

Supreme Court of India
Moti Lal vs Central Bureau Of Investigation & ... on 9 April, 2002

Author: Shah

Bench: M.B. Shah, B.N. Agrawal

CASE NO.:

Appeal (crl.) 476 of 2002

PETITIONER:

MOTILAL

Vs.

RESPONDENT:

CENTRAL BUREAU OF INVESTIGATION & ANR.

DATE OF JUDGMENT: 09/04/2002

BENCH:

M.B. Shah & B.N. Agrawal

JUDGMENT:

Shah, J.

Leave granted.

The short question involved in this appeal is whether the Central Bureau of Investigation (CBI) was authorised to investigate an offence, which is punishable under the Wild Life (Protection) Act, 1972 (hereinafter referred to as 'the Wild Life Act') as is contended that the said Act is a self contained Code? Before deciding the said question we would narrate brief facts of the case.

The appellant, who is resident of Delhi, was arrested in connection with the offence punishable under Sections 9, 39(3), 44, 49, 50, 51, 57 and 58 of the Wild Life Act. It is alleged that the officers of the Sales Tax Department conducted checking of a truck at Mohan Nagar barrier in District Ghaziabad on the night of 18th/19th December, 1999 and a bundle of cotton cloth was found therein, which

according to the documents, was being transported from Delhi to Siliguri. On opening the bundle, it was found that it contained 50 skins of leopard, 3 skins of tiger and 5 skins of jungle fox. On receipt of the said information, officers of the Forest Department, Ghaziabad arrived on the spot and seized the skins of animals under Section 50 of the Wild Life Act. Driver and the conductor of the truck were taken into custody and thereafter FIR was lodged and the case was registered as Crime No. 915 of 1999 under the Wild Life Act. By notification dated 21st March, 2000 issued by the Central Government, the investigation of the case was subsequently transferred to Delhi Special Police Establishment.

The order passed by the Central Government transferring the investigation to Delhi Special Police Establishment was challenged by filing Criminal Misc. Writ Petition No. 6830 of 2000 before the High Court of Allahabad with the prayer that the appellant be released forthwith. The High Court, by the impugned judgment and order dated 7th February, 2001, rejected the said petition. Hence, this appeal.

At the time of hearing of this matter, Mr. D.N. Goburdhan, learned counsel appearing for the appellant submitted that the Wild Life Act is a special law as understood under Section 5 of the Code of Criminal Procedure, 1973 and it contains comprehensive provisions for investigation, inquiry, search, seizure, compounding of offences, trial and punishment and, therefore, the Police Force Establishment under the Delhi Special Police Establishment Act (hereinafter referred to as 'the Act') was not empowered to investigate the case. He also submitted that under the Act jurisdiction of the Special Police Force is limited in relation to the investigation of offences within the Union Territories as specified in the Notification issued under Section 3 of the Act. In support of his contention he relied upon the decision rendered by this Court in Central Bureau of Investigation vs. State of Rajasthan & Ors. [(1996) 9 SCC 735]. As against this, learned counsel appearing on behalf of the respondents submitted that before transferring the investigation, the Central Government has issued Notification, as required under Section 5 of the Act and the State of U.P. has also issued necessary consent order, as required under Section 6 of the said Act. Hence, the CBI is having jurisdiction to investigate the offence.

For appreciating the said contentions, we would refer to relevant parts of Sections 3, 5(1) and 6 of the Act which read as under: -

"3. Offences to be investigated by special police establishment. The Central Government may, by notification in the Official Gazette, specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment.

5. Extension of powers and jurisdiction of special police establishment to other areas.

(1) The Central Government may by order extend to any area (including Railway areas), in a State, not being a Union Territory the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification

under section 3.

(2)

6. Consent of State Government to exercise of powers and jurisdiction. Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union territory or railway area, without the consent of the Government of that State."

