
(2009) 07 CAL CK 0111
In the Calcutta High Court
Case No : C.R.R. No. 4278 of 2006

Subrata Karmakar and Others

APPELLANT

Vs

The State of West Bengal and Another

RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 190(1)(b), 482
West Bengal Inland Fisheries Act, 1984 — Section 17, 17(1)(a)(12), 17A, 17A(1),
17A(1)(a)

Citation : (2009) 07 CAL CK 0111

Hon'ble Judges : Ashim Kumar Roy, J

Bench : Single Bench

Advocate : Tapash Ghosh and Mr. Tanmoy Chowdhury, for the Appellant; Swapan Kumar Mallick for State, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Roy, J.—Invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, the petitioners, who have been charge sheeted u/s 17 (A) of the West Bengal Inland Fisheries Act, 1984 in connection with Bhadreswar Police Station Case No. 154/04 corresponding to G.R. No. 384/04, now pending before the Learned Additional Chief Judicial Magistrate, Chandannagore, Hooghly moved this Court for quashing of the charge-sheet as well as the order of taking cognizance.

2. The background facts of the case in a nutshell are as follows;

On May 31, 2004 Executive Officer, Champdani Municipality lodged a complaint to the Officer-In-Charge, Bhadreswar Police Station against the petitioners alleging that they were illegally filling up the ponds comprising in Plot Nos. 2918, 1919 and 2920, Khatian Nos. 1105, 1246 and 1614, Ward No. 17 of Champdani Municipality.

Following lodging of the aforesaid complaint a FIR was recorded and Bhadreswar

Police Station Case No. 154/04 was registered u/s 17 (A) of the West Bengal Inland Fisheries Act, 1984 hereinafter referred to as, the "said Act." The police after completion of investigation submitted charge-sheet for the self-same offence. The said charge-sheet is now the subject matter of challenge in this criminal revision.

3. Mr. Tapash Ghosh, the learned advocate, appearing on behalf of the petitioners sought for quashing of the charge-sheet on the following grounds;

(a) The allegations of filling up of the pond in question is absolutely false and baseless. According to the records of right the relevant plots are bhiti and as such there is no question of filling up of any pond.

(b) In terms of provisions of section 22 of the West Bengal Inland Fisheries Act, 1984 taking cognizance of any offence punishable under the said Act is not permissible except on the complaint made by a Fishery Officer not below the rank of a District Fishery Officer or a police officer not below the rank of Sub-Inspector, but in the instant case complaint was made by the Executive Officer, Champdani Municipality.

(c) The tank in question never used as fishery or for pisciculture and as such even if the allegations are true, the penal consequences under the West Bengal Inland Fisheries Act, 1984 does not attract.

(d) No notice has been served before launching of the prosecution, in terms of sub-section (10)(a) of section 17 of the "said Act."

4. Mr. Ghosh in support of his submissions relied on two decisions of this Hon'ble High Court, relating to the case of Concern For Calcutta & Ors. v. State of West Bengal & Ors., reported in 1996 (1) CHN 123 and another in the case of Biswananda Naskar v. The State of West Bengal & Ors., reported in 2002 WBLR (Cal) 196. Mr. Ghosh also draws the attention of this Court to the records of right annexed with this criminal revision and annexures to the supplementary affidavit filed in connection with this criminal revision.

5. Mr. Mallick appearing on behalf of the State produced the Case Diary and vehemently opposed the prayer for quashing and submitted that there are the statements of local residents recorded during the investigation clearly shows that these petitioners were filling up the ponds in question. He further submitted that on the face of those allegations the petitioners have not only committed offence punishable under West Bengal Inland Fisheries Act, 1984 they are also guilty for conversion of the land punishable under the West Bengal Land Reforms Act.

6. Heard Mr. Tapash Kumar Ghosh and Mr. Swapan Kumar Mallick, the learned counsels appearing on behalf of the petitioners and for the State respectively. Perused the Case Diary and other materials on record. Considered the case laws relied upon by them.

