(1988) 10 SC CK 0002

Supreme Court of India

Case No: Criminal Appeal No''s. 551-553 of 1988

State of Bihar		APPELLANT
	Vs	
Murad Ali Khan and Others		RESPONDENT

Date of Decision: Oct. 10, 1988

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 210, 210(1), 300, 482
- Penal Code, 1860 (IPC) - Section 379, 409, 429, 447, 499
- Wild Life (Protection) Act, 1972 - Section 39, 50(1), 51, 54, 55
- Constitution Of India, 1950 - Article 20(2)

Citation: AIR 1989 SC 1 : (1988) 1 BLJR 37 : (1989) CriLJ 1005 : (1988) 3 Crimes 822 : (1998) 4 JT 124 : (1988) 2 SCALE 933 : (1988) 4 SCC 655 : (1988) 3 SCR 455 Supp

Hon'ble Judges: Ranganath Misra, J; M. N. Venkatachaliah, J

Bench: Division Bench

Final Decision: Allowed

Judgement

M.N. Venatachaliah, J.

SLP 1879 of 1987 is by the State of Bihar for special leave under Article 136 of the Constitution to appeal from the order dated 13-2-1987 of the High Court of Patna in Crl. Misc. 223 of 1987 quashing, in exercise of powers u/s 482 of CrPC 1973, the order dated 1-7-1986 of the Judicial Magistrate, Chaibasa, taking cognizance of an offence u/s 9(1) read with Section 51 of the Wild Life Protection Act, 1972 (Act) against respondent-Vikram Singh.

Special Leave Petitions Nos. 1877 of 1987 and 1878 of 1987 arise out of the subsequent two similar orders both dated 18-2-1987 in Criminal Misc. Nos. 258/1987(R) and 259/1987(R) of the High Court quashing the same common order of the said Magistrate dated 1-7-1986 against two other accused, namely, Murad Ali Khan and Faruq Salauddin who are respondents in these two Special Leave Petitions.

2. Special leave was granted and the three appeals were taken up for final hearing, heard and disposed of by this common-judgment, We have heard Shri M.P. Jha, learned Counsel for the State of Bihar and Dr. Chitaley and Shri Nariman for the respondents.

3. The accusation against the three respondents is that on 8-6-86 at 2.00 p.m. they along with two others named in the complaint, shot and killed an elephant in compartment No. 13 of Kundurugutu Range Forest and removed the ivory tusks of the elephant. On 25-6-1986 the Range Officer of Forest of that Range lodged a written complaint with the Judicial Magistrate, 1st Class, Chaibasa, in this behalf alleging offences against respondents u/s 51 of the Wild Life Protection Act, 1972. The learned Magistrate took cognisance of this offence and ordered issue of process to the accused.

It would appear that at the Police Station, Sonua, a case had been registered under Sections 447, 429 and 379, I.P.C. read with Sections 54 and 39 of the Wild Life Protection Act, 1972 and that the matter was under investigation by the police. The respondents, who were amongst the accused, moved the High Court u/s 482, Cr.P.C. for quashing of the order of the Magistrate taking cognisance of the alleged offence and issuing summons. The High Court was persuaded to the view that this was a case to which Section 210(1) of CrPC, 1973 was attracted and that as an investigation by the police was in progress in relation to the same offence the learned Magistrate would be required to stay the proceedings on the complaint and call for a report in the matter from the police; and that the learned Magistrate acted without jurisdiction in taking cognizance of the offence and ordering issue of process against the accused. The High Court, accordingly, quashed the proceedings against the respondents.

From the orders under appeal it would appear that two grounds commended themselves for acceptance to the High Court. The first was that the learned Magistrate acted contrary to the provisions of Section 210. The High Court observed:

The investigation is still continuing and pending in so far as the petitioner is concerned and the investigation shall continue. Obviously the Judicial" Magistrate acted beyond ""jurisdiction in taking cognisance against the petitioner when for the same allegation the investigation was proceeding and pending. He acted contrary to the provisions of Section 210 of the CrPC. The complaint was filed after long delay....

The second ground was on the merits of the complaint. The High Court, inter alia, observed:

On the face of the complaint petition of the first information report itself the facts alleged do not constitute the offence. The petitioner was never named in the first information report. There is no eye witness in this case and there is no identification of the petitioner in any manner whatsoever to sustain the allegation even prima facie for the offence alleged.

