

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.29080 of 2015**

Arising Out of PS. Case No.-5 Year-2013 Thana- BHABHU(KAIMUR) COMPLAIN C
District- Kaimur (Bhabua)

1. Rajesh Singh, Son of Shri Rang Bahadur Singh
2. Kunwar Singh, Son of Late Chhabinath Singh, Both resident of Village Mokari, P.S.- Bhabua, District Kaimur.

... .. Petitioner/s

Versus

1. State of Bihar
2. Shashi Bhushan Prasad, Forest Range Officer, Forest range- Bhabua, District Kaimur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Prabhakar Singh, Adv.

For the Opposite Party/s : Mr. Jitendra Kumar Singh, APP

**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT**

Date : 03-04-2025

Heard Mr. Prabhakar Singh, learned counsel appearing for the petitioners and Mr. Jitendra Kumar Singh, learned APP appearing for the State.

2. The instant petition has been filed under section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') with a prayer to quash the order dated 07.04.2015 passed in Complaint Case No. 5(O) of 2013 by the court of C.J.M., Bhabua by which the cognizance under sections 9, 27, 32 and 51/52 of the Wild Life (Protection) Act, 1972 (in short 'WL Act') and under section 33 of the Indian Forest Act, 1927 (in



short 'Forest Act') has been taken against the petitioners.

3. Mr. Prabhakar Singh, learned counsel appearing for the petitioners submits that both the petitioners preferred criminal miscellaneous No. 15622 of 2011 challenging the order of cognizance passed in the Forest Case No. 62/2009 relating to the same matter, which was allowed mainly considering the fact that the forester, who had filed the complaint against the petitioners, was not authorized to file a criminal case under the WL Act and a liberty was given to the concerned authority to take proper steps under the WL Act and only thereafter, a fresh Complaint Case No. 5(O)/2013 was lodged by the *Forest Range Officer*, who was also not a competent person to file the said complaint as under the provisions of section 55 of the WL Act, the complaint ought to have been filed by any of the authorities mentioned in the said section and as per section 55(b) of WL Act, the Chief Wild Life Warden was one of the competent authorities of the forest department to file the complaint, though as per section 55(b), any other officer authorized in this behalf by the State Government could have also filed the complaint in relation to the alleged wrong. But admittedly, none of the prescribed authorities, including the Chief Wild Life Warden, filed the complaint rather it was admittedly filed by the *Forest*



Range Officer, who was also not a competent person to file the complaint. Though as per the counter affidavit filed by the forest department, the complainant, the *Forest Range Officer*, had been authorized by the State Government to take action under sections 27(2)(c), 41(1), 50(1) and 55(b) of the WL Act but in this regard, concerned notification was issued on 22.01.2014 while the fresh complaint had been filed on 24.03.2013 before the issuance of said notification, though as per the last two lines of the said notification, the notification was made effective retrospectively and all earlier proceedings started under the provisions of the WL Act were made covered by that notification which is completely illegal. It is further submitted that the instant matter relates to hunting of a rabbit but the name of the said animal does not find place in any of the schedules of the WL Act, though, hare has been included in the schedule IV of the WL Act but there is much difference between the rabbit and hare and both the mammals have more differences than similarities in view of their behaviour and style of life. It is lastly submitted by learned counsel for the petitioners that the learned trial court has taken cognizance under sections 9, 27 and 32 of the WL Act but there is no penal provision in any of these sections, which also shows non-application of judicial mind by



the learned Magistrate while passing the impugned order and further, both the petitioners were not involved in the alleged hunting and they were not apprehended at the alleged place and they have been made accused mainly on the basis of availability and finding of a vehicle and a gun in the possession of the apprehended co-accused at the place of occurrence, which is not sufficient to make the petitioners as accused in the alleged matter.

4. In support of the aforesaid contention as to the rabbit being different from hare and the penal provisions under section 51 of the WL Act being not applicable on account of the rabbit not protected under the WL Act, the learned counsel has placed reliance upon an order of the High Court of Andhra Pradesh at Hyderabad passed in the case of **Mohd Rahamatullah Hussain vs. State of A.P.** reported in **2006 SCC Online AP 1548** and the relevant paragraphs Nos. 6 to 8, upon which reliance has been placed, are being reproduced as under :

*“6. On careful scrutiny of Schedule I, no doubt item No. 11 reads “**Hispid Hare (Caproagus hispidus)**”. Relating to the definition of Hare, the learned counsel placed strong reliance on “The World Book Encyclopedia”, wherein it is stated hereunder:*

