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**(2013) 11 CAL CK 0026**

**Calcutta High Court**

**Case No:** C.R.R. No. 4120 of 2012

Pravin Jain

APPELLANT

Vs

State of West Bengal

RESPONDENT

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**Date of Decision:** Nov. 19, 2013

**Citation:** (2014) 1 CHN 737

**Hon'ble Judges:** Joymalya Bagchi, J

**Bench:** Single Bench

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### **Judgement**

Joymalya Bagchi, J.

Proceeding being B.G.R. Case No. 6254 of 2011 arising out of Maheshtala Police Station Case No. 782 dated 28.10.2011 u/s 17A of the West Bengal Inland Fisheries Act, 1984 and section 52 of the West Bengal Town and Country (Planning and Development) Act, 1979 has been assailed in the instant case. The impugned criminal proceeding was initiated on the basis of a written complaint lodged by Mr. S.N. Lahiri, Assistant Engineer, Maheshtala Municipality, inter alia, alleging that M/s. Marsons Private Limited had started filling up a pond at Chakmir in spite of stop work notice issued by the Municipality.

2. Pursuant to investigation, charge-sheet has been filed in the instant case against the petitioner. The impugned charge-sheet has been assailed by the petitioner on the premise that the petitioner was neither a Director nor an office bearer of the Company, namely, M/s. Marsons Private Limited at the time of commission of the alleged offence and he is no way connected with the alleged offence. It is also submitted that M/s. Marsons Private Limited though named in the First Information Report has not been named as an accused in the impugned charge-sheet.

3. In support of his contention, the petitioner referred to the annual report of the Company for the year 2010-2011 evidencing the fact that the petitioner was not an office bearer of the Company. He also referred to Form 32 filed on behalf of the Company showing that the petitioner had ceased to be a Director of the company on and from 31.10.2006. He relied on 2011 (3) SCC 531 and [Anita Malhotra Vs.](#)

[Apparel Export Promotion Council and Another,](#) in support of his contention that resignation of the petitioner from the Directorship of the Company before the commission of offence as evidenced from public document like annual report, Form 32 may be considered by this Court in exercise of its inherent jurisdiction.

4. Mr. Mohanty, Learned Counsel appearing for the Municipality submitted that the first information report was lodged against the Company, namely, M/s. Marsons Private Limited. Strangely enough, the Company has not been made an accused person in the charge-sheet. He further submitted that the documents annexed to the revisional application cannot be taken into consideration at this stage. He also submitted that the petitioner is involved in the alleged crime and the impugned proceeding ought not to be quashed against him.

5. Mrs. Sinha, Learned Counsel appearing for the State has produced the case diary of the instant case.

6. I have perused the materials collected in course of investigation in the light of the rival submissions, as aforesaid. I find that only two statements of witnesses were recorded in course of investigation which are absolutely cryptic in nature they do not implicate the petitioner. There has not been any investigation whatsoever as to the identity and/or role of the persons who filling up of the pond in question which is under the control and ownership of M/s. Marsons Private Limited. Even the said Company has not been named as accused person in the impugned charge-sheet.

7. Be that as it may, there is no escape from the conclusion that the investigation in this case is a complete eyewash and the impugned charge-sheet against the petitioner which is a product of such sham and half-backed investigation cannot be permitted to survive and is accordingly quashed. The allegations in the instant case, however, disclose the ingredients of the alleged offence. Accordingly, it is imperative in the interest of justice that further investigation by a superior police.

8. It, however, appears that the pond in question was being filled up without authority of law. The nature of investigation portrays a pitiable picture of complete dereliction of statutory duty to unravel the truth by collection of evidence and identifying the real offenders in this case. There is nothing collected in course of investigation against the petitioner. No doubt, it is vehemently claimed on behalf of the de facto complainant/Municipality that it was the petitioner who acted as an agent of the Company to fill up the pond and that such evidence has not been collected intentionally.

9. However, the interest of justice necessitates that the proceeding in the instant case ought not to come to a dead end due to indolence of the Investigating Agency.

10. It is the duty of the Court that further investigation is conducted to unravel the truth and to identify the real offenders who had played a role in the alleged crime.

11. I, therefore, direct further investigation in the instant case to be made by a superior officer not lower than the rank of an Inspector of Police under the supervision of Superintendent of Police, South 24-Parganas including the role of the petitioner, if any, as claimed by the de facto complainant. In course of such investigation, the Investigating Agency would be at liberty to investigate the documents relied upon by the petitioner in this application, namely, the annual report 2010-2011 and Form 32, in the backdrop of the facts and circumstances of the case. Such investigation be conducted as expeditiously as possible and in accordance with law. The quashing of the impugned charge-sheet against the petitioner shall not stand in the way of filing a police report against him in the event any incriminating material surfaces against him in course of further investigation.

12. The Learned Counsel appearing for the State is directed to communicate this order to the Superintendent of Police, South 24-Parganas for necessary and prompt action. Case diary be returned.

13. The instant revisional application is allowed to the aforesaid extent. Parties are directed to act on the downloaded copy of this order from the official website of this Court.