

22.03.2021
Item no.22 and 23
Ct. No.2
CHC

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION
(Physical Hearing)**

C.R.R. No.71 of 2021

In Re:- An application under Section 482 read with 401 of the
Code of Criminal Procedure, 1973.

And

In the matter of:-

The Chief Administrative Officer,
Air Force Station & anr.

.....petitioners

With

C.R.R. No.11 of 2021

In Re:- An application under Sections 482 & 401 of the Code
of Criminal Procedure, 1973.

And

In the matter of:-

Mohd. Khoda Baks Alam

.....petitioner

Mr. Sudipto Mazumder, Ld. A.S.G

Mr. Arijit Ghosh,

Mr. Ashok Kr. Singhi,

Mr. Ashok Kumar Ghosh

....for the petitioners in C.R.R.71 of 2021

and for the U.O.I. in C.R.R.11 of 2021

Mr. Debajit Kundu

....for the o.p. no.1 in C.R.R.71 of 2021

and for the petitioner in C.R.R.11 of 2021

Mr. Aditi Shankar Chakraborty, Ld. A.P.P.

Mr. Nilay Chakraborty

....for the State in CRR 71 of 2021

Mr. Aditi Shankar Chakraborty, Ld. A.P.P.

Mr. Sourav Ganguly

....for the State in CRR 11 of 2021

The impugned order dated 19th August, 2019 and subsequent orders passed by the Learned Additional Chief Judicial Magistrate, 2nd Court, Alipurduar, in connection with Jaigaon Police Station Case No.233 of 2018 dated 30.10.2018 giving rise to G.R. Case No.1894 of 2018, under Sections 379/427 of the Indian Penal Code releasing 69 trees to the petitioner upon execution of Zimma nama bond of Rs.25 Lakhs is subject of challenge in both these two revisional cases, referred above.

Since a common law point is involved in both the cases, as it essentially arises out of impugned order dated 19th August, 2019 passed by Learned A.C.J.M., 2nd Court, Alipurduar, in connection with G.R. Case No.1894 of 2018, on the prayer of the learned advocate appearing for the parties, both the cases are taken up together giving a common hearing.

Mr. Sudipto Mazumder, learned A.S.G. representing the petitioners/de facto complainants involved in C.R.R.71 of 2021 submits that learned Magistrate has mechanically disposed of the prayer for return of the logs of trees without having understood the real purport of the complaint, submitted in this case alleging removal of several trees situated within the Air Force area in

violation of the work order, issued for the purpose by the appropriate authority.

Incidentally, learned advocate for the de facto complainant/Air Force draws attention of the Court to the F.I.R. submitted in this case to Officer-in-Charge, Hasimara Out Post, Jaigon Police Station. The gist of the complaint furnished in this case may be reproduced as hereinbelow:-

“As per the authority the contractor was permitted to cut 199 trees (172 and 27 trees at different sites respectively). The work at site with 172 trees amounting to 83.378 cubic meters for felling commenced in the month of Sep 17. However, after detailed scrutiny as per the gate pass and transit permit records, it is found that the contractor has carried 319.20 cubic meters of wood (1286 logs). He has also cut 586 trees from an unauthorized different location thereby causing loss to exchequer.”

It is contended by Mr. Mazumder, learned A.S.G. for the petitioners that in spite of discrepancies noted by the learned Magistrate, as revealed from the report submitted twice by the I.O. of this case, learned court below ought not to have passed an order directing return of 69 trees to the possession of the petitioners, who are facing prosecution in this case under Section 379/427 of the Indian Penal Code.

Learned advocate, Mr. Debajit Kundu representing the petitioner involved in C.R.R.11 of 2021 submits that it is the Air Force authority concerned, which has not cooperated with the I.O. before submitting the report, and thus the enquiry supposed to be

conducted by the I.O. before submitting the report to the Court concerned, could not be effectively held due to the apathy of the Air Force Officer exposed to the I.O. concerned. Learned advocate, Mr. Kundu submits that even after being favoured with an order directing release of the 69 trees to the petitioner upon execution of a bond, till date the required bond could not be executed so as to recover possession of the 69 trees resulting in huge financial loss, caused to the client/petitioner of Mr. Kundu.

Mr. Nilay Chakraborty, learned advocate representing the State submits that the enquiry conducted by the I.O. could not be effectively held due to the non cooperation of the Air Force Officer being the F.I.R. maker in this case.

The point is thus very simple that the learned court below while making order directing return of possession of 69 trees to the petitioner upon execution of bond, the Court itself identified the defects in the report submitted by the I.O. Thus in the opinion of the learned Magistrate the reports, so submitted by the I.O. twice, was nothing but a vague one and it could not be treated to be comprehensive report for the effective adjudication of the issue pertaining to the proposed prayer for return of possession of 69 trees.

Upon perusal of the impugned order, it appears that it was obligatory upon learned Magistrate to insist upon production of comprehensive report by the I.O. and if necessary by drawing to the attention of the de facto complainant of this case. Most of the trees, said to have been taken away are from the Air Force area.

When some of the defects were identified by the learned Magistrate in the report so submitted by the I.O., the order directing return of possession of 69 trees, without ascertaining the actual state of affairs pertaining to the alleged removal of trees, is against the spirit of the law and as such the impugned order is set aside.

There will be no prejudice caused to either of the parties to this case if the prayer for return is heard afresh obtaining a comprehensive report from the I.O. of this case, to be submitted within three weeks from the date of communication of this order to the learned court below.

Mr. Mazumder, learned A.S.G. assures the Court that Air Force authority, de facto complainant will cooperate with the I.O. of this case to conduct an effective enquiry in the interest of this case, so that there can be meaningful adjudication of the prayer pertaining to the proposed prayer for return of 69 trees to the rightful claimant.

Learned court below is directed, after being communicated with this order to obtain a comprehensive report from the I.O. of this case with an aim to dispose of the prayer for return of trees within the stipulated period of time as mentioned above.

I.O. is at liberty to issue a notice upon the de facto complainant for purpose of required enquiry, before making submission of comprehensive report to the learned court below concerned.

With this direction/observation, the revisional applications stand disposed of.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Subhasis Dasgupta, J.)