“Hare is a long-eared mammal with powerful hind legs and a short, fluffy tail. Hares are related to rabbits and are often confused with them. But hares differ from rabbits



in several ways. Hares give birth on the ground or in a scratched-out depression called a form. The young are born covered with fur and with their eyes open. Rabbits are born naked and blind in a fur-lined nest. Hares never dig burrows as do many rabbits. Also, hares usually try to escape from their enemies by leaping away rapidly. Rabbits usually try to hide from enemies. The Belgian hare is really a type of rabbit. The North American snow-shoe rabbit and the jack rabbit are, in fact, hares.

Most hares are brownish-grey with a pure white belly. Some kinds of hares that live in cold climates turn completely white during the winter. The largest hares grow to nearly 70 centimetres long and can reach a weight of more than 3.5 kilograms.

Hares court and mate in spring. During courtship, they often jump and twist in the air. This behaviour may explain the phrase “made as a March hare.” Young hares are called leverets. There are usually fewer than five in a litter, but there may be as many as seven litters a year.

Hares rest during the day and generally look for food during the night and at dawn. Hares eat plants and can have long ears, long forelegs, and an upward stance. They generally live in open country or the edge of woods. Their young are born in a shallow hollow in the ground.”

Rabbit *is a furry animal with long ears and a short, fluffy tail. Rabbits do not walk or run, as most other fourlegged animals do. A rabbit moves about by hopping on its hind legs, which are much longer and stronger than its front legs. The animal also uses its front legs when it moves. Rabbits balance on their front legs much as people balance on their hands when they play leapfrog. When chased by a enemy, a rabbit can hop as fast as 30 kilometres an hour. Many children have pet rabbits. Pet shops sell tame rabbits*



that have been raised to be pets.

Rabbits live in Africa, Asia, Europe, North America, and have been introduced to other parts of the world. Most species make their homes in fields and prairies where they can hide their young under bushes or among tall grasses. A female rabbit usually has four or five young at a time, and may give birth several times every year.

*A **young cottontail** rabbit sits motionless to escape hunters, but hops away quickly if they come near.*

7. The learned counsel for the petitioner also relied upon “Reader's Digest Universal Dictionary” wherein it indicates a reference for hairs procedure under the word ‘his-pir’ as summarized in Latin word ‘hispidus’ which reads as hereunder:

“his-pid (hispid) adj. Covered with stiff or rough hairs; bristly: hispid stems. (Latin hispidus)”

*8. Schedule-I of Part I of the Act aforesaid deals with **Mammals** and it is not in serious controversy that rabbit does not find a place in the said Schedule. In the light of the same, the provisions under Section 9 and 51 of the Act aforesaid may not be attracted and hence the proceedings so far as they relate to the alleged offences under the Wild Life (Protection) Act, 1972 are liable to be quashed and accordingly, the same are hereby quashed.”*

5. On the other hand, Mr. Jitendra Kumar Singh, learned counsel appearing for the State has vehemently opposed this petition and submitted that there is slight difference between the animal rabbit and hare and both can be deemed to be the same species of a mammal and togetherly come in the purview



of protected wildlife animal and so far as the filing of the complaint by a competent authority is concerned, as per the notification dated 22.01.2014, Range Forest Officer, Bhabua was a competent person to file the complaint at that time and he filed the complaint with the sanction of Divisional Forest Officer (DFO), Kaimur and in this regard, Annexures – ‘R/1’ and ‘R/2’ filed with the counter affidavit by the forest department may be perused.

6. Heard both the sides, perused the order impugned and other relevant materials. As per the prosecution’s allegation, the instant matter relates to hunting of a rabbit inside the protected forest area by 5 to 6 persons using a firearm. The learned trial court has taken cognizance under sections 9, 27, 32 and 51/52 of the WL Act and also under section 33 of the Forest Act against the petitioners and others. The section 9 of WL Act says that no person shall hunt any wild animal specified in schedules I, II, III and IV except as provided under sections 11 and 12.

The section 27 of WL Act says :-

“Restriction on entry in sanctuary — (1) No person other than,—

(a) a public servant on duty,

(b) a person who has been permitted by the Chief Wild Life Warden or the authorised officer to reside within the limits of the sanctuary,



(c) a person who has any right over immovable property within the limits of the sanctuary,

(d) a person passing through the sanctuary along a public highway, and

(e) the dependants of the person referred to in clause (a), clause (b) or clause (c), shall enter or reside in the sanctuary, except under and in accordance with the conditions of a permit granted under Section 28.

