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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1258 OF 2014

1. Mr. Manoj Harischandra Mahtre
2. Mr. Harischandra Ramchandra Mhatre
3. Mrs. Pritam Manoj Mahtre
4. Mrs. Manisha Santosh Shegade
5. Mrs. Manisha Rajesh Patil
6. Mrs. Jayashree Rahul Kolekar
7. Shri Santosh Lakshman Shegade

....Applicants

versus

State of Maharashtra through
Mahabaleshwar Police Station

....Respondent

Mr. Surel S. Shah, advocate for the applicants.
Mr. S. K. Shinde, PP along with Mr. J. P. Yagnik, APP for the State.

**CORAM : RANJIT MORE &
ANUJA PRABHUDESSAI, JJ.**

DATED : 5th MARCH, 2015.

P.C.:

Heard Mr. Shah, learned counsel for the applicants and
Mr. Yagnik, learned APP for the respondent.

2. Rule. Rule is made returnable forthwith. By consent of
learned counsel appearing for the respective parties, the application is
taken up for final hearing as the controversy involved is in short compass.

3. By this application under Article 482 of the Code of Criminal Procedure, 1908, the applicant is seeking direction to quash the proceedings pending before learned J.M.F.C. bearing S.C.C.No.230/2013. The said case arises out of complaint by Mr. Tanweer Abdul Karim Patel working as Kamgar Talathi in the Tahasil Department, Mahabaleshwar with the Mahabaleshwar Police Station against the applicants herein for the offences punishable under Section 21(1) of the Maharashtra (Urban Areas) Preservation of Trees Act, 1975 (for short "the 1975 Act"), Section 25 of the Maharashtra Land Revenue Code, 1966 (for short "1966 Code"), Sections 3 and 14 of the Maharashtra Felling of Trees Act, 1964 (for short "the 1964 Act") and Section 427 of the Indian Penal Code, 1860 (for short "the IPC").

4. Survey Nos. 27/A/2, 27/A/3, 27/A/4 and 27/A/5 situated in Village Shindola, Taluka Mahabaleshwar belongs to the applicants. It is the prosecution case that Mahabaleshwar is an Eco-Sensitive Zone and the applicants without taking permission of the Forest Department or Revenue Department have caused felling of nearly 1500 small and big trees in the aforesaid survey numbers and thus, they have committed offences referred above.

5. Initially FIR was registered, and after completion of investigation, charge-sheet was filed before the concerned magistrate

which is numbered as S.C.C.230/2013. The applicants filed an application for discharge before the learned magistrate. However, the same was rejected on the ground that the captioned case is summons/summary case and, therefore, the application for discharge is not maintainable. The applicants have, therefore, approached this Court in exercise of jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C.").

6. Mr.Shah, learned counsel for the applicants submitted that the land, in question, is not an urban area within the meaning of Section 2(f) of the 1975 Act as well as Section 2(g) of the 1964 Act. The said land is located in rural area and, therefore, the provisions of 1975 Act are not applicable. Mr. Shah submits that at the most, the applicants can said to have committed offence under Section 3 of the 1964 Act. However, they have already deposited the penalty amount. He submitted that Section 25 of the 1966 Code and Section 427 of the IPC are not applicable to the present case. He lastly prayed for quashing the proceedings of S.C.C.No.230/2013.

7. Mr, Yagnik, learned APP does not dispute that the said land does not fall within the definition of "Urban Area" within the meaning of Acts mentioned hereinabove. He, however, stated that this is not a fit case for quashing the proceedings of S.C.C.No.230/2013 and the applicants should face the trial.

8. Having heard learned counsel and learned APP appearing for the respective parties and having gone through the compilation of the application along with the annexures thereto and provisions of the relevant Acts, we find merit in the application. The applicants have been charged under :

1. Section 21(1) of the 1975 Act;
2. Section 25 of the 1966 Code;
3. Sections 3 and 14 of the 1964 Act and
4. Section 427 of the IPC.

Section 1 of the 1975 Act speaks about short title, extent and commencement, which reads as follows:

“1. *Short title, extent and commencement:-*

- (1) This Act may be called as the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975.
- (2) It extends to the whole of the State of Maharashtra.
- (3) It shall come into force in any urban area or any part thereof on such date as the State Government may, by notification in the Official Gazette, specify; and different dates may be specified for different urban areas or any parts thereof.”

