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APOT 122 of 2021
WITH
WPO 242 of 2021
IA GA 1 of 2021
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

MR. SOUMITRA KANTI DEY
VERSUS
THE STATE OF WEST BENGAL & ANR.

BEFORE:

The Hon'ble JUSTICE SUBRATA TALUKDAR

AND

The Hon'ble JUSTICE KESANG DOMA BHUTIA

Date : 29th September, 2021.

APPEARANCE:

Mr. Sabyasachi Chowdhury, Sr. Adv.

Mr. Rajarshi Dutta, Adv.

Mr. Rohit Das, Adv.

Mr. VVV Shastri, Adv.

Mr. Tridib Bose, Adv.

Mr. Kishwar Rahman, Adv.

...for the appellant.

Mr. Dhruba Ghosh, Sr. Adv.

Mr. Manoj Malhotra, Adv.

Mr. Paritosh Sinha, Adv.

...for the State.

Ms. Radhika Misra, Adv.

The Court :- Under challenge is the order of the Hon'ble Single Bench dated 26th July, 2021. The Hon'ble Single Bench noticed that proceedings in connection with a charge-sheet filed by the respondents/Forest authorities are pending before the competent Court of the learned Magistrate. The charge-sheet has been filed under the West Bengal Trees Protection and Conservation in Non-Forest Areas Act, 2006 (the 2006 Act), read with its relevant rules.

The Hon'ble Single Bench further noticed that the offence as made out under the 2006 Act is compoundable. Accordingly, the Hon'ble Single Bench directed compounding of the offence only on the payment of a hefty sum by the petitioner/present appellant.

Mr. Chowdhury, learned Counsel appearing for the appellant/writ petitioner, submits that the offence is compoundable only on payment of sums clearly mentioned under the 2006 Act read with its rules. Therefore, the direction to pay an amount wholly disproportionate requires to be set aside. There should also be a direction on the competent Magistrate to compound the offence strictly in terms of the statute in view of the fact that the statute envisages compounding of the offence.

Per contra, Mr. Ghosh, learned Counsel, points out that compounding of the offence before the competent Magistrate was

objected to by the concerned Forest Authorities namely, the Divisional Forest Officer. The Divisional Forest Officer, Forest Utilisation Division had objected to compounding of the offence on the ground that it involves a heinous offence. Accordingly, the competent Forest authority expressed its unwillingness to compound the offence considering its gravity.

Mr. Ghosh submits that compounding of the offence involves the consent of the prosecuting party and, even though the statute may provide for such compounding, the exercise of such power is discretionary.

Having heard the parties and considering the materials placed, this Court is satisfied that the facts of this case did not warrant the Hon'ble Single Bench to venture into a jurisdiction which purely belongs by statute to the domain of the learned Magistrate.

Neither the Hon'ble Single Bench could have directed that the offence can be compounded nor, the Hon'ble Single Bench could have directed the payment of a hefty sum not borne out from the statute.

Accordingly, the order impugned dated 26th July, 2021 stands set aside.

Parties shall place their stand before the learned Magistrate in respect of the pending criminal proceeding, being GR Case No. 385 of

2017. The learned Magistrate shall take a decision purely on merits, uninfluenced by any observations made by the Hon'ble Courts.

APOT No. 122 of 2021 and **GA No. 1 of 2021** stand, accordingly, **disposed of.**

Since affidavits are not invited, the allegations made are deemed to be denied and disputed.

All parties to act on a server copy of this order.

(KESANG DOMA BHUTIA,J.)

(SUBRATA TALUKDAR,J.)