(2) Every person shall, so long, as he resides in the sanctuary, be bound—

(a) to prevent the commission, in the sanctuary, of an offence against this Act;

(b) where there is reason to believe that any such offence against this Act has been committed in such sanctuary, to help in discovering and arresting the offender;

(c) to report the death of any wild animal and to safeguard its remains until the Chief Wild Life Warden or the authorised officer takes charge thereof;

(d) to extinguish any fire in such sanctuary of which he has knowledge or information and to prevent from spreading, by any lawful means in his power, any fire within the vicinity of such sanctuary of which he has knowledge or information; and

(e) to assist any Forest Officer, Chief Wild Life Warden, Wild Life Warden or Police Officer demanding his aid for preventing the commission of any offence against this Act or in the investigation of any such offence.

(3) No person shall, with intent to cause damage to any boundary-mark of a sanctuary or to cause wrongful gain as defined in the Indian Penal Code, 1860 (45 of 1860), alter, destroy, move or deface such boundary-mark.

(4) No person shall tease or molest any wild animal or litter the grounds of sanctuary.”

The section 32 of WL Act says “no person shall use, in a sanctuary, chemicals, explosives or any other substances which may cause injury to, or endanger, any wild life in such sanctuary.

The violation of aforesaid provisions has been made a



punishable offence by the provisions of section 51 of WL Act. To attract the violation of section 9 of WL Act, it must be shown that a wild animal specified and detailed in schedules I, II, III and IV has been hunted. It is an admitted position that the mammal's species rabbit did not find place in the schedules I to IV, dealing with mammals, of the WL Act when the alleged offence was committed, though later, vide an amendment in Appendix I of Schedule IV of the Wild Life (Protection) Amendment Act, 2022, the mammal rabbit was included and made a protected wild animal but the said amendment was not in force when the alleged offence relating to hunting of rabbit is said to have been committed and in view of the differences between the rabbit and hare with regard to their behavior and style of life, both can not be deemed to be the same species of a mammal. Though the alleged entry of the petitioners and co-accused persons in the protected forest area and use of explosive material endangering wildlife in the alleged forest area may be deemed to be a violation of the provisions of sections 27 and 32 of the WL Act, for which, there is a penal provision under section 51 of the WL Act but to prosecute the petitioners for the said violation, the complaint ought to have been filed by one of the authorities mentioned in section 55 of WL Act. As per the



provisions of section 55 of WL Act, the Chief Wild Life Warden or any other officer authorised in this behalf by the State government could have filed the complaint in the present matter but admittedly, the Chief Wild Life Warden or any other authority as being competent in the light of the provisions of section 55 of WL Act did not file the said complaint rather the same was filed by Range Forest Officer, Bhabua, whose specific post name as being competent to file the complaint, does not find place in the section 55 of WL Act. Though as per the defence taken by the State, the Bihar State Government by notification dated 22.01.2014 authorized the Rangers (वनों के क्षेत्र पदाधिकारी) to take actions under sections 27(2)(c), 41(1), 50(1) and 55(b) but admittedly the notification came into force on 10.02.2014 while the complaint was filed by the Range Forest Officer on 24.03.2013 and in this regard, learned APP has taken the defence that the said notification was made effective retrospectively in respect of all the matters coming under the WL Act but the said defence is not acceptable and the same is not as per the settled position of law and so far as the cognizance under section 33 of the Forest Act is concerned, the prosecution has not shown from the Wild Life (Protection) Act, 1972 and the Indian Forest Act, 1927, how any of the provisions of section 33



of the Forest Act has been violated in this matter and in this regard, the order impugned is completely silent and not speaking. As such, considering the facts that at the time of alleged occurrence, the rabbit, one of the species of mammal, did not find place in any of the schedules of WL Act to make it a protected wild animal and further, filing of the complaint by Range Forest Officer, on account of he being not a competent authority to file the complaint, is completely a violation of the mandatory provision of section 55 of WL Act, this Court deems the order impugned taking cognizance of the alleged offence to be bad in the eye of law and not sustainable and the forest department was given a liberty to file a fresh complaint by a competent authority but the said liberty has not been availed properly by the forest department, as such, the order impugned is hereby set aside and the instant petition stands allowed.

(Shailendra Singh, J)

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