7. This is a case where the impugned charge-sheet relates to an offence

punishable u/s 17A of the West Bengal Inland Fisheries Act, 1984 (hereinafter referred to as "the said Act"). The subsection (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 cottas 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. During the investigation of this case it has been found by the police that the pond in question measuring more 5 cottas. Now having regards to the statement of the local residents, who have been examined as witnesses u/s 161 of the Code by the police during investigation that the pond in question, a water area is existing for years together and on the further allegations that the petitioners were filling the said pond, a water area it cannot be said that no prima facie case of commission of offences punishable u/s 17A (11) has been made out. I am of the opinion, at this stage there is no scope to say that the records of right prepared in the year 1985 where the land holding in question has been described as a bhati out weigh the evidence of the local residents that the said land holding is a pond, i.e., a water area existing over years and the present petitioners are filling up the same. Nevertheless the records of right prepared in 1985 has described the land in question as bhati it cannot be ruled out the said land holding in question in passage of time naturally depressed into a water area which retain water for more than six months in a year. Moreover, having gone through the copy of the records of right filed with the instant criminal revisional application as annexures, I find that same do not relates to the land holding comprised in Plot Nos. 2918, 1919 and 2920 within Khatian Nos. 1105, 1246 and 1614, Ward No. 17 of Champdani Municipality. The submissions of Mr. Ghosh that taking of cognizance is bad in law because the case was commenced on a FIR lodged by the Chief Executive Officer of Champdani Municipality is without any substance. According to the provisions of section 22 of the Act, there is a legal bar in taking of cognizance otherwise than on a complaint made by a Fishery Officer not below the rank of a District Fishery Officer or a police officer not below the rank of Sub-Inspector. However, in the instant case, cognizance has been taken by the Court u/s 190 (1)(b) of the Code on a charge-sheet, i.e. on a police report, not on the complaint of the Chief Executive Officer of Champdani Municipality, thus there is no violation of any law. Top of everything u/s 17 (1)(a) (12) of the said Act, all offences punishable thereunder are cognizable. Therefore, there is no bar for the police to investigate into the offence alleged on a complaint made by such officer of the Municipality. The last submission of Mr. Ghosh that the pond in question was never used as fishery is not only a disputed question of facts but even when a water area which is capable of being used as fishery if used for any other purposes other than fishery the same would amount to contravention of the provisions of section 17A (1) of the Said Act.

8. Mr. Ghosh relying on the decision of this Hon"ble Court in the case of Concern For Calcutta & Ors. v. State of West Bengal & Ors. (supra), contended the tank in question not being used as fishery even if the same is filled up by the petitioners that would not amount to contravention of section 17A of the said Act. I am unable to accept the contention of Mr. Ghosh for the simple reason that under the provisions of section 17A(1)(a) of the said Act, any water area measuring 5 cottas or more, if is capable of being used as fishery, even if not used as fishery, if put on such use other than fishery that would certainly amount to violation of the said provisions. The last contention of Mr. Ghosh that before launching of a criminal prosecution a notice under sub-section (10)(a) of section 17A of the said Act is necessary is entirely misconceived inasmuch as prior notice is necessary only in a case where the competent authority is proposed to take over the management and control of such water area on the allegation of violation of the said provisions. The ratio of the decisions relied upon by Mr. Ghosh in this connection as regards to the case of Biswananda Naskar v. State of West Bengal & Ors. (supra) has no manner of application in the facts situation of the present case, where our High Court, held service of written notice is mandatory before taking over the management and control of any water area by the competent authority, when such water area in violation of this provision is put on use for any purposes other than fishery but not before institution of a criminal proceeding.

9. At the risk of repetition it may once again be noted that it clearly appears from the Case Diary that during investigation police examined several local residents and recorded their statement u/s 161 of the Code and the same clearly shows that the pond in question was existing for years together and the petitioners were filling up the said pond and the area of the said pond is more than 5 cottas.

10. For the reasons stated above, I do not find any merit in this criminal revisional application and accordingly same stands dismissed.

11. So far as the submissions of Mr. Mallick that even on the evidentiary materials collected during investigation besides the offence punishable u/s 17A of the said Act, an offence punishable u/s 4D of the West Bengal Land Reforms Act has been made out. I make it clear it would be open to the State to agitate the same at the appropriate stage of trial in accordance with law and in such case the Court below shall consider such plea in accordance with law.

Criminal section is directed to deliver urgent photostat certified copy of this judgment to the parties, if applied for, as early as possible.