

(2010) 06 CAL CK 0034
In the Calcutta High Court
Case No : C.R.R. No. 216 of 2010

KCCL Zipall Pvt. Ltd. and Another

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 16-06-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Land Acquisition Act, 1894 — Section 4

West Bengal Land Reforms Act, 1955 — Section 4C, 4C(5), 4D

Citation : (2010) 06 CAL CK 0034

Hon'ble Judges : Ashim Kumar Roy, J

Bench : Single Bench

Advocate : Utpal Majumdar, for the Appellant; Swapan Kumar Mullick, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Roy, J.—Invoking Section 482 of the Code of Criminal Procedure, the petitioners who have been arraigned as accused in a FIR relating to an offence punishable u/s 4D of the West Bengal Land Reforms Act, 1955 have approached this Court for quashing of the said case on the following grounds;

(a) The FIR was lodged by imputing incorrect information and in complete non-application of mind and without examining materials on record.

(b) On April 6, 2009 the petitioners received a show cause notice from the competent authority u/s 4C of the West Bengal Land Reforms Act, 1955 on the allegations that the petitioners were filling the water body with fly ash and earth and constructing a factory shed in violation of Section 4C of the said Act and was directed to show cause as to why FIR will not be lodged for an offence punishable u/s 4D of the said Act and although petitioners duly replied to that but without giving any hearing to the petitioners in a straightway FIR was lodged.

(c) An offence u/s 4D of the West Bengal Land Reforms Act can said to have

been committed in case of any change, conversion or alteration except in accordance with the provisions of Section 4C or any violation of the order of collector made under Sub-section (5) of Section 4C of the said Act.

(d) There has been no specific allegation against the petitioners except that they were making attempt to effect alteration of the area, character and mode of use of land.

(e) Already the competent authority issued a notification u/s 4 of the Land Acquisition Act, 1894. Thus, no prosecution u/s 4D of the West Bengal Land Reforms Act lies.

(f) The petitioners have not violated the provisions of Section 4C of the Land Reforms Act. Therefore, there cannot be any question of prosecuting them u/s 4D of the said Act.

2. The petitioners have approached this Court for quashing of the FIR and it is well settled a FIR can be quashed only when on the face of the allegations made in the FIR no offence is constituted. At this stage the defence of the accused as well as the truth or falsehood of the allegations cannot be the deciding factor.

3. So far as the contention of the learned advocate of the petitioners the FIR was lodged by ascribing false statement and suppressing correct facts and without any application of mind and there was no change in the character of the land in violation of the provisions of Section 4C of the West Bengal Land Reforms Act are purely disputed question of facts and cannot be gone into at this stage.

4. The next contention of the learned advocate of the petitioners before lodging the FIR a show cause notice was issued by the complainant u/s 4C of the West Bengal Land Reforms Act and in spite of giving reply to that by the petitioners the impugned FIR has been lodged without giving him any reasonable opportunity of hearing, in my view is without any force.

Having carefully gone through the provisions of West Bengal Land Reforms Act, I do not find anything in the said statutes which even very remotely suggests about issuance of show cause notice before lodging of any FIR u/s 4D of the West Bengal Land Reforms Act.

Moreover, issuance of notice before lodging of a FIR for committing a criminal offence is a concept foreign to the criminal jurisprudence. Moreover, information about the commission of any cognizable offence to a police station only sets the machinery of investigating agency in motion. Either the decision of lodging FIR about the commission of a cognizable offence or when information discloses commission of the cognizable offence, the decision of the investigating agency to register FIR and to cause investigation thereupon does not attract principles of natural justice by giving pre-decisional hearing.

5. I am unable to accept the contention of the learned advocate of the petitioners that there has been no specific allegation against the petitioners

except that they were making attempt to commit the alleged offence inasmuch as having gone through the impugned First Information Report, I find that there is categorical allegation against the petitioners, who happened to be the Director of M/s. KCCL Zipall Pvt. Ltd. that they are making attempt to effect alteration of the area, character and mode of use of land and has caused change in the area unauthorizedly without taking necessary permission in violation of Section 4C of the West Bengal Land Reforms Act. Therefore, neither it can be said there was no specific allegation against the petitioners nor it can be said on the face of those allegations no offence has been made out. Moreover, from the perusal of the Case Diary, I find that during preliminary investigation the police has examined many local residents and according to them the land in question previously was a water body and the petitioner purchasing those lands converted the same to solid land by filling up the same with earth and solid waste.

6. The only other submissions of the learned advocate of the petitioners that in view of issuance of notification u/s 4 of the Land Acquisition Act, 1894, the lodging of First Information Report without termination of the proceeding initiated thereunder is also without any merit. The notification, if any, as aforesaid was for the purpose of acquisition of any land which is likely to be needed for any public purpose and same had no connection when the character or area of any land has been changed and the land have been converted to some other use other than for which it was settled or being previously used.

For the reasons stated above, I do not find any merit in this criminal revision and same accordingly stands dismissed. Interim order, if any, also stands vacated.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.