
(2009) 02 CAL CK 0011

Calcutta High Court

Case No: C.R.R. No. 1833 of 2005

Tapan Kumar Mitra and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Feb. 4, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Criminal Procedure Code, 1973 (CrPC) - Section 173, 207, 401, 482
- West Bengal Land Reforms Act, 1955 - Section 4B, 4C

Hon'ble Judges: Arunabha Basu, J

Bench: Single Bench

Advocate: Sitaram Bhattaeharyya, for the Appellant; R.S. Chattopadhyay for the State, for the Respondent

Judgement

Arunabha Basu, J.

The revisional application u/s 401 read with section 482 of the Code of Criminal Procedure is directed to quash the First Information Report lodged by the Opposite Party No.2 against the petitioners, along with others in connection with offence falling under the provisions of West Bengal Land Reforms Act, 1955 (hereinafter called the Act).

2. The aforementioned occurrence was registered at Basirhat Police Station Case No. 68 dated 6.4.2002, now pending before the Court of learned Sub-Divisional Judicial Magistrate (now A.C.J.M.), Basirhat.

3. Petitioners' case in short is that the property falling under plot No. 4320,4339,4341,4350 & 4366, under Mouja Tantra, Newra under Basirhat Police Station was inherited by the petitioners along with the other co-sharers.

4. The petitioners sold the property falling under plot No. 4320 to one Madhovi Ghosh by a registered deed dated 28.1.1998. Similarly the property falling under

plot No. 4339, 4341 & 4350 was sold to one Somnath Datta by registered deed dated 26.2.2002.

5. It is further stated that property falling under plot No. 4366 is not exclusively owned by the petitioners and they have interest over only four decimal out of 33 decimal of land falling under the said plot.

6. It is further stated that they are not the owners in respect of plot No. 4368. With regard to plot No. 4366, they are still owners along with others in respect of the said plot.

7. Petitioners are mainly aggrieved by registration of the F.I.R. which was lodged by Opposite Party No.2 in respect of plot No. 4368, 4366, 4320, 4339, 4341 & 4350.

8. It appears from the F.I.R. that the case is registered against number of persons including the petitioners herein mainly on the allegation of felling 50 Mango trees and 20 Coconut trees, from the said plots without obtaining prior permission as required in terms of provisions u/s 4B of the Act.

9. It is further alleged in the F.I.R. that such act on the part of the accused persons is nothing but an attempt to change the nature and character of the land in violation of the provision u/s 4C of the Act.

10. Learned Advocate for the petitioners mainly submitted that petitioners long before the date of occurrence divested themselves from the ownership of the plot in question and as such they cannot be held to be liable in connection with the said offence. It is further contended that felling of trees which does not fall within forest lands cannot be said to be an offence, under the provisions of the Bengal Act as mentioned above.

11. In support of his contention learned Advocate for the petitioners has referred to the decision of Supreme Court in *Sri Ram Saha vs. State of West Bengal & Ors.* reported in 2005(1) CLJ (SC) 163. In this case Two Judges Bench of Hon"ble Supreme Court after considering the various provisions of the West Bengal Land Reforms Act, 1955 held that no permission is required for felling trees in the non-forest private plantation/orchard/bagan.

12. Learned Advocate for the petitioners has also referred in another decision of Supreme Court in [Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others](#), whereby the Hon"ble Supreme Court held while considering the scope of Article 226, Article 227 of the Constitution vis-a-vis section 482 of the Code of Criminal Procedure and held that nomenclature under which petition is filed is not quite relevant and the same does not debar the Court from exercising its appropriate jurisdiction. The Hon"ble Supreme Court further held that summoning of an accused in a criminal case is a serious matter and the order of the learned Magistrate summoning the accused must reflect that he has applied his mind to the fact of the case and the law applicable thereto. However, this decision is not

applicable in connection with the present case as no summons has not issued by the learned Magistrate and the petitioners herein have moved this Court to quash the F.I.R.

