

09.11.2022
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SB
Ct. No.236

CRR 3835 of 2008

In the matter of : Shome Nath De

Mr. Jayanta Narayan Chatterjee
Mr. Anirban Dutta ... for the petitioner

Assistant Land Manager, Kolkata Port Trust filed a petition of complaint under Section 11(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 against Sri Asis Banerjee, and Sri Ramesh Polley. Learned Chief Judicial Magistrate having taken cognizance on 31st July 2008 transferred the petition of complaint to the learned Judicial Magistrate, 4th Court, Howrah for inquiry under Section 200 of Cr. P.C. Learned transferee Court, however, after perusal of petition of complaint was pleased to hold that there is lack of jurisdiction to entertain the petition of complaint in view of Section 15 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and was pleased to return the petition of complaint by invoking the provision of Section 201 of Code of Criminal Procedure.

Aggrieved by the said order Kolkata Port Trust preferred this application under Section 482 of the Cr.P.C. for quashment of order passed by learned Judicial Magistrate, on 04.8.2008 in Complaint Case No. 696C of 2008, T.R. 609 of 2008 passed on 04.8.2008.

Learned counsel appearing on behalf of the petitioner submits that the petition of complaint was filed in consonance with

the provision laid down under Section 11(1) of the said Act and no prayer was made before the learned Judicial Magistrate for eviction of the accused persons. According to Mr. Dutta, learned counsel for the petitioner, the learned Trial Court failed to exercise jurisdiction vested upon the Court by misconstruing the provision of Section 15 by ignoring the provision of Sub-Section 1 of Section 11 of the said Act which runs as follows.

“Section 11(1) – If any person unlawfully occupies any public premises, he shall be punishable with simple imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees; or with both:

Provided that a person who, having been lawfully in occupation of any public premises by virtue of any authority (whether by way of grant, allotment or by any other mode whatsoever) continues to be in occupation of such premises after such authority has ceased to be valid, shall not be guilty of such offences.”

Section 11 speaks the offence which is cognizable in nature and penalty while Section 15 of the said Act speaks of Bar of Jurisdiction which says that “No Court shall have jurisdiction to entertain any suit or proceeding in respect of (a) – the eviction of any person who is in unauthorized occupation of any public premises.....”

Thus it is palpably clear that the learned Trial Court failed to appreciate the content of the complaint which was filed against the unauthorized occupants in terms of Section 11(1) of the said act and Section 15 of the said act does not cause any impediment to

take cognizance and to proceed with the petition of complaint in accordance with law by the learned Magistrate. Learned Trial Court failed to exercise jurisdiction vested upon the Court.

Under such circumstances, I am inclined to set aside the impugned order by invoking the inherent jurisdiction vested upon the Court.

Learned 4th Court of Judicial Magistrate is directed to entertain the petition to its original file and to proceed with the petition of complaint according to law under Section 200 of Cr. P.C. as expeditiously as possible.

The criminal revision, is thus, disposed of along with application, if any.

The copy of the order be sent down to the learned Trial Court for information and necessary action.

The parties shall act the server copy duly downloaded from the official website of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon completion of requisite formalities.

(Siddhartha Roy Chowdhury, J.)