

22.09.2022

Serial no. 3

[G.S.D]
Court No.35

**CRR 169 of 2015
With
CRAN 6 of 2017
(Old No. CRAN 2981 of 2017)**

In re : An Application under Section 482 of the Code of Criminal Procedure, 1973

-And-

In the matter of : Gobinda Chandra Naskar & Anr.

... .. Petitioners

*Mr. Koushik Gupta
Mr. P.P. Dasgupta
Mr. Madanmohan Chandra*

... .. For the Petitioner

*Mr. Swapan Banerjee
Mr. Anindya Sundar Chatterjee*

... for the State

Mr. Goutam Dinda

... for the KMC

This revisional application has been filed by the petitioners under Section 482 of the Cr.P.C. praying for an order of this Court to quash the proceedings pending in the trial court, in connection with Garfa P.S. Case No. 91 dated 20th October, 2011.

The case was registered on the basis of the First Information Report dated 21st October, 2011 under Sections 17(11) and 17A(1) of the West Bengal Inland Fisheries Act, 1993 and read with Section 188 of the Indian Penal Code, 1860. After completion of the investigation, the police had submitted charge-sheet in this case on 20th of March, 2013.

The petitioner has put forth that the filling up of pond in Mouza-Kalikapur, is alleged by the complainant in Dag

Nos. 97,98, 99, 101, 102, 105, 106, 190 and 191 under Borough XII.

The petitioners are aggrieved and have stated that they are not the owners of the plots of land which are being allegedly converted into land from the water body.

Learned Advocate appearing on behalf of the petitioners has also referred to the annexed document, which is a letter dated 16th of March, 2009 written by the Assistant Secretary, Government of West Bengal to the Inspector-in-charge, Kasba Police Station, South 24 Parganas. The subject-matter of the said letter dated 16th of March, 2009 (*supra*) is quoted below:

"Withdrawal of P.S. Case No. 98(6)/03 dt.08.06.2003 relating to complaint lodged by A.D.F. South 24-Parganas, Alipore, Kolkata vide Memo No. 503/4, dt. 03/09/2003."

It is submitted that on the self-same allegation, previously a police case was lodged and later withdrawn on the ground of '*mistake of facts*'. The previous case was lodged and withdrawn at the instance of the present complainant. The said fact is duly corroborated from the document as shown before this Court as discussed above.

It is submitted that the present case is nothing but only the result of non-application of mind regarding the records of the case as well as the existing facts as to the ownership of the petitioners and also recording and classification of the land concerned and petitioner's involvement in the alleged occurrence.

The petitioners have prayed for an order to quash the present criminal proceedings.

Learned Advocate appearing on behalf of the State produces a Case Diary in the Court, from which he particularly refers to a document i.e. Memo dated 10th of May, 2012 issued by the Block Land and Land Reforms

Officer, Kasba, South 24 Parganas addressed to the S.I. of Garfa Police Station. On the basis of the same, it has been pointed out that the classification regarding Dag No. 97 is "*pukur*". By doing so he has supported the prosecution case of illegal conversion of water body. However, he has stated nothing with regard to the previous police case on the same ground or regarding the ownership of the plot of land in question.

Learned Advocate appearing on behalf of the Municipal Corporation has put forth strongly that the implication of the present petitioners is not as the owners but as an abettor and accomplice to the principal accused person.

However, no record could be produced from the office of the said O.P. regarding the ownership or classification of the land comprising within the Dag No. 97.

Heard the submissions of all the parties.

Perused the documents, C.D. and the other materials available.

None of the O.P.s has made any submission as regards the letter dated 16th of March, 2009 wherefrom it reflects that the on the previous occasion, with respect to the F.I.R. with the self same accusations and cause of action, the informant has accepted "*mistake of facts*" and withdrew the complaint.

On perusal of the certified copy of the F.I.R. in the present case, I find that the complainant has come up with the self-same cause of action with regard to the same property and against the same persons. Firstly, a subsequent F.I.R. alleging same set of facts against same persons shall not be maintainable, particularly when the previous one has been withdrawn on the ground of mistaken facts stated therein, secondly, neither of the opposite parties could come up to negate the submission made on behalf of the petitioners that they are not the owners with respect to

the plot of land in question, thirdly, state has not come up with any material as to the role of the present petitioners in commission of the crime as alleged and lastly, the Municipal Corporation has not been able to produce any supporting material to corroborate its submission that the concerned plot of land is recorded with them as a water body.

Therefore, I find that the present case is only misconceived so far as the present petitioners are concerned. A copy of the *porcha* is produced in Court on behalf of the petitioners, which shows that the owner with respect to the dag No. 97 in Kalikapur Mouza is some other person and not the present petitioners.

All the facts, as discussed above, prompt me to find that furtherance of proceeding against the petitioners would only amount to abuse of process of Court and the same is not to be entertained.

Accordingly, I find merit in the petitioners' case and the instant revision is **allowed**.

It is ordered that the proceedings in the Trial Court in connection with ACGR 1778 of 2011 arising out of Garfa P.S. Case No. 91 of 2011 dated 20.10.11 is hereby **quashed and set aside**.

CRR 169 of 2015 with **CRAN 6 of 2017 (Old No. CRAN 2981 of 2017)** is **disposed of** accordingly.

C.D. is returned.

All parties to act on a server copy of this order duly obtained from the official website of the Hon'ble High Court, Calcutta.

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

(Rai Chattopadhyay, J.)

