

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JANUARY, 2023

BEFORE

THE HON'BLE Mr. JUSTICE HEMANT CHANDANGOUDAR

CRIMINAL PETITION No.4567 OF 2018

BETWEEN:

- 1 . SRI ATTAR AHMED
AGED 67 YEARS
S/O LATE MOHAMMED YUSUF,
R/AT HIBA COFFEE LAND,
UDAYAVAR POST,
SAKALESHPURA,
HASSAN DISTRICT-573 134
- 2 . SRI RAFEEQ
AGED 42 YEARS
S/O LATE MEER HASSAN ALI
R/AT NO.22,AGA ABDULLA STREET,
SARPAIN TAIN STREET,
RICHMOND TOWN,
BANGALORE-560 025
- 3 . SRI MADDASIR ALI
AGED 22 YEARS
S/O MEER YAVAR ALI ,
R/AT RICHMOND TOWN,
BANGALORE-560 025
- 4 . SRI M S MOHAMMAED RIZWAN
AGED 36 YEARS
S/O SHOUKATH ALI
R/AT CHIKAKUNDA,
SOMVARAPETE,
KODUGU-571 236
- 5 . SRI MEER NAYAR ALI

- AGED 23 YEARS
S/O MEER YAVAR ALI
R/AT ABDUL STREET,
RICHMOND TOWN,
BANGALORE-560 025
- 6 . SRI MEER NAZEEB ALI
AGED 18 YEARS
S/O MEER YAVAR ALI,
R/AT ABDUL STREET,
RICHMOND TOWN,
BENGALURU-560 025
- 7 . SYED AMEN
AGED 30 YEARS
S/O MEERAMANULLA,
R/AT MEERAMANULLA
R T NAGAR,
BANGALORE-560 032
- 8 . MOHAMMED SAMEER
AGED 29 YEARS
S/O ATTHAR AHAMED,
HIBA COFFEE LAND,
UDAYAVARA,
SAKALESHPURA,
HASSAN-573 134
- 9 . ARUNA
AGED 23 YEARS
S/O ANNAPPA,
R/AT MAHAL
BISAGNIMATHA,
CHICKMAGALUR-577 101
- 10 . CHETHAN
AGED 26 YEARS
S/O ANNAPPA,
R/AT MAHAL
BISAGNIMATHA,
CHICKMAGALUR-577 101
- 11 . HARISHA
AGED 25 YEARS

S/O MANJU
R/AT MAHAL
BISAGNIMATHA,
CHICKMAGALUR-577 101

12 . MAHAMED
AGED 48 YEARS
S/O ALAVI,
R/AT NAZAMA ESTATE,
MAHAL,BISAGNIMATHA,
CHICKMAGALUR-577 101

13 . ARABAJH
AGED MAJOR,
S/O AFAK,
R/AT UDAYAVARA
SAKLESHAPURA
HASSAN-573 134

14 . YASEEN
AGED MAJOR,
S/O ISTIYAQ
R/AT UDAYAVARA
SAKLESHAPURA
HASSAN-573 134

15 . JABEE
AGED MAJOR,
S/O PAPUSAB
R/AT AREHALLI,
UDAYAVARA,
SAKLESHAPURA
HASSAN-573 134

...PETITIONERS

(BY SRI.P.P.HEGDE, SR. ADVOCATE FOR
SRI.VENKATESH.SOMAREDDI, ADVOCATE)

AND:

1 . THE ASSISTANT CONSERVATOR OF POLICE
BHADRA WILD LIFE ZONE,

LAKKAVALLI,
TARIKERE TALUK-577 101

- 2 . THE STATE-THROUGH THE SUB
INSPECTOR OF POLICE,
MALLANDURU POLICE STATION,
CHIKMAGALURU
REPRESENTED BY THE STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU-575 001

...RESPONDENTS

(BY SRI.MAHESH SHETTY, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE FIR IN CR.NO.12/2017 OF MALLANDURU POLICE STATION OF CHIKKAMAGALURU DISTRICT, PENDING ON THE FILE OF II ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, CHIKKAMAGALURU AND ALL FURTHER PROCEEDINGS IN THE SAID CASE IN SO FAR AS PETITIONERS ARE CONCERNED.

