

*IN THE COURT OF THE CHIEF METROPOLITAN
MAGISTRATE, BENGALURU CITY*

Dated this the 27th day of October 2021

PRESENT:

Sri S.Sreedhara, B.E., L L.B.,
Chief Metropolitan Magistrate,
Bengaluru

C.C. No.8672/2020

Complainant : State by Mahalakshmi Layout
Police, Bengaluru City

(By learned Sr.APP)

-V/s-

Accused : Manjunath Rathnakar Naika &
Others

Petitioner/
Accused No-4 : Uday Ramanayak s/o Ramanayak,
59 yrs, R/at Ramabayalu Road,
Marikamba Nagara, Sirasi Town,
North Kannada.

(By Sri M.Shashidhara & Associates Advocates for
petitioner/A4)

Orders on Discharge Application

The petitioner/accused No-4 has filed this application under Section 239 of Cr.P.C., by requesting the court to discharge him from the alleged offences, in the ends of justice.

2. The accused No-4 has contended that he is innocent of the alleged offences. As per Section 55 of Wild Life Protection Act, 1972, no court shall take cognizance of any offence against this Act except on the complaint of any person authorized by the State Government. The police have alleged that on receipt of credible information, they have apprehended accused No-1 and 2 and seized the skin of Leopard after drawing a mahazar. According to prosecution case, the police came to know that the brother of accused No-4 has handed over the skin of Leopard to the accused No-1 and 2. In the FIR the name of accused No-4 is not mentioned, but he is later on falsely implicated to the case only on the basis of voluntary statement of co-accused. Except the voluntary statement there are no other incriminating materials placed before the court against accused No-4. Hence he has

requested the court to discharge him from the alleged offences in the ends of justice.

3. The Learned Sr. APP has filed objections to this application by stating that the I.O. after completion of investigation has submitted charge sheet against accused for the alleged offences. The I.O. has also recorded the statements of witnesses under Section 161 of Cr.P.C. and collected documents during investigation, which discloses sufficient materials against them. The complainant has not lodged complaint against the accused with any ulterior motive. The court has to proceed to frame charges against accused, if there are sufficient materials made out against him. The accused has filed this application only to delay the proceedings without producing any materials in support of his application. Hence the prosecution has requested the court to dismiss the application.

4. Heard the arguments of learned counsel for accused No-4, who has relied upon a decision reported in **AIR ONLINE 2020 MP 1083.**

5. Heard the arguments of learned Sr.APP who has relied upon the following decisions.

1) AIR 2015 (SC) 75

2) (2012) AIR (SCW) 2398

**3) Judgment rendered by the
Hon'ble High Court of Karnataka in
R.Ramanath V/s State of Karnataka
on 17/12/2020**

6. On the basis of contentions raised by both the sides, the following points arise for my consideration.

*1) Whether the petitioner/accused No-4
has made out grounds to discharge him
from the alleged offences?*

2) What Order?

7. My answers to the above points are as under for following reasons.

Point No-1 : In the Negative

Point No-2 : As per final order

REASONS

Point No-1:

8. The Mahalakshmi Layout Police have submitted charge sheet against accused No-1 to 8 for the offences punishable under Section 379, 429 read with 34 of IPC and Section 9, 39, 40, 44, 49(b), 51 of Wild Life Protection Act. The allegations made in complaint discloses that CW1 Venkataramanappa.B.T. was doing patrolling duty on 19/07/2018 along with his staff. At about 7.30 p.m., he has received credible information about the incident and accordingly, he came near Kirloskar Poultry and found that accused No-1 and 2 were holding a bag in their hands. When he has enquired them, they have informed that they are trying to sell the skin of Leopard. Accordingly, the complainant has registered a case against accused persons on the ground that they have committed theft of the Leopard skin.

9. CW10 Prashanth.M., the P.I. has proceeded with the investigation and submitted charge sheet against the accused persons. During investigation, he has recorded the voluntary statements of accused, where some of the accused persons have disclosed that accused No-4 and his

brother Prabhakar Nayak gave the skin of Leopard to sell the same. On the basis of said information, the I.O. has included accused No-4 to the charge sheet. Whether the accused persons gave voluntary statement or not has to be decided only after completion of trial. When some of the accused persons in their voluntary statements have disclosed the name of accused No-4 in the commission of offence, then there is no option for the I.O., except to charge sheet him. Therefore, the prosecution papers at this stage has established a prima-facie case against accused No-4 to proceed in the trial.