13. Learned Advocate for the petitioners referred to another decision of Supreme Court in [Union of India \(UOI\) Vs. Prakash P. Hinduja and Another](#), where the Hon"ble Supreme Court after considering the earlier decision of Supreme Court considered the case in which the inherent power of the Court may be exercised.

14. Learned Advocate for the petitioners lastly referred to the decision of Hon"ble Supreme Court in [Ashok Chaturvedi and Others Vs. Shitulh Chanchani and Another](#), in which the Hon"ble Supreme Court quashed the proceeding when it was found that there is no iota of material to indicate as to how all or any of the accused is involved with the offence for forgery.

15. It may be pointed out in this context that this decision will be applicable in the fact situation of the case. In the decision of Supreme Court in Sri Ram Saha vs. State of West Bengal & Ors. (supra), the Hon"ble Supreme Court considered whether cutting of trees in non-forest land will come within the purview of the Bengal Land Reforms Act as mentioned above. The other three decisions referred by learned advocate for the petitioners cannot be said to be applicable in the fact situation of the case, save and except to consider the scope of section 482 of the Code of Criminal Procedure, in order to ascertain whether it is a fit case to invoke the inherent power of this Court u/s 482 of the Code.

16. Even though not specifically argued or pointed out by the learned advocate for the petitioners but I find on perusal of the document particularly orders passed by the Court below, which indicates that the aforementioned case is now pending at the stage of supply of copy. The revisional application was filed on 26.8.2005 and it is clear from the certified copy of the order dated 5.2.2005 that the case being G.R. Case No. 245/2002 arising out of Basirhat Police Station Case. No. 68 dated 6.4.2002 is fixed for supply of copy and appearance. It is evident that petitioners herein suppressed material fact before this Court, as because the date for supply of copy is fixed in terms of provision u/s 207 of the Code of Criminal Procedure, only after submission of charge-sheet in terms of provision u/s 173 of the Code of Criminal Procedure.

17. It is evident that charge-sheet is already submitted in this case and after submission of charge-sheet, F.I.R. cannot be quashed.

18. Moreover, in this case not only the felling of trees is the issue but the issue involved apart from felling trees is change of the nature and character of the plot in violation of the provision of the Act.

19. In terms of provision u/s 4C of the Act prior permission is required to change the nature and character of the plot and it is the allegation against the accused persons

including the petitioners that by such act the nature and character of the plot is sought to be changed by the accused persons.

20. It may further be pointed out that petitioners' claim that they are not mere owners of the property consequent to the earlier sale cannot be accepted simply on perusal of the photostat copy of the deeds. Whether the petitioners are owners in respect of the plots which is the subject-matter of offence in connection with the aforementioned criminal case is required to be decided at the stage of trial and only on consideration of evidence.

21. The defence plea as advanced by the petitioners cannot be accepted without proof and such proof cannot be available by hearing an application u/s 482 of the Code of Criminal Procedure. With regard to the contention that petitioners are not the owners or part owners of the plots, the same must be decided at the appropriate stage of trial and the same cannot be answered in favour of the petitioners simply relying on the recital in the revisional application.

22. In view of reasons as highlighted above, I am of the view that this is not a fit case to invoke the inherent power of this Court and as such the petition is disposed of accordingly.

23. I make myself clear that observation recorded by me may not be taken as finding either about the merit of the prosecution case or about the evidence that may be led during trial. Learned Court below shall independently decide the same without being influenced in any way by any of the observation recorded in the body of the order.

24. In view of disposal of revisional application, no separate order is required to be passed on the application being C.R.A.N. 2761/2008. The same stands disposed of along with the revisional application.

25. There shall be no order as to costs.

26. Criminal Section is directed to forward a copy of the order to the learned Court below.

27. Criminal Section is also directed to supply urgent photostat copy of the order to the learned Advocate for the petitioners as and when applied for.