Admittedly, in exercise of the powers conferred by Section 3 of the Act, notification dated 24.1.1996 was issued by the Central Government specifying that offences punishable under Section 51 of the Wild Life Act could be investigated by the Delhi Special Police Establishment. Thereafter, the State of U.P. has issued the Notification, as required under Section 6 of the Act wherein it has been stated that the State of Uttar Pradesh is pleased to accord the consent to the extension of powers and jurisdiction of the members of the Delhi Special Police Establishment in the investigation of the Offence(s) punishable relating to the seizure of skin of Tiger and Leopard under Schedule 1 of the Wild Life Act, namely, case Crime No. 915/99 under Sections 9/39(3), 44, 48, 49, 50, 51, 57, 58 of the Wild Life Act and also case Crime No. 11/2000 under Section 429/379/411 IPC and Section 49B/51 of the Wild Life Act and also under Section 10/15 of the Animal Cruelty Act. Subsequently, the Central Government had issued a Notification, as contemplated under Section 5 of the Act empowering members of Delhi Special Police Establishment for investigating the aforesaid cases. In view of the Notifications issued by the Central Government under Section 5 of the Act and the Notification issued by the State of U.P. according consent to the extension of powers and jurisdiction of the members of the Delhi Special Police Establishment to investigate the offences, the contention raised by the learned counsel for the appellant that the CBI does not have jurisdiction to investigate the matter is without any substance.

Keeping the aforesaid Notifications in mind, we would first refer to the relevant provisions of the Wild Life Act. It is the contention of the learned counsel for the appellant that Section 50 prescribes exhaustive procedure to investigate and seize the articles specified therein. It also provides the procedure for the arrest of the persons, who are found in possession of the articles mentioned therein. It is his contention that sub-sections (1), (8) and (9) of Section 50 make the position abundantly clear that the officers mentioned and authorised under the Act, would only have jurisdiction to investigate the offences under the Wild Life Act. He also contended that sub-section (9) of Section 50 makes a departure and provides that evidence recorded by the officer empowered under sub-section (8) of Section 50 is made admissible in any subsequent trial before the magistrate and, therefore, also the police officer would not be entitled to investigate the offence because the evidence recorded by the police officer is inadmissible at the trial under the Evidence Act. For appreciating the said contention, we would refer to the relevant provisions of Sections 50 and 55:

"Chapter VI Prevention and Detection of Offences.

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 Chief Wild Life Warden or the authorised officer or any Forest Officer or any Police Officer not below the rank of a sub-inspector, may, if he has reasonable grounds for believing that any person has committed an offence against this Act,-

(a) require any person to produce for inspection any captive animal, wild animal, animal article, meat, trophy, uncured trophy, specified plant or part or derivative thereof 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, 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.] (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.

(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.

(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 Wild Life Warden 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 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."

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

(b) the Chief Wild Life Warden, or any other officer authorised in this behalf by the State Government; 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."

At this stage, we would mention that the Central Government has issued notification dated 7th April 2000 under the provisions of clause (a) of Section 55 of the Wild Life Act, authorizing the officers of Delhi Special Police Establishment not below the rank of Deputy Superintendent of Police, to file complaints with regard to the offences punishable under the Act in the areas in their respective jurisdiction. Therefore, it cannot be said that the CBI was not entitled to file the criminal complaint against the appellant.

Further, considering sub-section (1) of Section 50, it is apparent that under the Wild Life Act, the Director or any other officer authorised by him in this behalf or the Chief Wild Life Warden or the authorised officer or any Forest Officer are empowered to exercise the powers mentioned in sub-clauses (a), (b) and (c). Not only this, but it specifically empowers the Police Officer not below the rank of sub-inspector to inspect, conduct search or hold inquiry or seize articles, as provided in clauses (a), (b) and (c). This would certainly mean that the Police Officers are not excluded from investigating the offences under the Act. Sub-section (1) starts with a non-obstante clause that 'notwithstanding anything contained in any other law for the time being in force' which would include the Code of Criminal Procedure and the Officers mentioned therein are also entitled to inspect, search or seize the articles mentioned in clauses (a), (b) and (c). This would mean that apart from the Police Officers not below the rank of Sub-Inspector, other officers as mentioned above are given special powers for the purpose of prevention and detection of the offence under the Act.

Similarly, sub-section (8) empowers the officer not below the rank of an Assistant Director of Wild Life Preservation or Wild Life Warden for the purposes of making investigation into any offence against any provision of the Act: to issue search warrant; to enforce the attendance of witnesses; to compel the discovery and production of documents and material objects; and to receive and record evidence. Further, sub-section (9) provides that evidence recorded by such officer would be admissible in the trial if it is taken in presence of the accused person. But this would have no bearing

on the question whether the Police Officers are entitled to investigate the case or not.

