

Form No.J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. 405 of 2019

***Apurba Mukherjee
versus
The State of West Bengal & Ors.***

For the Appellant : Mr. Prabir Majumder,
Mr. Sandip Ghosh,
Mr. Partha Sarkar.

For the State : Mr. Arijit Ganguly,
Mr. Sanjib Kumar Dan.

Heard On : 23.08.2022 & 25.08.2022.

Judgement On : 25-08-2022.

Tirthankar Ghosh, J. :

The present appeal has been preferred challenging the judgement and order of acquittal dated 26.04.2018 passed by learned Judicial Magistrate, 3rd Court, Suri, Birbhum in G.R. Case No. 926/2014 arising out of Sainthia Police Station Case No. 194 of 2014 dated 04.10.2014 under Sections 188/447/34 of the Indian Penal Code.

The genesis of the case relating to Sainthia Police Station Case No. 194 of 2014 dated 04.10.2014 was the letter of complaint addressed to the Officer-in-Charge of the police station by one Apurba Mukherjee. It was alleged that the Hon'ble High Court vide order dated 08.10.2013 in W.P. No. 31772(W) of 2013 was pleased to forbid the accused persons from worshipping by assembling a pandal or performing such activities illegally in the land of the appellant being Dag No. 891. However, disobeying such order, few people started to arrange construction of pandal in Dag No. 891 and was using the said space continuously. It was further alleged that as Durga Puja was knocking at the door several people started activities on the land of the complainant like gathering, discussing, throwing water and using the land as road to enter the temple. According to the complainant, such activities were restrained by the High Court. However, on and from 06.09.2014, the accused persons were preparing the idol of the temple using the land of the complainant, thereby violating the order of the Hon'ble Court and the complainant felt helpless by the act of the accused persons. He, therefore, prayed before the Officer-in-Charge to take action against the accused persons. Consequent to such complaint, FIR was registered against 10 persons viz. 1. Somenath Mondal, 2. Bipad Taran Mondal, 3. Nanda Dulal Banerjee, 4. Ujjwal Mukherjee, 5. Rabin Roy, 6. Bimal Kumar Saha, 7. Sanjoy Das, 8. Tarun Mondal, 9. Raj Kumar Mondal, 10. Suren Bouri.

The police authorities on completion of investigation submitted their report and by an order dated 06.05.2015, the learned trial court was pleased to examine the accused persons in respect of the substance of the accusation under Section 251 of the Code of Criminal Procedure, to which the accused persons pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon 5 witnesses viz. Apurba Mukherjee, PW-1 complainant; Ashim Kumar Mondal, PW-2, an acquaintance of PW-1; Kajal Banerjee, PW-3, an acquaintance of PW-1; Kashinath Mondal, PW-4, a person of the same locality and Swapan Nag, PW-5, the Investigating Officer of the case.

Records of the case reflect that Apurba Mukherjee, PW-1 in his evidence narrated the incident in the same manner as that was available in the complaint and added that the accused persons abused him and obstructed his egress and ingress in the property. It was also alleged while deposing in court that the accused persons threatened to kill him. He identified his signature also on the complaint which was admitted in evidence.

The independent witnesses being Ashim Kumar Mondal, Kajal Banerjee and Kashinath Mondal who were examined as PW-2, PW-3 and PW-4 respectively did not support the version of PW-1 and their evidence was vague to the extent that they knew there was some dispute, but were not aware regarding the subject matter of the dispute. The other

witness who appeared before the court is PW-5, the Investigating Officer of the case who identified the formal FIR, the endorsement of the Officer-in-Charge, the sketch map which he prepared with index and also narrated the chronology and manner in which he examined the witnesses in course of investigation till he submitted charge-sheet with the permission of the superiors.

I have considered the submissions of the learned advocates appearing for the complainant/appellant as also that of the State and I find that the order of the High Court which was referred to in the complaint and deposed before the court was not produced at the time of evidence. Consequently attracting the provisions of Section 188 of the Indian Penal Code is ruled out. The document relating to ownership or possession of Dag No. 891 as contended in the complaint and the evidence was also not produced before the court by the prosecution or the complainant which raises question regarding the applicability of Section 447 of the Indian Penal Code as the provisions of criminal trespass defined under Section 441 of the Indian Penal Code would be applicable only when the owner or the person in possession prove his right or title over the land. Having regard to the evidence available on record and on independent consideration of the same, I am of the opinion that on the basis of the evidence available, it is not possible for a court to come to a conclusion of guilt in respect of the accused persons.

As such, the judgement and order of acquittal dated 26.04.2018 passed by the learned Judicial Magistrate, 3rd Court, Suri, Birbhum do not call for any interference.

The appeal being CRA 405 of 2019 is, thus, dismissed.

All pending connected applications, if any, are consequently disposed of.

Department is directed to send back the lower court records to the jurisdictional court.

All parties shall act on the server copy of this judgement duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)

dc.