
(2008) 08 CAL CK 0077
In the Calcutta High Court
Case No : C.R.R. No. 4377 of 2007

Gobinda Ghosh

APPELLANT

Vs

State of West Bengal and Anr

RESPONDENT

Date of Decision : 25-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

West Bengal Inland Fisheries Act, 1984 — Section 17A, 17A, 17A(1), 17A(1)(a), 2(vi)

Citation : (2008) 08 CAL CK 0077

Hon'ble Judges : Arunabha Basu, J

Bench : Single Bench

Advocate : Milon Mukherjee, Amit Lahiri, for the Appellant; Debabrata Roy, for the Respondent

Final Decision : Dismissed

Judgement

Arunabha Basu, J.

The Judgment of the Court was delivered by:

1. The revisional application u/s 482 of the Code of Criminal Procedure is directed to quash proceeding in connection with G. R. Case No. 196 of 2006 arising out of Serampore Police Station Case No. 62 dated March 2006 u/s 17A of the West Bengal Inland Fisheries Act, 1984 (hereinafter called the Act), now pending before the Court of the learned Additional Chief Judicial Magistrate, Serampore. The petitioner herein is arrayed as an accused in connection with above noted case in which chargesheet is submitted by police on completion of investigation.
2. In the revisional application it is stated that the entire proceeding is vitiated in view of the fact that the police officer while submitting charge sheet failed to consider the various provisions of the Act such as section 2(vi) and also section 17 A of the Act.
3. The learned Advocate for the petitioner submitted that bare perusal of the Act

will show that the offence complained against the petitioner will be attracted only when the same falls within the purview of fishery. The scope and object of the Act disclose that for the purpose of conservation, development, propagation, protection, exploitation and disposal of inland fish and fisheries the Act was enacted by the assembly.

4. Fishery is defined u/s 2(vi) of the Act, which is set out below:

"(vi) "fishery" means any activity or occupation connected with conservation, development, propagation, protection, exploitation or disposal of fish and fish products, or any place or water area where such activity or occupation is carried on, and includes a tank fishery.

Explanation-"Tank fishery" shall have the same meaning as in the West Bengal Estates Acquisition Act, 1953.

5. The offence u/s 17A of the Act in which the petitioner herein is charge sheeted deals with bar to conversion of water area etc. for other use. The relevant portion of section 17A is reproduced below:

(1) No person shall-

(a) put any water area including embankment measuring 5 cottahs or 0.035 hectare or more, which is capable of being used as fishery, or any naturally or artificially depressed land holding measuring 5 cottahs or 0.035 hectare or more, which retains water for a minimum period of six months in a year, to such use, other than fishery, as may result in abolition of fishery, or

(b) fill up any water area including embankment or naturally or artificially depressed land holding as aforesaid, with a view to converting it into solid land for the purpose of construction of any building thereon or for any other purpose, or

(c) divide any water area including embankment or naturally or artificially depressed land holding as aforesaid into parts so as to make any such part measure less than 5 cottahs or 0.035 hectare for any purpose other than pisciculture or transfer any part of any such water area including embankment or naturally or artificially depressed land holding as so divided to any other person.

6. Before discussing the stand taken by the learned Advocate for the petitioner it may be pointed out in the context that in terms of sub-section (12) of section 17A any offence falling under sub-section (11) shall be cognizable and. non-bailable.

7. Sub-section (11) of section 17A of the Act deals with an offence for contravention of provision of sub-section(1) of section 17A of the Act. Moreover, u/s 22 of the Act it is provided that no Court shall take cognizance of any offence punishable under this Act save on Complaint made by a fishery officer not below the rank of District Fishery Officer or a police officer not below the rank of Sub-Inspector. So far as the present case is concerned the report is submitted by the

police officer and in terms of the provision u/s 22 of the Act the learned Court below was competent to take cognizance for the offence u/s 17A of the Act.

8. The contention of the learned Advocate for the petitioner is that so far as the present case is concerned the alleged conversion cannot be said to be within the purview of section 2(vi) of the Act as because it was nobody's case that the area which was converted any fishery or activities in connection with the fishery was going on. But so far as this aspect of the matter is concerned I may point out that in terms of section 17A of the Act, law has prevented any person from doing any act in respect of water area including embankment measuring 5 cottahs or 0.035 hectare or more.

9. The language appearing u/s 17A(1)(a) of the Act indicates that in connection with an area measuring 5 cottahs or more which is capable of being used as fishery there cannot be any other use other than fishery. Clause (a) does not indicate by its necessary language that the place or the area in connection with which the offence complained of has taken place must be a fishery. The word "capable of being used as fishery" indicates that the area must be capable even if the same is not used as fishery.

10. Clause (b) of section 17A(1) also prohibits filling up of any area including embankment with a view to converting it into solid land for the purpose of construction of any building thereon, shall also be treated as offence within the purview of the said clause.

11. Clause (c) of section 17A(1) prohibits division of water including embankment.

12. From the cumulative effect of the provision of law as detailed above it is clear that the water area of 5 cottahs or more cannot be converted for any other use. It is not the requirement of law that the said area must be a fishery within the meaning of the Act. The main criterion is whether the area in which the said offence as complained of has been committed is a water area as detailed in section 17 A of the Act.

13. So far as the present case is concerned the case diary is produced by the learned Advocate for State in terms of earlier direction passed by this Court. It appears from the report submitted by the Block Land and Land Reforms Officer, Serampore that so far as the present place of occurrence, which falls within the Dag No. 537/538 is recorded as "Pukur" having an area of 0.180 acre. The said area falls within the purview of clause (a) of section 17A(1) of the Act as the area is more than the statutory required area of 0.035 hectare.

14. The other contention was raised by the learned Advocate for the petitioner about the non-examination of certain witnesses who lodged initial complaint before the authority is in my view will be the subject-matter of trial. At this stage, this Court cannot say that there is no prima facie case against the petitioner justifying his trial for commission of offence punishable u/s 17A of the

Act. While exercising power of this Court vested u/s 482 of the Code of Criminal Procedure this Court shall refrain from discussing disputed question of fact. The same must be decided at the stage of trial. The value of evidence shall be examined by the learned Trial Court only after the same is adduced.

15. On consideration of the entire matter I am of the view that this is not a fit case to invoke the inherent power of this Court u/s 482 of the Code of Criminal Procedure.

16. The revisional application is devoid of any merit and stands dismissed.

17. Interim order granted earlier stands vacated.

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

19. The Criminal Section is, also, directed to supply urgent xerox certified copy of the order to the petitioner, as and when applied for.

20. The case diary is to be returned.