As provided under sub-section (1) of Section 50, 'police officers' are not excluded for the purpose of investigation including inspection, search and seizure of the offending articles. No doubt, special powers are conferred to other officers but that is in consonance with sub-section (2) of Section 4 of Code of Criminal Procedure. Section 4 of the Code reads thus:

"4. Trial of offences under the Indian Penal Code and other laws.(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

The aforesaid section inter alia specifically provides that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the Code of Criminal Procedure but it shall be subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences. In view of specific provision under the Wild Life Act, apart from the police officer not below the rank of sub-inspector, the Director or any other officer authorised by him in this behalf or the Chief Wild Life Warden or authorised officer or any Forest officer can inspect, conduct search or inquire, seize article mentioned in the clauses (a), (b) and (c) of sub-section (1). To this extent, there is contrary provision under the Wild Life Act and would prevail as provided under sub-section (2) of Section 4 of Code of Criminal Procedure.

Learned counsel for the appellant referred to the decision in the case of State of Rajasthan (supra) wherein this Court dealt with the question whether the CBI can investigate the offences for violation of the Foreign Exchange (Regulation) Act, 1973 ("FERA" for short), more so, when the offence is alleged to have been committed outside the Indian territory? After referring to Sections 3, 4 and 5 of FERA, the Court held that the Act enacts that for implementing and enforcement of provisions of FERA, different classes of officers of Enforcement have been constituted in Section 3. The Court observed that from a combined reading of sections 3, 4 and 5 of FERA, it was clear that primarily officers of Enforcement Directorate as mentioned in Sections 3 and 4 have been empowered to exercise the powers and discharge the duties conferred or imposed on such officers of the Enforcement Directorate under FERA. And, in such cases, the Central Government under Section 5 can authorise any officer of the Customs or Central Excise Officer or Police Officer or any officer of the Central Government or State Government to exercise such of the powers and discharge such of the duties of the Director of Enforcement or any other officer of Enforcement under FERA as may be specified subject to such conditions and limitations as deemed fit by the Central Government. The

Court also held that as it was nobody's case that any notification has been issued under FERA authorising the member of Delhi Special Police Establishment to discharge the duties and functions of an officer of Enforcement Directorate and in absence of such notification under FERA, a member of Delhi Special Police Establishment cannot be held to be an officer under FERA and, therefore, is not competent to investigate into the offences under FERA. The Court further observed that FERA being a special law containing provisions for investigation, inquiry, search, seizure, trial and imposition of punishment for offences under FERA, section 5 of the Code of Criminal Procedure is not applicable in respect of offences under FERA.

In our view, the aforesaid judgment has no bearing in the present case. As stated above, the Central Government has issued notification dated 21.3.2000 under Section 5 read with Section 6 of the Act empowering the CBI for investigation of the case against the appellants under the Wild Life Act and Indian Penal Code. The scheme of Section 50 of the Wild Life Act makes it abundantly clear that Police Officer is also empowered to investigate the offences and search and seize the offending articles. For trial of offences, Code of Criminal Procedure is required to be followed and for that there is no other specific provision to the contrary. Special procedure prescribed is limited for taking cognizance of the offence as well as powers are given to other officers mentioned in Section 50 for inspection, arrest, search and seizure as well of recording statement. The power to compound offences is also conferred under Section 54. Section 51 provides for penalties which would indicate that certain offences are cognizable offences meaning thereby police officer can arrest without warrant. Sub-section (5) of Section 51 provides that nothing contained in Section 360 of the Code of Criminal Procedure or in the Probation of Offenders Act, 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 5A unless such person is under 18 years of age. The aforesaid specific provisions are contrary to the provisions contained in Code of Criminal Procedure and that would prevail during the trial. However, from this, it cannot be said that operation of rest of the provisions of the Code of Criminal Procedure are excluded.

In this view of the matter, there is no substance in the contention raised by the learned counsel for the appellant that Section 50 of the Wild Life Act is complete code and, therefore, CBI would have no jurisdiction to investigate the offences under the said Act. Hence, it cannot be said that the judgment and order passed by the High Court rejecting the petition filed by the appellant is in any way illegal or erroneous.

In the result, appeal is dismissed.

.J.

(M. B. SHAH) .J.

(B. N. AGRAWAL) April 9, 2002.