10. The learned counsel for accused No-4 has argued that a Police Officer cannot charge sheet accused for the offences punishable under the provisions of Wild Life Protection Act, in view of Section 55 of the said Act. The learned counsel in support of his contention has relied upon a decision reported in **AIR ONLINE 2020 MP 1083**, where their Lordships have held that on interception of co-accused by Police, he stated that contraband supplied to him by accused, but no recovery was made from the accused. It was also held that no other material available to

implicate the accused and hence order framing charges is liable to be set aside.

11. With due respect to the Hon'ble Court, the ratio laid down in the above decision are not applicable to the case on hand, since in the present case the I.O. has recorded the voluntary statement of accused No-4 himself. If the I.O. has impleaded accused No-4 only on the basis of voluntary statement given by other co-accused, then the accused No-4 can take the advantage of principles laid down in the above decision. As the accused No-4 himself has stated before the I.O. about handing over the skin of Leopard to accused No-1 and 2 in his voluntary statement, then the same has to be decided at the time of judgment.

12. The learned Sr.APP has relied upon a decision reported in **AIR 2015 (SC) 75** in support of his arguments. I have gone through the ratio laid down by their Lordships in the above decision and it is revealed that the Police Officer has submitted charge sheet against accused persons for the offences punishable under Section 379 and 114 of IPC and Section 21 of MMDR Act. The accused has challenged the registration of case on the ground that

the complaint has to be filed under Section 22 of the Act by the Authorized Officer. Their Lordships while deciding the matter has discussed about Section 55 of Wild Life Protection Act in para No.48 and 49 of the Judgment. Furthermore in para 59 of the judgment, their Lordships have observed that Section 21 of MMDR Act does not begin with a non-obstante clause but it begins with the words “no court shall take cognizance of any offence”. It is further observed by their Lordships that a non-obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions. Accordingly their Lordships have concluded that in a case where there is a theft of sand and gravels from the Government land, the police can register a case, investigate the same and submit a final report under Section 173 of Cr.P.C. before the Magistrate for the purpose of taking cognizance.

13. In the present case on hand, the Police Officer has charge sheeted the accused persons for the offences

punishable under IPC and also the offence punishable under Wild Life Protection Act. The accused No-1 and 2 without any license or permit have tried to sell the skin of Leopard which amounts to commission of theft. The I.O. has included the offences punishable under Section 379, 429 read with 34 IPC along with the offences punishable under Section Wild Life Protection Act. In view of the ratio laid down by their Lordships in the above decision, the I.O. being Police Officer is entitled to register a case, investigate the same in respect of theft of the skin of Leopard and submit a final report before the Magistrate. Therefore, one of the grounds urged by accused No-4 about the non-authority of Police Officer to submit the charge sheet under the provisions of Wild Life Protection Act does not holds any water.

14. The prosecution papers clearly establishes a prima-facie case against accused persons. In such circumstances, the court has to frame charges against accused for the alleged offences and proceed against them. The accused No-4 has not made out any grounds to allow the application. In the result, I answer Point No-1 in the Negative.

Point No-2:

15. In view of my finding to Point No-1 as above, I proceed to pass the following-

ORDER

a) The Application filed by petitioner/accused No-4 under Section 239 of Cr.P.C. is hereby rejected.

b) No order as to costs.

(Dictated to the Stenographer on Computer. The print out is revised, corrected and then pronounced by me in the open court on this day i.e., 27/10/2021)

(S.Sreedhara),
Chief Metropolitan Magistrate,
BENGALURU.

27/10/2021

(Orders pronounced vide separate sheets)

ORDER

a) The Application filed by petitioner/accused No-4 under Section 239 of Cr.P.C. is hereby rejected.

b) No order as to costs.

Chief Metropolitan Magistrate,
Bengaluru.