

30.09.2020

CRR 1409 of 2019

Abdul Mannan

-Vs-

State of West Bengal & Anr.

For the petitioner:

Mr. Milon Mukherjee,

Mr. Biswajit Manna.

For the State:

Mr. Rana Mukherjee, Ld. A.P.P

The petitioner is a sitting member of Legislative Assembly, West Bengal.

In the instant application he has prayed for quashing of charge-sheet No.21 of 2009 dated 31st January, 2009 under Sections 283 of the Indian Penal Code and Section 26(8) of the Control of National Highways (Land & Traffic) Act, 2002.

One D. Muhari, Duty Officer of EMAS Expressway Pvt. Ltd submitted a written complaint stating, inter alia, that the petitioner and one Dijo Prasad Bandyopadhyay, both members of a particular political party were conducting a political meeting blocking both sides of Durgapur Expressway since 10.15 am on 11th January, 2009. As a result, huge numbers of vehicular traffic were stucked on Durgapur Expressway causing great difficulty to the members of public proceeding through the said highway. On the basis of the said complaint, police registered Singur P.S Case No.7 of 2009 dated 11th January, 2009 under Section 283 and 26(8) of the Control of National Highways (Land & Traffic) Act, 2002.

The petitioner has filed the instant revision for quashing the said proceeding.

Mr. Milon Mukherjee, learned Senior Counsel at the outset submits that the essential ingredients of offence under Section 283 of the Indian Penal Code as follows:

- (1) The accused did an act or omitted to take care with property in his possession or under his charge:
- (2) Such act or omission caused danger or obstruction or injury to any person.
- (3) The danger, obstruction or injury was caused in any public way or public line of navigation.

The allegation against the petitioner is that he along with another supporters of a particular political party were holding a political meeting causing obstruction of public thoroughfare on both sides of Durgapur Expressway on 11th January, 2009. The defacto complainant was not an aggrieved person because he did not allege in his complaint that he was personally obstructed by the petitioner and his supporters. It is further submitted by Mr. Mukherjee that the petitioner does not know as to whether the investigating officer recorded statement of any aggrieved person who was obstructed from proceeding through Durgapur Expressway on the date of occurrence being restrained by the meeting conducted by the petitioner and others.

At this, Mr. Rana Mukherjee, learned P.P in-charge fairly submits that the investigating officer recorded statement of some witnesses, but none of them stated that they were obstructed as a result of the meeting conducted by the petitioner and the others.

It is further pointed out by Mr. Mukherjee, learned Senior Counsel on behalf of the petitioner that Section 26 of the Control of National Highways (Land & Traffic) Act,

2002 deals with removal of unauthorized occupation.
Section 26 runs thus:-

“Removal of unauthorised occupation.—(1)

Where the Highway Administration or the officer authorised by such Administration in this behalf is of the opinion that it is necessary in the interest of traffic safety or convenience to cancel any permit issued under sub-section (2) of section 24, it may, after recording the reasons in writing for doing so, cancel such permit and, thereupon, the person to whom the permission was granted shall, within the period specified by an order made by the Highway Administration or such officer restore the portion of the Highway specified in the permit in such condition as it was immediately before the issuing of such permit and deliver the possession of such portion to the Highway Administration and in case such person fails to deliver such possession within such period, he shall be deemed to be in unauthorised occupation of highway land for the purposes of this section and section 27.

(2) When, as a result of the periodical inspection of highway land or otherwise, the Highway Administration or the officer authorised by such Administration in this behalf is satisfied that any unauthorised occupation has taken place on highway land, the Highway Administration or the officer so authorised shall serve a notice in a prescribed form on the person causing or responsible for such unauthorised occupation requiring him to remove such unauthorised occupation and to restore such highway land in its original condition as before the unauthorised occupation within the period specified in the notice.

(3) The notice under sub-section (2) shall specify therein the highway land in respect of which such notice is issued, the period within which the unauthorised occupation on such land is required to be removed, the place and time of hearing any representation, if any, which the person to whom the notice is addressed may make within the time specified in the notice and that failure to comply with such notice shall render the person specified in the notice liable to penalty, and summary eviction from the highway land in respect of

which such notice is issued, under sub-section (6).

(4) The service of the notice under sub-section (2) shall be made by delivering a copy thereof to the person to whom such notice is addressed or to his agent or other person on his behalf or by registered post addressed to the person to whom such notice is addressed and an acknowledgment purporting to be signed by such person or his agent or other person on his behalf or an endorsement by a postal employee that such person or his agent or such other person on his behalf has refused to take delivery may be deemed to be prima facie proof of service.

(5) Where the service of the notice is not made in the manner provided under sub-section (4), the contents of the notice shall be advertised in a local newspaper for the knowledge of the person to whom the notice is addressed and such advertisement shall be deemed to be the service of such notice on such person.