4. On a careful consideration of the matter, we are afraid, the approach of and the conclusion reached by the High Court is unsupportable. In regard to the first ground, presumably, certain provisions of the "Act" in regard to cognizability and investigation of offences against the Act. relevant to the matter, had not been placed before the High Court. The policy and object of the Wild Life laws have a long history and are the result of an increasing awareness of the compelling need to restore the serious ecological-imbalances introduced by the depradations inflicted on nature by man. The state to which the ecological imbalances and the consequent environmental damage have reached is so alarming that unless immediate, determined and effective steps were taken, the damage might become irreversible. The preservation of the fauna and flora some species of which are getting extinct at an alarming rate, has been a great and urgent necessity for the survival of humanity and these laws reflect a last-ditch battle for the restoration, in part at least, a grave situation emerging from a long history of callous insensitiveness to the enormity of the risks to mankind that go with the deterioration of environment. The tragedy of the predicament of the civilised man is that "Every source from which man has increased his power on earth has been used to diminish the prospects of his successOrs. All his progress is being made at the expense of damage to the environment which he can not repair and cannot foresee." In his foreword to International Wild Life Law". H.R.H. Prince Philip. The Duck of Edinburgh said:
....Many people seem to think that the conservation of nature is simply a matter of being kind to animals and enjoying walks in the countryside. Sadly, perhaps, it is a great deal more complicated than that....

....As usual with all legal systems, the crucial requirement is for the terms of the conventions to be widely accepted and rapidly implemented. Regretfully progress in this direction is proving disastrously slow....

See International Wildlife Law by Simon Lyster. Cambridge - Grotuis Publications Limited. 1985 Edn.

There have been a series of international conventions for the preservation and protection of the environment. The United Nations General Assembly adopted on 29-10-1982. "The world charter for nature." The charter declares the "Aware" ness that:

(a) Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients.

(b) Civilization is rooted in nature, which has shaped human culture and influenced all artistic and scientific achievement, and living in harmony with nature gives man the best opportunities for the development of his creativity and for rest and recreation.

In the third century B.C. King Asoka issued a decree that "has a particularly contemporary'' ring" in the matter of preservation of wild life and environment. Towards the end of his reign, he wrote:

Twenty six years after my coronation, I declared that the following animals were not to be killed; parrots, mynas. the aruna, ruddy geese, wild geese, the nandimukha, cranes, bats, queen ants, terrapins, boneless fish, rhinoceroses...and all quadrupeds which are not useful or edible...forests must not be burned.

Environmentalists'' conception of the ecological balance in nature is based on the fundamental concept that nature is "a series of complex biotic communities of which a man is an inter-dependant part" and that it should not be given to a part to tresspass and diminish the whole. The largest single factor in the depletion of the wealth of animal life in nature has been the "civilized man" operating directly through excessive commercial hunting or. more disastrously, indirectly through invading or destroying natural habitats.

5. We might now turn to certain provisions of the Act. Section 9(1) of the Act says that no person shall "hunt" any wild animal specified in Schedule I. Elephant is included in schedule I. The expression "wild-animal" is defined in Section 2(36) to mean any "animal found wild in nature and includes any animal specified in schedule I" etc. The expression "hunting" is defined in Section 2(16) in a comprehensive manner:

2(16) "hunting'' with its grammatical variations and cognate expressions, includes.

(a) capturing, killing, poisoning, snaring and trapping of any wild animal and every attempt to do so.

(b) driving any wild animal for any of the purposes specified in Sub-clause (a),

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

Section 51 of the Act provides for penalties. Violation of Section 9(1) is an offence u/s 51(1). Section 55 deals with cognizance of offences:

55. No court shall take cognizance of any offence against this Act except on the complaint of the Chief Wild Life Warden or such other officer as the State Government may authorise in this behalf.

