

(2022) 11 CAL CK 0033
In the Calcutta High Court
Case No : Criminal Revision No. 2913 Of 2019

Md. Asif @ Mohammed Asif	Vs	APPELLANT
State Of West Bengal & Anr.		RESPONDENT

Date of Decision : 10-11-2022

Acts Referred:

Indian Penal Code, 1860 — Section 226
West Bengal Land Reforms Act, 1955 — Section 4C(5) 4D
Mines and Minerals Management Act, 1995 — Section 21
Mines and Minerals Act, 1957 — Section 3(aa), 3(d), 4(1), 4(1A), 21
West Bengal Inland Fisheries Act, 1984 — Section 17A, 17A(1)
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2022) 11 CAL CK 0033

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : M. Chatterjee, Sk. Nizamuddin, D. Majumder, Arijit Ganguly, S. K. Dan

Final Decision : Dismissed

Judgement

Shampa Dutt (Paul), J

The revisional application has been preferred by the petitioner/accused praying for quashing of the Charge-Sheet No. 111/19 dated 30.04.2019 arising out of Pandua Police Station Case No. 32 of 2019 dated 07.01.2019 under sections 4C(5) of WBLR Act, 1955 & 21 of Mines and Minerals Act, 1995 & 21 of Mines and Minerals Act, 1957 pending before the Court of the Learned Chief Judicial Magistrate, Hooghly.

The prosecution case is that on 07.02.2019 at about 14.45 hrs. one written complaint was lodged with Pandua Police Station by one Sri Subhasish Mukherjee, B.L. & L.R.O., Pandua, Hooghly against Md. Asif, son of Md. Alauddin, residing at Village- Balihatta, P.S. – Pandua, District – Hooghly to the effect that on 22.01.2019 a portion of the pond appertaining to LR Plot no. 859 of Mouza –

Pandua, JL No. 108, by classification 'Pukur' with an area 33 decs. was being filled up and consequently an enquiry was conducted from the end of the complainant on 22.01.2019 and it was ascertained that the said pond has been filled up in part and a wall had been erected along the middle of the pond. A notice under Section 4C(5) of WBLR Act, 1955 was issued to accused Md. Asif vide BLRO office Memo no. 110/PND/19 dated 22.10.2019 whereby he was asked to restore the pond to its original condition. Despite such direction, the pond has not been restored.

On the basis of the said written complaint, Pandua Police Station Case No. 32 of 2019 dated 07.02.2019 under sections 4C(5) of WBLR Act, 1955 & 21 of Mines and Minerals Act, 1957 was started.

On completion of Investigation the police filed the charge sheet in this case. The petitioner was granted anticipatory bail by the Hon'ble High Court at Calcutta in connection with the aforesaid case and the said bail was duly regularized by the Court of the Learned Chief Judicial Magistrate, Hooghly and the accused was released on bail on 12.04.2019.

Mr. M. Chatterjee, Learned Counsel for the petitioner has argued that there is no ingredient in the said FIR which constitutes an offence under sections 4C(5) of WBLR Act, 1955 & 21 of Mines and Minerals Act, 1957. The petitioner never filled up the pond in question but has only raised a boundary wall around the said pond which may not or cannot be treated as construction over the pond. As such the charge sheet No. 111/19 dated 30.04.2019 arising out Pandua Police Station Case No. 32 of 2019 dated 07.02.2019 under sections 4C(5) of WBLR Act, 1955 & 21 of Mines and Minerals Act, 1957 filed before the Court of the Learned Chief Judicial Magistrate, Hooghly is bad in law and liable to be quashed. The provisions of section 4C(5) of the West Bengal Land Reforms Act, 1955 and 21 of Mines and Minerals Act, 1957 are not applicable and if the proceedings on the basis of the said charge sheet is allowed to be continued, it will be nothing but abuse of process of law. From the bare perusal of the charge-sheet and the complaint it is crystal clear that no case has been made out against the petitioner in any manner whatsoever.

As such unless the impugned proceeding is quashed and/or set aside, your petitioner will suffer irreparable loss and injury.

Mr. Arijit Ganguly, Learned Advocate for the State submits that the proceeding in this case has been initiated in accordance with law by the appropriate authority, which should have also included the offence under section 17(A) of the West Bengal Inland Fisheries Act, 1984 being the appropriate provision of law. The charge sheet has been filed in the case under revision on proper and correct investigation and this revision is thus liable to be dismissed.

On hearing the learned Advocates for both sides and on considering the materials on record, it is seen that Pandua Police Station Case No. 32 of 2019 under section 4C(5) of WBLR Act, 1953 and 21 of the Mines and Minerals Act, 1957 was

initiated on a Complaint lodged by the B.L. & LRO, Pandua, Hooghly against the petitioner for violation of Sec 4C(5) of WBLR Act.

"Sec 4C(5).....

(5) If the Collector is satisfied that any land is being converted for any purpose other than the purpose for which it was settled or was being previously held, or attempts are being made to effect alteration in the mode of use of such land or change of the area or character of such land, he may, by order, restrain the raiyat from such act."

The offence and penalties have been provided under section 4D of the Act.