THIS CRIMINAL PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The first respondent filed a private complaint under Section 200 of Cr.P.C., for the offences punishable under Sections, 9, 27, 31, 39, 71(A), 50, 51, 52, 55 of the Wild Life (Protection) Act, 1972, Section 71(a) of Karnataka Forest Act, 1963, and Section 50 of the Wild Life Protection

Act, alleging that petitioners-accused illegally entered into the forest land and shot Sambar using two guns.

2. Learned Magistrate has taken cognizance of the aforesaid offences against the petitioners-accused. Thereafter, the respondent No.1 submitted a report with the jurisdictional Police concerned stating that the petitioners have committed the offences punishable under Indian Arms Act and the Arms Act, 1959 and the same has to be investigated by the Police concerned.

3. Based on the report submitted by the respondent concerned, the FIR was registered for the offences punishable under sections 3, 7, 25, 27 and 30 of the Indian Arms Act and section 35 of the Arms Act, 1959. Taking exception to the registration of the FIR, the petitioners-accused have filed this petition.

4. Mr. P.P. Hegde, learned senior counsel appearing for the petitioners-accused submits that the allegation in the FIR is that the petitioners had used the

licensed guns to kill two sambars in a forest land and even accepting the allegations on the face of it, does not constitute commission of the offence punishable under Sections 3, 7, 25, 27 and 30 of the Indian Arms Act and section 35 of the Arms Act, 1959 . He further submits that even accepting the allegations on the face of it, that the petitioners used the guns in violation of the conditions of the license, registration of the FIR for the offence punishable under Section 30 of the Indian Arms Act and section 35 of the Arms Act, 1959 which are non cognizable is impermissible, since the FIR was registered without obtaining the order of the learned Magistrate as specified under Section 155(2) of Cr.P.C.

5. On the other hand, the learned HCGP appearing for the respondent-State would submit that the allegations made in the FIR clearly disclose the commission of the offence alleged against the petitioners-accused. At this stage the allegations made require to be investigated and sought for dismissal of the petition.

6. I have examined the submissions made by the learned counsel appearing for the parties.

7. The allegations in the FIR registered for the offences under Sections 3, 7, 25, 27 and 30 of the Arms Act, 1959 is that the petitioners/accused had used two licensed guns for killing sambar in violation of the conditions of license.

8. Section 3 of the Arms Act, 1959 deals with grant of license in acquisition and possession of firearms and ammunition. Section 7 of the Arms Act, 1959 prohibits the acquisition or possession, or of manufacture or sale of prohibited arms or prohibited ammunition. Section 25 of the Act specifies punishment for certain offences. Section 27 of the Act specifies punishment for use of arms etc., Section 30 of the Act specifies the punishment for contravenes of license or rule. Section 35 of the Act specifies criminal responsibility of the persons in occupation of premises in certain cases.

9. In the instant case, the allegations made in the FIR, even accepted on the face of it, constitute the offences only under Sections 30 and 35 of the Act. The offences under Sections 30 and 35 of the Act are punishable with imprisonment for a term of six months or with fine amount of Rs.2,000/- or with both. Hence, offences under the said provisions are non cognizable and the police before registering FIR were required to obtain order from the learned Magistrate as specified under Section 155(2) of Cr.P.C. The police without obtaining the order of the learned Magistrate as specified under Section 155(2) of Cr.P.C has registered the FIR and the same is one without authority of law. Hence, continuation of investigation against petitioners/accused in the absence of prior permission from learned Magistrate will be an abuse of process of law. Accordingly, I pass the following:

ORDER

- i. Criminal petition is allowed.

ii. The impugned FIR in Cr.No.12/2017 registered by the Mallanduru Police Station, Chikkamagaluru insofar it relates to petitioners/accused Nos.1 to 15 is hereby quashed.

In view of disposal of the main petition, pending IA.No.1/2022 does not survive for consideration.

**Sd/-
JUDGE**

HR/RKA