, II, III and IV except as provided in Sections 11 and 12 or in other words, what is drawn from the provision was that hunting of a wild animal can only be in accordance with Section 11 and 12 of the Act. According to the learned counsel, the petitioners have not violated Section 48(A) of the Act or Rule 9 of the Rules. The petitioners have also complied with the duties and responsibilities under Rule 8 of the Rules. It was contended that the ingredients of the offences alleged against the petitioners are prima facie attracted from the allegations. It was canvassed by the learned counsel that the continuation of the prosecution against the petitioners on the basis of the final report (Annexure A1) would only be an abuse of the process of court.

6. The learned Public Prosecutor was directed to obtain instructions from the Investigating Officer and to file a report in the matter. A report is found filed as directed. In the report it was stated that the statements of accused 1 to 4 and the description in scene mahazar, indicate that elephant was badly injured due to negligence of the lorry driver and the mahouts accompanying it. On the basis it was contended by the learned Public Prosecutor that proper precautions were not taken by the owner of the elephant, while transporting it in the vehicle.

7. Section 9 of the Act prohibits hunting. Therefore, it is relevant to have an idea of the definitions of hunting as found under Sub-section (16) of Section 2 of the Act.

“2(16)“hunting”, with its grammatical variations and cognate expressions, includes- 16[(a) killing or poisoning of any wild animal or captive animal and every attempt to do so;

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

(c) injuring or destroying or taking any part of the body of any such animal or, in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles, or disturbing the eggs or nests of such birds or reptiles;”

8. The offences alleged against the petitioners being one punishable under Section 9 read with Section 51 of the Act, it is apposite to extract Section 9 hereunder:

Section 9-Prohibition of hunting. -No person shall hunt any wild animal specified in Schedules I, II, III and IV except as provided under section 11 and section 12.] Thus under Section 9 hunting of all wild animals i.e. listed in Schedules I to IV except as permitted under Sections 11 and 12 are prohibited. Therefore, under Section 9 of the Act hunting for the purposes enumerated under Section 11 in accordance with the procedure under Section 12 of the Act, is permissible.

9. Sections 11 and 12 are also apposite extraction hereunder.

“11. Hunting of wild animals to be permitted in certain cases.”-(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of Chapter IV

(a) the Chief Wild Life Warden may, if he is satisfied that any wild animal specified in Schedule I has become dangerous to human life or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefor, permit any person to hunt such animal or cause such animal to be hunted:

[Provided that no wild animal shall be ordered to be killed unless the Chief Wild Life Warden is satisfied that such animal cannot be captured, transquilised or translocated:

Provided further that no such captured animal shall be kept in captivity unless the Chief Wild Life Warden is satisfied that such animal cannot be rehabilitated in the wild and the reasons for the same are recorded in writing.

Explanation.-For the purposes of clause (a), the process of capture or translocation, as the case may be, of such animal shall be made in such manner as to cause minimum trauma to the said animal];

(b) the Chief Wild Life Warden or the authorised officer may, if he is satisfied that any wild animal specified in Schedule II, Schedule III, or Schedule IV, has become dangerous to human life or to

property (including standing crops on any land) or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefor, permit any person to hunt [such animal or group of animals in a specified area or cause such animal or group of animals in that specified area to be hunted].

(2) The killing or wounding in good faith of any wild animal in defence of oneself or of any other person shall not be an offence:

Provided that nothing in this sub-section shall exonerate any person who, when such defence becomes necessary, was committing any act in contravention of any provision of this Act or any rule or order made thereunder.

(3) Any wild animal killed or wounded in defence of any person shall be Government property.”

“12. Grant of permit for special purposes.-

Notwithstanding anything contained elsewhere in this Act, it shall be lawful for the Chief Wild Life Warden, to grant 48[***] a permit, by an order in writing stating the reasons therefor, to any person, on payment of such fee as may be prescribed, which shall entitle the holder of such permit to hunt subject to such conditions as may be specified therein, any wild animal specified in such permit, for the purpose of,

(a) education;

2[(b) scientific research;

(bb) scientific management. Explanation.-For the purposes of clause (bb), the expression, “Scientific Management” means-

(i) translocation of any wild animal to an alternative suitable habitat; or

(ii) population management of wild life without killing or poisoning or destroying any wild animals;]

3[(c) collection of specimens-

(i) for recognised zoos subject to the permission under section 38-I; or

(ii) for museums and similar institutions;

(d) derivation, collection or preparation of snake-venom for the manufacture of life-saving drugs :]

[Provided that no such permit shall be granted-

(a) in respect of any wild animal specified in Schedule I, except with the previous permission of the Central Government, and

(b) in respect of any other wild animal, except with the previous permission of the State Government.]”

11. Section 51 of the Act provides for penalties for contravention of provisions or rules or orders made thereunder or breach of any of the conditions guaranteed under the Act.

12. From a conjoint reading of all provisions extracted above it has come out that injuring a wild animal is inclusive under the word ‘hunting’ and Section 9 speaks about prohibitions on hunting. It says that a person shall hunt a wild animal only in accordance with Sections 11 and 12 of the Act. Section 11 provides that if a wild animal specified in Schedule I has become dangerous to human life or is disabled or deceased beyond recovery, Chief Wild Life Warden may, on being satisfied, shall permit a person to hunt such animal or cause such animal to be hunted.

13. For killing a wild life animal, the Chief Wild Life Warden shall be satisfied that the animal cannot be captured, tranquillised or translocated and such animal shall be kept in captivity only on a certificate being issued by the Chief Wild Life Warden that it cannot be rehabilitated in the wild, and on recording reasons in writing for doing so. Section 12 speaks about grant of permit for hunting a wild animal on payment of fees as may be prescribed by the Chief Wild Life Warden for the purposes of education, scientific research and scientific management.

15. The word hunting defined under Sub Section (16) of Section 2 of the Act is inclusive of killing or poisoning any wild animal or captive animal, capturing, coursing, snaring, trapping, driving or baiting any wild or captive animal, injuring or destroying or taking any part of the body of any such animal and every attempt to do as above. All the inclusive terms under Sub Section (16) of Section 2 of the Act can be taken to have an element of intention behind it's commission. For the acts enumerated above to amount to a penal action, mens rea is an essential element. Therefore, if something of the nature included under the term “hunting” has been done by a person without mens

rea, the punishment cannot be imposed under Section 51 of the Act."

14. Thus, in view of the aforesaid and the observation made by the Kerala High Court in the case of Shaju Paul (*supra*), this Court is also of the opinion that the act of the present petitioner does not come within the ambit of Section 9 of the Act, 1972 and consequently it cannot be considered to be a hunting, as defined under sub-section (16) of Section 2 of the Act, 1972. It was undoubtedly an accident occurred on a public road due to which injuries sustained by a Barking Deer, which culminated into its death. As a result, the provisions of Section 9 of the Act, 1972 do not attract in the present case and no proceeding under the said provisions can be initiated. The prosecution of the present petitioner, in the opinion of this Court, is nothing but an abuse of process of law.

15. *Ex-consequencia*, this petition is allowed. The criminal proceedings initiated against the petitioner vide Criminal Case No. 2513/2022 arising out of the Forest Crime Case No.281/04 registered for the offence punishable under Sections 9, 39 and 50 of the Act, 1972 are hereby quashed and all the other proceedings based upon the said criminal case are also hereby quashed.

(SANJAY DWIVEDI)
JUDGE

Reghvendra