

(1999) 04 CAL CK 0029

In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction W.P. No. 5503 (W) of 1999

Swapan Kumar Bose and Others

APPELLANT

Vs

Pradip Mukherjee and Others

RESPONDENT

Date of Decision : 30-04-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Criminal Procedure Code, 1973 (CrPC) — Section 154, 200, 244, 247, 4

Mines and Minerals (Development and Regulation) Act, 1957 — Section 21, 21(4), 22, 26(1), 26(2)

West Bengal Land Reforms Act, 1955 — Section 4

Citation : (1999) 2 CALLT 415 : 2 CWN 310

Hon'ble Judges : Bijitendra Mohan Mitra, J

Bench : Single Bench

Advocate : Mr. Shyamal Kumar Mukherjee, for the Appellant; Mr. Himangsu Kumar Basu and Ms. Sabita Roy, for the Respondent

Judgement

B.M. Mitra, J.—This writ petition is by way of a challenge shown at annexure "C" appended to the writ petition. From the perusal of which it appears that a FIR was purported to be lodged against 14 brick field owners whose names appear on the reverse page of the said annexure. The learned Advocate appearing on behalf of the petitioners came to the challenge the validity of the said purported move at the instance of the concerned B.L. & L.R.O. to initiate FIR before the concerned police station. In support of the said submission it has been contended before this court that West Bengal Land Reforms Act has not laid down the procedure of criminal prosecution and in view of section 4 of the Criminal Procedure Code the provision of the same shall be attracted and the complaint had to be made before a Magistrate competent to entertain such complaint. Such a complaint, according to the submission, has to be entertained only by the Magistrate having jurisdiction and the provisions of the Code of Criminal Procedure for issuing process against the accused on the basis of the private complaint shall be attracted. However, as it is a complaint by a public servant, the examination of the complainant by a Magistrate is not necessary before

issuing process in view of the proviso (a) of section 200 of the Code of Civil Procedure. The offence is to be dealt with in a criminal proceeding which is to be tried as a warrant case and procedure for trial of warrant case on private complaint as provided in section 244 to section 247 Criminal Procedure Code shall be required to be followed by a Magistrate trying the offence u/s 4. Here, the court while taking note of the series of aforesaid submission advanced on the footing of construction of section 4(d) read with section 4(c) of the West Bengal Land Reforms Act cannot also be oblivious of the provisions of section 21 of the Mines and Minerals (Regulations and Development) Act, 1957. It is not out of context to refer to the provisions of section 22 of the said Act of 1957 where it has been laid down that no court shall take cognizance of any offence punishable under the said Act or the Rules made thereunder excepting upon a complaint in writing made by a person authorised in this behalf by the Central Government or the State Government. Therefore, from the reading of the provisions of section 22 of the Central Act of 1957, as aforesaid, there is a categorical bar on any court to take cognizance of any offence punishable under the said Act and the same cannot be allowed to be diluted by the provisions of section 4(d) of the West Bengal Land Reforms Act. The contravention of the provisions of the Act and the rules framed under the Mines and Minerals (Regulations and Development) Act, 1957 are required to be perceived in altogether separate perspective. Therefore, this court is to concentrate its attention to the letters and spirit of the same provisions entracted under the said Act and the rules thereunder and it cannot afford to derive inspiration of the other Act, namely, the West Bengal Land Reforms Act when the provisions contained in the Mines and Minerals (Regulations and Development) Act, 1957 are self-explanatory.

2. A point has sought to be raised by making reference to the case of Smt. Seema Sarkar v. State, reported in Calcutta High Court Notes 1995(1) when a learned single Judge of this court has held that prosecution for offence under the Mines and Minerals (Regulations and Development) Act on the strength of the complaint lodged by a persons not authorised either by Central Government or by State Government. The court is not competent and to take cognizance of such complaint and the same cannot be sustained in law. There is no doubt of such proposition as laid down in the aforesaid judgment if it transpires that the person is not authorised either by the Central Government or by the State Government. Here, in this context a " reference can be made to the case of Shyam Sundar Rathi v. The Additional District Magistrate. Bankura & Others where on construction of section 4(2-a)(b) of the West Bengal Land Reforms Act it has been held that the provisions contained therein are beyond the competence of State legislature and therefore, they are ultra vires. Here, it is not concerning the question of competence of exercise of jurisdiction of the State legislature. Here, the case rotates round of assumption of Jurisdiction by the officer of the State on the strength of delegation made by the appropriate authorities in favour of the State authorities. It is the specific case of the Slate respondents that from lime to time such delegations have been made and on the basis of such delegations,

delegated authorities tent to assume Jurisdiction in exercise of their function. Mr. Bose, the learned Advocate appearing for the State-respondents has referred to a Notification No. 88-C1/GR D. 4M-30/ 88 dated 24.1.91. From the perusal of which it appears that in terms of the provisions of sub-section (2) of section 26 of the Mines and Minerals (Regulation and Development) Act 1957 read with Order No. 446E dated 28th April. 1987 of the Ministry of Steel and Mines, Development of Mines, Government of India issued under Clause (b) of section (1) of section 26 of the said Act and in cancellation of earlier notification, the Governor was pleased to direct that the powers exercised by the State Government under sub-Section (4) of section 21 of the said Act. Section 21(4) of the said Act expressly authorised the State to function in terms of jurisdiction derived from delegation. Here, in view of the provisions as enumerated u/s 22 of the Mines and Minerals (Regulation and Development) Act 1957, there is clear embargo on the court to take cognizance and as such on the basis of a complaint made by the competent authority, the police authority having jurisdiction in the local area can consider the complaint and can look into the matter and is entitled to proceed in accordance with law. It has been pointed out by Mr. Bose, the learned Advocate appearing on behalf of the State-respondents that only the initial step has been taken and it is yet to be set on motion and exist itself and it is to speculate about what shall be the outcome and the outcome, if any, will be tested in terms of the provisions not only by the West Bengal Mines and Minerals Rules, 1973 read with provisions of the Act but also in the light of the para-materia of the Criminal Procedure Code guiding governance of adjudication of criminal litigation. Accordingly, this court is not in a position to interfere with the writ petition at this stage for the reasons as indicated hereinbefore.

The writ petition thus stands dismissed on contest.

3. Petition dismissed