

Section - 55 Cognizance of offence

Filing of complaint

In discharging the petitioner, the learned Chief Judicial Magistrate gave so many reasons and one of the grounds was that the challan which was filed by the SHO was not sufficient and a regular complaint should have been filed as provided by Section 55 of the Act of 1972. To remove this lacuna, the complaint has been filed and by doing so, the order of discharge dated 22-2-1999 is not set aside and when order of discharge against the petitioner for the same offence is in force, subsequent filling of complaint, taking cognizance and framing of charges are without jurisdiction and thus, the order of taking cognizance and framing of charges are liable to be set aside.

RAJASTHAN HIGH COURT

Ashwini Kumar Bhardwaj

Petitioner

Vs.

State of Rajasthan

Respondent

SUNIL KUMAR GARG, J.

ORDER: This revision petition has been filed by the accused petitioner against the order dated 25-10-2000 passed by the learned Additional Chief Judicial Magistrate No. 1, Chittorgarh in Criminal Case No. 110/99 by which he framed charges against the petitioner for offence under Sections 40, 49 read with Section 51 of the Wild Life (Protection) Act, 1972 (hereinafter referred to as the Act of 1972).

2. It arises in the following circumstances:-

(i) On 7-6-1996 Shri Bhanwar Singh, SHO, Police Station Chanderiya Distt. Chittorgarh lodged a first information report against the accused petitioner alleging to the effect that at the house of accused petition situated at C-82, Kumbha Nagar, Chittorgarh, a search was conducted and during search two skins of Panther were recovered in one white bag and they were seized and the servants who were present at the time of search showed their unawareness and at the time of search, the accused petitioner was not in his house and he was in police custody in another case.

(ii) On this report, police registered a case under Section 9/51 of the Act of 1972 and after investigation, police filed challan against the petitioner under Section 411, I.P.C. and under sections 40, 49 read with Section 51 of the Act of 1972 against the accused petitioner in the Court of Chief Judicial Magistrate, Chittorgarh, where a case was registered bearing Criminal Case No. 367/97. The learned Chief Judicial Magistrate after considering the entire material available on record vide his order dated 22-2-1999 discharged the petitioner from the aforesaid offences. After discharge of accused petitioner from the said offences, the SHO filed a regular complaint, in the Court of Additional Chief Judicial Magistrate No. 1, Chittorgarh in respect of same offences for which he was earlier discharged by the Chief Judicial Magistrate vide order dated 22-2-1999.

(iii) On the said complaint, the learned ACJM No. 1 first took cognizance against the accused petitioner on 2-6-1999 for offence under Section 40, 49 read with Section

51 of the Act of 1972 and framed charges against the accused petitioner vide order dated 25-10-2000.

3. Aggrieved from the order dated 25-10-2000, this revision petition has been filed by the accused petitioner.

4. In this revision petition, the main contention of the accused petitioner is that since the accused petitioner was discharged by the learned Chief Judicial Magistrate vide order dated 22-2-1999, on same facts the Additional Chief Judicial Magistrate has no jurisdiction or authority to proceed further and this amounts to abuse of process of Court as order dated 22-2-1999 by which the accused was discharged is in force and same has not been set aside by any Court. Hence, the orders of taking cognizance as well as framing of charges against the accused petitioner be set aside.

5. Before proceeding further, it may be stated that there is no dispute on the point that facts of Criminal Case No. 367/97 which was pending before the Chief Judicial Magistrate and in which accused was discharged on 22-2-1999 and material facts of criminal case No. 1/99 which was pending before learned Additional Chief Judicial Magistrate No. 1 are similar. The learned Chief Judicial Magistrate vide order dated 22-2-1999 while discharging the accused petitioner gave following reasons:

(i) No case for offence under Section 41 is found prima facie against the accused petitioner. Similarly case for offence under sections 40, 49 read with Section 51 of the Act of 1972 prima facie is not found.

(ii) By virtue of Section 55 of the Act of 1972, cognizance of any offence under this Act can be taken only on the complaint of the Chief Wild Life Warden or such other officer as the State Government may authorize in this behalf and since in the present case, challan was filed by the SHO who was not competent and from this point of view also, he came to the conclusion that instead of challan, complaint should have been filed and for the aforesaid reasons, the Chief Judicial Magistrate discharged the accused petitioner.

6. Subsequent to that order dated 22-2-1999, SHO, Chittorgarh on 9-4-1999 filed a complaint before the Additional Chief Judicial Magistrate No. 1 on the same facts and allegation which were levied by him earlier through challan. On this complaint, the learned ACJM No. 1, Chittorgarh first took cognizance on 2-6-1999 for the aforesaid offences and framed charges against the accused petitioner on 25-10-2000.

7. In my considered opinion, when on same facts and circumstances, the accused petitioner was discharged by the Chief Judicial Magistrate vide order dated 22-2-1999, the Additional Chief Judicial Magistrate No. 1 was not competent to take cognizance and thereafter framed charges against the accused petitioners for the aforesaid offences. The learned Chief Judicial Magistrate vide order dated 22-2-1999 has discharged the accused petitioner earlier by giving cogent reasons and thus the order of discharge the Chief Judicial Magistrate was speaking order. In discharging the petitioner, the learned Chief Judicial Magistrate gave so many reasons and one of the grounds was that the challan which was filed by the SHO was not sufficient and a regular complaint should have been filed as provided by Section 55 of the Act of 1972. To remove this lacuna, the complaint has been filed and by doing so, the order of discharge dated 22-2-1999 is not set aside and when order of discharge against the petitioner for the same offence is in force, subsequent filling of complaint, taking cognizance and framing of charges are without jurisdiction and thus, the order of taking cognizance and framing of charges are liable to be set aside.

For the reasons mentioned above, the present revision petition is allowed and the order dated 2-6-1999 by which the learned ACJM No. 1 took cognizance against the accused petitioner Ashwini Kumar Bhardwaj and the order dated 25-10-2000 by which charges were framed against the accused petitioner Ashwini Kumar Bhardwaj for offence under sections 40, 49 read with Section 51 of the Wild Life (Protection) Act, 1972 are set aside and the complaint filed by the SHO, Police Station Chanderiya is quashed.

Petition allowed

[Also reported in 2002 Cri. L. J. 179]