What emerges from a perusal of these provisions is that cognizance of an offence against the "Act" can be taken by a Court only on the complaint of the officer mentioned in Section 55. The person who lodged complaint dated 23-6-86 claimed to be such an officer. In these circumstances even if the jurisdictional police purported to register a case for an alleged offence against the Act, Section 210(1) would not be attracted having regard to the position that cognizance of such an

offence can only be taken on the complaint of the officer mentioned in that section. Even where a Magistrate takes cognisance of an offence instituted otherwise than on a police-report and an investigation by the police is in progress in relation to same offence, the two cases do not lose their separate identity. The section seeks to obviate the anomalies that might arise from taking cognisance of the same offence more than once. But, where, as here, cognisance can be taken ony in one way and that on the complaint of a particular statutory functionary, there is no scope or. occasion for taking cognisance more than once and, accordingly, Section 210 has no role to play. The view taken by the High Court on the footing of Section 210 is unsupportable.

6. The second ground takes into consideration the merits of the matter. It cannot be said that the complaint does not spell out the ingredients of the offence alleged. A complaint only means any allegation made orally or in writing to a Magistrate, with a view to his taking action, that some person, whether known or unknown, has committed an offence.

It is trite that jurisdiction u/s 482, Cr.P.C, which saves the inherent power of the High Court, to make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice, has to be excised sparingly and with circumspection. In exercising that jurisdiction the High Court would not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute or spell out any offence and that resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the court or not.

In Municipal Corporation of Delhi v. R.K. Rohtagi, [1983] SCR 1 884 at 890 it is reiterated:

It is, therefore, manifestly clear that proceedings against an accused in fhe initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers u/s 482 of the present Code.

In Municipal Corporation of Delhi v. P.D. Jhunjunwala, [1983] 1 SCR 895 at 897 it was further made clear:

...As to what would be the evidence against the respondents is not a matter to be considered at this stage and would have to be proved at the trial. We have already held that for purpose of quashing the proceedings only the allegations set forth in the complaint have to be seen and nothing further.

In the complaint No. 653 dated 23-6-1986 of the Range Officer, Forests, it is, inter alia, alleged:

I have to report that on 8-6-86 at about 2 P.M. I learnt from Sri Aghnu Mahto, Forester, Jomatai Beat, that somebody has killed an elephant in compartment No. 13 of Kundrugutu Reserve Forest. The matter was serious and so I immediately reported it to Officer incharge, Sonua Police Station to register a case and for investigation.

It was further reported that Jiwan Mesi Longa. Coupe Overseer, Joratal beat has (been) seen the accused persons entering into the forest during the night time and Ssad returned on the same Jeep No. BRX 9588 at about 8 or 9 A.M. He could identify only Sri Prabhu Sahay Bhengra in the jeep, was is driver of Block Development Officer, Bandgaon. During my enquiry I visited the spot and dug out the body of the elephant and found that both of the tusks had been extracted out, from the mouth of the elephant. It was also learnt from the admission of the accused Prabhu Sahay Bhengra, who was interrogated by me during the course of enquiry, that the elephant was killed in the early morning of 1-6-86 before dawn i.e. on 1-6-86 by him and (1) Sri Abraham Bhengra (2) Sri Murad Ali Khan (3) Sri Vikram Singh, (4) Sri Farukh Salauddin (5) Sri Babu Khan (named above) by two Rifles and had used 6 rounds of bullets. On the spot two empty cartridges were found and I picked them up and produced them before the officer-in-charge, Sonua Police Station for needful. Sri Prabhu Sahay Bhengra had also admitted before me that he had kept one tusk with him and other tusk was taken away by Murad Ali Khan and his associates. Later one of the tusks was produced by Sri Prabhu Sahay Bhengra to the officer-in-charge, Sonua Police Station in my presence.
On the basis of the information resolved from Bhengra I immediately proceeded to Jamshed pur with D.S.P., Chakradharpur and the D.F.O., Pornahat Division, Sri Murad Ali Khan and his associates. Sri Babu Khan was interrogated who admitted that they brought one of the tusks and have sent it to Lucknow for disposal. They were brought to Chaibasa with jeep No BRX 9588 and they were handed over in the custody of the S.P. Singhbhum, Chaibasa, for needful. Mr. Murad Ali promised to produce the tusk in a few days'' time but did not disclose the place where he had sent the tusk at Lucknow....

The complaint further proceeds to say that elephant is included in the Schedule 1 of the Wild Life (Protection) Act, 1972, and that the complainant was authorised by the Bihar Government''s notification No. SO-1022/418/73 to file complaints under the Act.