Thus, the perusal of the above provisions make it abundantly clear that the 1975 Act applies to urban area in the whole of Maharashtra.

Section 2(f) of the 1975 Act, defines urban area as follows:

- “1. A Municipal Corporation area, for which, a municipal corporation is constituted under the Bombay Municipal

Corporation Act, the Bombay Provincial Municipal Corporation Act, 1949 or the City of Nagpur Corporation Act, 1948;

2. A Municipal area for which a Municipal Council is constituted under the Maharashtra Municipalities Act, 1965;

3. A notified area for which a Special Planning Authority is constituted or appointed under Section 40 of the Maharashtra Regional and Town Planning Act, 1966 and

4. An area designated as the site for a new town for which a Development Authority is constituted under Section 113 of the Maharashtra Regional and Town Planning Act, 1966.”

9. The 1964 Act also applies to the whole State of Maharashtra, however, urban area is excluded. Section 2(g) of the 1964 Act defines urban area as follows:

“urban area” means the area within the limits of a municipality, municipal corporation, Municipal Committee, Town Committee, or notified area committee or Cantonment constituted under any law for the time being in force; and includes a local area which is specified by the State Government in the Official Gazette, being an area which has a population of not less than five thousand and has not less than three-fourths of male workers engaged in non-agricultural pursuits”

10. The parties are not at dispute that the land from which the trees were felled is located in rural area and, therefore, it does not fall within

the definition of urban area under both 1975 and 1964 Acts. In that view of the matter, the restriction imposed under Section 8 of the 1975 Act would not apply to the land, of which, the applicants are the owners. Consequently, the penal provisions of Section 21 of the 1975 Act will also have no application.

11. Section 3 of the 1964 Act deals with restriction on felling of trees. Under this Section, notwithstanding any custom, usage or law for the time being in force, or the decree or order of a Court or anything contained in any instrument to the contrary, no person shall fell any tree or cause such tree to be felled in any land, whether of his ownership or otherwise, except with the previous permission in writing of a Tree Officer duly empowered by the State Government in that behalf. Section 4 of the 1964 Act makes penal provision whereunder any person who fells any such tree or causes it to be felled, contrary to the provisions of Section 3 of the 1964 Act, is liable to such penalty not exceeding one thousand rupees as the Tree Officer empowered under Section 3 may, after holding an inquiry and giving such person an opportunity of being heard, deem fit to impose.

12. The applicants have annexed a copy of notice dated 22nd August, 2013 issued by Sub-Divisional Officer, Sub-Division Wai. By the said notice, it is alleged that the applicants have felled 1284 small and big

trees from the said land contrary to the provisions of Section 3 of the 1964 Act and, accordingly, the applicants were directed to deposit total amount of Rs.12,84,000/- i.e. @Rs.1,000/- per tree towards penalty. The petitioner has complied with this notice and deposited an amount of Rs.12,84,000/- with the Sub-Divisional Office. The receipt at "Exhibit C" corroborates this fact.

13. Though the prosecution has alleged that the applicants have committed offences under Sections 3 and 14 of the 1964 Act, we find that reference of Section 14 is inadvertently made. Section 4 of the said Act deals with the penal provisions and the applicants have complied with the notice given under Section 3 of the 1964 Act. Therefore, the prosecution against the applicants cannot be continued on this charge.

14. This takes us to consider the allegations against the applicants of contravening the provisions of Section 25 of the 1966 Code and Section 427 of the IPC. Section 25 deals with the right to trees in holdings. Section 25 is not a penal provision. It provides that right to all trees standing or growing on any occupied land shall vest in the holder thereof but if the State Government is of opinion that it is necessary to prohibit or regulate the cutting of certain trees for preventing erosion of soil, it may by rules prohibit or regulate the cutting of such trees. This provision seems to have been made for prevention of erosion of soil and applicants cannot be said to have contravened the same.

15. Section 427 of the IPC deals with mischief causing damage to the public at large or to any person or property to the amount of fifty rupees. The provisions of Section 427 are also not applicable to the facts and circumstances of the present case inasmuch as the applicants are alleged to have felled or caused to fell the trees located on their own land and there is no question of damage to the public at large or to any person or property.

16. Taking overall facts and circumstances of the case into consideration, we are of the opinion that no purpose would be served by continuing the prosecution against the applicants. The proceedings of S.C.C.No.230/2013 are quashed. The criminal application is, accordingly, made absolute in terms of prayer clause (a) and is disposed of as such.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)