"[4D. Offence and penalties.]—(1) Any change, conversion or alteration in the area, character or mode of use of any land, except in accordance with the provisions of section 4C, or any violation of the order of the Collector under sub-section (5) of section 4C, [shall be a cognisable and non-bailable offence and shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to fifty thousand rupees or with both]:

Provided that no prosecution shall lie for an offence under this sub-section in a case where an action has already been taken by the prescribed authority under sub-section (4) of section 4:"

As such the case under section 4C(5) WBLR Act, 1953 has been initiated as per the provision of section 4D of the Act which clearly lays down that any violation under section 4C(5) of the Act is a Cognizable and non bailable offence. The case as made out in the written Complaint is prima facie a violation under section 4C(5) of the WBLR Act. Certified true copy of the case diary which include the Record of Rights in respect of the LR plot no. 859 clearly shows that the plot is recorded as 'Pukur' and the accused/petitioner has prima facie violated the provision of sec 4C(5) of the WBLR Act.

The state on production of the certified copy of the case diary has shown that the materials in the case diary prima facie make out a case under section under section 4C(5) of WBLR Act and as such the case has been initiated under section 4(D) of the WBLR Act.

Ld lawyer for the petitioner further submits that sec 21 of the Mine and minerals, Acts (D+R) Acts, 1959 is not applicable in this case and has placed the relevant provision of the Act.

Section 21 of the Act of 1957 provides the provision for penalties, for violation of sub section (1) or sub-section (1-A) of section 4 of the Act of 1957 which relates to 'Mining operation' and 'Mineral'.

'Mineral' is defined under section 3(aa) of the act and includes all mineral except mineral oils.

Mining operation is defined under section 3(d) of the Act and means any

operation undertaken for the purpose of mining any mineral.

From the written complaint no case of mining of any mineral is made out. It is clearly a case of unlawfully filling up of a pond and the relevant provisions applicable here are Sec 4C(5) of the WBCR Act and Sec 17(A) of the West Bengal Inland Fisheries Act, 1984.

"17A. Bar to conversion of water area etc. for other use.—(1) No person shall —

(a) put any water area including embankment measuring 5 cottahs or 0.035 hence 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 [in part or in full] 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."

In *Subrata Karmakar & Ors. Vs. The State of West Bengal & Anr* (CRR 4278 of 2006) this Court held:-

Para 5: "The sub-section (1)(a) of Section 17A of the said Act put a ban on user of any water area which is capable of being used as fishery or any naturally or artificially depressed land holding which retains water for a minimum period of six months in a year measuring 5 cotthas or 0.035 hectare or more, to such use, other than fishery. While sub-section (1)(b) of Section 17A of the said Act prohibits filling up of any water area or naturally or artificially depressed land holding as aforesaid with a view to converting the same to solid land for the purpose of construction of any building thereon or for any other purpose."

The area in this Case as in the written complaint is 33 decimals that is equal to 19.965 cottahs. When a water area (as in the Act) which is capable of being used as fishery, even if used for any other purpose other than fishery, the same would amount to contravention of the provisions of section 17A(1) of the West Bengal Fisheries Act of 1984.

The prosecution case of a cognizable offence is very clear, wherein charge sheet has been filed after completion of investigation. The materials or record including the case diary clearly shows that a portion of the pond in this case (area 33 decimals = 19.965 cottahs) has been filled up. The pond (total area 19.96 cottahs) had been filled up in part and a wall has been erected along the middle

of the pond by the petitioner accused. In spite of a notice under section 4C(5) of the WBLR Act, 1955, the petitioner did not restore it to its original condition, and as such the present case was initiated.

In view of the discussions above and the materials on record including the case diary, and there being prima facie materials (of cognizable offence) to proceed against petitioner/accused, there should be no interference by this court.

The Supreme Court in *Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others* (2021) SCC online SC 315 has laid down the guidelines to be followed by the High Courts while exercising its power under Section 482 of the Cr.P.C./or under Article 226 of the Constitution of India in para 80 of the said judgment as under:-

i) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

ii) Criminal proceedings ought not to be scuttled at the initial stage;

iii) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

iv) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

Accordingly in view of the said guidelines, this court will not interfere in a case where a prima facie case has been made out of a cognizable offence.

The first information report itself made out a clear case of cognizable offence.

In the lines of the Supreme Court:

(a) The power of quashing should be exercised sparingly with circumspection.

(b) criminal proceedings ought not to be scuttled at the initial stage.

(c) quashing of complaint /FIR should be an exception rather than an ordinary rule (Here the case has ended in Charge sheet).

(d) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

(e) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court.

The charge sheet on completion of investigation has been filed in respect of a cognizable offence on prima facie finding and as such the criminal revisional application being CRR 2913 of 2019 stands dismissed.

Considering the Submission of the Ld Lawyer for the State that on the evidentiary materials collected during investigation, an offence punishable under section 17A of the WB Fisheries Act, 1984 has also been made out, this Court makes it clear that it would be open to the State to agitate the same at the appropriate stage of trial, so also the petitioner will be at liberty to contend the charge and the Ld Magistrate shall consider such plea of both sides in accordance with law.

No order as to costs.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.