It is difficult to agree with the High Court that the allegations in the complaint, taken on their face-value, would not amount in law to any offence against the "Act".

The second ground on which the High Court came to quash the proceedings of the Magistrate, on the facts of this case, is impermissible as an exercise u/s 482, Cr.P.C.

7. It was, however, suggested for the respondents that the offence envisaged by Section 9(1) read with Section 2(16) and Section 50(1) of the Act, in its ingredients and content, is the same or substantially the same as Section 429, IPC and that after due investigation the police had filed a final report that no offence was made out and that initiation of any fresh proceedings against respondents would be impermissible. Section 429, IPC, which occurs in the chapter "Of mischief" provides:

429. Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees - Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

The offence of hunting any wild-animal as defined in Section 9(1) read with Section 2(16) of the Act is much wider.

Section 56 of the ''Act" provides:

56. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for the time being in force, for any act or omission which constitutes an offence against this Act or from being liable under such other law to any higher punishment or penalty than that provided by this Act:

Provided that no person shall be punished twice for the same offence.

We are unable to accept the contention of, Shri R. F. Nariman that the specific allegation in the present case concerns the specific act of killing of an elephant, and that such an offence, at all events, falls within the overlapping areas between Section 429, IPC on the one hand and 9(1) read with 50(1) of the Act on the other and therefore constitutes the same offence. Apart from the fact that this argument does not serve to support the order of the High Court in the present case, this argument is, even on its theoretical possibilities, more attractive than sound. The expression "any act or omission which constitutes any offence under this Act" in Section 56 of the Act, merely imports the idea that the same act or omission might constitute an offence under another law and could be tried under such other law or laws also.

The proviso to Section 56 has also a familiar ring and is a facet of the fundamental and salutory principles that permeate penalogy and are reflected in analogous provisions of Section 26 of General Clauses Act, 1897; Section 71 IPC; Section 300 of

the Cr.P.C, 1973, and constitutionally guaranteed under Article 20(2) of the Constitution. Section 26 of the General Clauses Act, 1897 provides:

26. Provision as to offences punishable under two or more enactments:

Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

Broadly speaking, a protection against a second or multiple punishment for the same offence, technical complexities aside, includes a protection against reprosecution after acquittal, a protection against reprosecution after conviction and a protection against double or multiple punishment for the same offence. These protections have since received constitutional guarantee under Article 20(2). But difficulties arise in the application of the principle in the context of what is meant by "same offence". The principle in American law is stated thus:

...The proliferation of technically different offences encompassed in a single instance of crime behaviour has increased the importance of defining the scope of the offence that controls for purposes of the double jeopardy guarantee.

Distinct statutory provisions will be treated as involving separate offenses for double jeopardy purposes only if "each provision requires proof of an additional fact which the other does not" (Blockburger v. United States (1931) 284 US 299. Where the same evidence suffices to prove both crimes, they are the same for double jeopardy purposes, and the clause forbids successive trials and cumulative punishments for the two crimes. The offences must be joined in one indictment and tried together unless the defendant requests that they be tried separately. (Jeffers v. United States (1977) 432 US 137.

(See "Double Jeopardy" in the Encyclopedia of Crime and Justice vol. 2, (p. 630) 1983 Edn. by Sanford H. Kadish: The Free Press, Collier Mac Millan Publishers, London)

The expressions "the same offence", "substantially the same offence" "in effect the same offence" or "practically the same", have not done much to lessen the difficulty in applying the tests to identify the legal common denominators of "same offence". Friedland in "Double Jeoparady" (Oxford 1969) says at page 108:

The trouble with this approach is that it is vague and hazy and conceals the thought processes of the Court. Such an inexact test must depend upon the individual impressions of the judges and can give little guidance for future decisions. A more serious consequence is the fact that a decision in one case that two offences are "substantially the same" may compel the same result in another case involving the same two offences where the circumstances may be such that a second prosecution should be permissible....

8. In order that the prohibition is attracted the same act must constitute an offence under more than one Act. If there are two distinct and separate offences with different ingredients under two different enactments. a double punishment is not barred. In Leo Roy Frey v. The Superintendent, District Jail, Amritsar, [1958J SCR 822 the question arose whether a crime and the offence of conspiracy to commit it are different offences. This Court said (at P. 121 of AIR):

The offence of a conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients. They are. therefore, quite separate offences.

