

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION*

WRIT PETITION No. 1189 of 2017

Frank Augustin Lopes,
Aged 38 years, residing at "Sweet House",
Zagodi, Nale-Panmali, Post Sopara,
Taluka Vasai, District Palghar ... Petitioner

Vs

1. State of Maharashtra,
(At the instance of Nala Sopara Police
Station, Dist. Palghar)
2. Shri Surendra Pandit Patil,
Residing at Mangalam CHS Ltd.,
Barhampur, Near Dosti Paradise,
Vasai Road, Taluka Vasai, ... Respondents

Mr.Ganesh Bhujbal, for the Petitioner.

Mr.F.R.Shaikh, APP, for Respondent-State.

***CORAM : B. P. DHARMADHIKARI &
SARANG V. KOTWAL, JJ.***

Date : 19th December, 2018.

Oral Judgment :

Heard finally by issuing Rule and making it returnable forthwith by consent. On 17 March 2017, this Court has passed following order-

'2. Heard learned counsel appearing for the Petitioner and the learned APP for the first Respondent.

3. Issue notice to the second Respondent, returnable on 20th April 2017.

4. The submission of the learned counsel appearing for the Petitioner is that the offence punishable under Section 21 of the Maharashtra (Urban Areas) Protection and Preservation of Trees) Act, 1975 is not a cognizable offence and hence, First Information Report could not have been registered.

5. By way of ad-interim relief, we direct that though investigation shall continue, chargesheet shall not be filed as against the Petitioner.'

2. Respondent No.2 is duly served. Learned counsel appearing for Petitioner states that offence under Section 21 of the Maharashtra (Urban Areas) Protection and Preservation of Trees) Act, 1975 is not cognizable and hence registration of FIR or investigation carried thereafter by Respondent No.1 is without jurisdiction and non-est. He submits that Respondent No.2 is a private person who lodged police complaint and its cognizance has been taken.

3. Learned APP does not dispute the facts. He further submits that this Court should not intervene in extra ordinary

jurisdiction as the offence is in relation to a conduct which has got impact on environment.

4. Section 21 of the Maharashtra (Urban Areas) Protection and Preservation of Trees) Act, 1975 makes the offence of tree felling punishable with fine of not less than Rs.1000/- which may extend upto Rs.5,000/- and also that imprisonment for a term of not less than one week which may extend upto one year. There is no other section in the 1975 Act dealing with offences or its cognizance or procedure. Section 2(h) explains that words and expression used in 1975 Act but not defined therein, are to be given meaning assigned to them in relevant Act. It therefore follows that prosecution for offences under Section 21 has to be in consonance with Cr.P.C 1973.

5. We need not delve more on this controversy because impact of such cognizance and investigation without necessary permission in terms of Section 155 (2) of Cr.P.C is looked into by this Court in case of *Mukesh Laxman Das Talreja Vs Inspector of Police – 2006(2) Bom.C.R. (Cri.) 76*.

6. There the learned Single Judge of this Court has in paragraph 6 observed as under -

'6. A perusal of the said section makes it clear that the aforesaid provisions of obtaining the permission is a mandatory provision and if there is non-compliance of the said provision, the investigation which is carried out by the Police

Officer would be rendered illegal and void. In my view, since the said provision has not been followed, the entire investigation which is carried out by the Police Officer will have to be set aside on this ground alone'.

7. In view of this ruling and also clear provisions of law it is apparent that the cognizance and investigation is unsuspendable and non-est. In statute too we could not give any provision like Section 20(c) in 1975 Act. Consequently, R.C.C. No.1352 of 2018 is also quashed.

(Sarang V.Kotwal, J.)

(B.P.Dharmadhikari, J.)