(6) Where the service of notice under sub-section (2) has been made under sub-section (4) or sub-section (5) and the unauthorised occupation on the highway land in respect of which such notice is served has not been removed within the time specified in the notice for such purpose and no reasonable cause has been shown before the Highway Administration or the officer authorised by such Administration in this behalf for not so removing unauthorised occupation, the Highway Administration or such officer as the case may be, shall cause such unauthorised occupation to be removed at the expenses of the Central Government or the State Government, as the case may be, and impose penalty on the person to whom the notice is addressed which shall be five hundred rupees per square metre of the land so unauthorisedly occupied and where the penalty so imposed is less than the cost of such land, the penalty may be extended equal to such cost.

(7) Notwithstanding anything contained in this section, the Highway Administration or the officer authorised by such Administration in this behalf shall have power without issuing any notice under this section to remove the unauthorised occupation on the

highway land, if such unauthorised occupation is in the nature of—

(a) exposing any goods or article—

(i) in open air; or

(ii) through temporary stall, kiosk, booth or any other shop of temporary nature,

(b) construction or erection, whether temporary or permanent, or

(c) trespass or other unauthorised occupation which can be removed easily without use of any machine or other device,

and in removing such occupation, the Highway Administration or such officer may take assistance of the police, if necessary, to remove such occupation by use of the reasonable force necessary for such removal.

(8) Notwithstanding anything contained in this section, if the Highway Administration or the officer authorised by such Administration in this behalf is of the opinion that any unauthorised occupation on the highway land is of such a nature that the immediate removal of which is necessary in the interest of—

(a) the safety of traffic on the Highway; or

(b) the safety of any structure forming part of the Highway,

and no notice can be served on the person responsible for such unauthorised occupation under this section without undue delay owing to his absence or for any other reason, the Highway Administration or the officer authorised by such Administration may make such construction including alteration of any construction as may be feasible at the prescribed cost necessary for the safety referred to in clause (a) or clause (b) or have such unauthorised occupation removed in the manner specified in sub-section (7).

(9) The Highway Administration or an officer authorised by such Administration in this behalf shall, for the purposes of this section or section 27, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) issuing commissions for the examination of witnesses; and
- (d) any other matter which may be prescribed,

and any proceeding before such Administration or officer shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860) and the Administration or the officer shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).”

Careful reading Clause (8) of Section 26 of the said Act shows that the highway administration or the officer authorized by such administration shall have the power of immediate removal of unauthorized occupation of national highways which is necessary in the interest of-

- (a) The safety of traffic on the highway; or
- (b) The safety of any structure forming part of the highway.

Section 26 authorizes the Highway Administration to remove unauthorized occupation on national highways. By virtue of Clause (9) by Section 26 the Highway Administration or its authorized officer are vested with the same power like that of Civil Court under the Code of Criminal Procedure and any proceeding before such administration shall be deemed to be a proceeding within the meaning of chapter XXVI of the Code of Criminal Procedure. The FIR does not disclose delegation of the Authority of National Highway Administration to the police officer who investigated into the case.

Therefore considering entire facts of the case and on careful perusal of the charge-sheet, this Court is of the

view that if the trial of this case is allowed to be proceeded with it will be sheer abuse of process of the Court.

There is another aspect of the matter. In **Ashwini Kumar Upadhyay vs. Union of India**, the Hon'ble Supreme Court passed a direction to set up Special Courts in the States in order to dispose of cases pending against the elected MPs and MLAs. Accordingly a Special Court was set up at Barasat, North 24 Parganas for trial of cases relating to MPs and MLAs in the state of West Bengal. The said Special Court is in the rank of a Sessions Judge. The Hon'ble Apex Court in aforesaid decision was pleased to direct the State Government and the High Courts to set up Special Courts of the Magistrate and the Courts of Sessions. It is rightly pointed out by Mr. Mukherjee, learned Senior Counsel that a Special Judge in the rank of Sessions Judge cannot try a case under Section 283 IPC and Section 26(8) of the National Highways (Land & Traffic) Act, 2002 because the case is triable by a Magistrate. The maximum punishment is only fine of Rs.200/- and if the case is tried by the learned Sessions Judge as Special Court the petitioner may be deprived of his statutory right of appeal which amounts to denial of procedure established by Law. In support of his contention he refers to a decision of the Hon'ble Supreme Court in the case of **A.R. Antulay vs. R.S. Nayak & Anr.** reported on **1988 SCC (Cri) 372**.

On this score also trial of this case before the Special Court will be illegal.

Be that as it may, on perusal of the entire record as well as the case diary I do not find prima-facie ingredient of offence under Section 283 of the Indian Penal Code. Section 26(8) of the Control of National Highways (Land & Traffic) Act, 2002 is not a penal provision and accordingly further proceeding of Special Case No.63 of 2018 pending before the learned Additional Sessions Judge, Special

Court (MLAs & MPs) Cases, Barasat, North 24 Parganas will be abused of the process of the Court.

Accordingly the instant criminal revision is allowed on contest, however without cost.

Charge-sheet No.21 of 2009 dated 31st January, 2009 is quashed and the petitioner is discharged from the case.

(Bibek Chaudhuri, J.)