In State of of Madhya Pradesh v. Veereshwar Rao Angnihotry [1957] SCR 868 the accused was tried by the special judge for offences u/s 409, IPC, and Section 5(2) of the Prevention of Corruption Act, 1947. While convicting him u/s 409, IPC, the Special Judge held that the accused could not be cried u/s 5(2) of the Prevention of Corruption Act, 1947. as there was a breach of the requirement of law that the investigation be by a police officer not below a particular rank. In appeal, the High Court set aside even the conviction u/s 409, IPC, applying the doctrine of autrefois acquit holding that the Special Judge''s finding on the charge u/s 5(2) amounted to an acquittal and that punishment on a charge u/s 409, would be impermissible. This Court following the pronouncement in Omprakash Gupta v. Slate of UP, [1957] SCR 423 held that the two offences were distinct and separate offences.

In The State of Bombay v. S.L. Apte & Anr., 11961] 3 SCR 107 , the question that fell for consideration was that in view of earlier conviction and sentence u/s 409, IPC a subsequent prosecution for an offence u/s 105 of Insurance Act, 1938. was barred by Section 26 of the General Clauses Act and Article 20(2) of the Constitution. This Court observed (at Pp. 581 and 583 of AIR):

To operate as a bar the second prosecution and the consequential punishment thereunder, must be for ''the same offence. The crucial, requirement therefore for attracting the Article is that the offences are the same. i.e.. they should be identical. If, however, the two offences are distinct, then notwithstanding that the allegations, of facts in the two complaints might be substantially similar, the benefit of the ban cannot be invoked. It is, therefore, necessary to analyse and compare not the allegations in the two complaints but the ingredients of the two offences and see whether their identity is made out....

...Though Section 26 in its opening words refer to ''the act or omission constituting an offence under two or more enactments.'' the emphasis is not an the facts alleged in the two complaints but rather on the ingredients which constitute the two offences with which a person is charged. This is made clear by the concluding portion of the section which refers to ''shall not be liable to be punished twice for

the same offence''. If the offences are not the same but are distinct, the ban imposed by this provision also cannot be invoked....

The same set of facts, in conceivable cases. can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the IPC and at the same time constitute an offence under any other law. The observations of this Court made in the context of Section 2(3) of Contempt of Courts Act might usefully be recalled. In Bathina Ramakrishna Reddy v. State of Madras, [1952] SCR 4''5 this Court examined the contention that the publication of an article attributing corruption to a judicial officer was not cognizable in contempt jurisdiction by virtue of Section 2(3) of the Contempts of Courts Act, 1971, which provided that (at P. 151 of AIR):

No High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.

The contention before this Court was that the allegations made in the article constituted an offence u/s 499 of IPC and, that therefore, cognizance of such an offence under the Contempts of Court Act was barred. Repelling the contention, Mukharji, J., said (at p. 151 of AIR):

In our opinion, the sub-section referred to above excludes the jurisdiction of High Court only in cases where the acts alleged to constitute contempt of a subordinate court are punishable as contempt under specific provisions of the Indian Penal Code, but not where these acts merely amount to offences of other description for which punishment has been provided for in the Indian Penal Code. This would be clear from the language of the sub-section which uses the words "where such contempt is an offence" and does not say ''where the act alleged to constitute such contempt is an offence"....

It is, however, unnecessary to explore the possibilities of this contention as indeed there has been admittedly no prior conviction and sentence for an offence under 429. IPC even assuming that the two offences are substantially "the same offence". Suffice it to notice, prima facie, that the ingredients of an offence u/s 9(1) read with Section 50(1)* of the Act require for its establishment certain ingredients which are not part of the offence u/s 429 and vice versa.

In the result, these appeals are allowed, the orders of the High Court in Crl. Misc. No. 223 of 87 dated 13-2-1987 and the two orders in Crl. Misc. No. 258 of 1987(R) and Crl. Misc. No. 259/1987(R) dated 18-2-1987 are set aside and the order dated 1-7-1986 of the learned Magistrate taking cognizance of the offence and ordering issue of summons to the respondents is restored. The criminal case initiated on the complaint will now be proceeded with in accordance with law.