

**Sl No. 5**

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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**CRR 3192 of 2013**

***Manish Kakrania  
V.  
The State of West Bengal***

**For the Petitioner :** Mr. Arindam Sen  
Mr. Sourav Basu

**For the State :** Mr. Avishek Sinha

**Heard on :** 08.12.2022

**Judgment on :** **16.12.2022**

**Ananya Bandyopadhyay, J. :-**

The instant revisional application under Section 482 of the Code of Criminal Procedure has been filed to quash the proceeding being B.G.R – 5945 of 2011 arising out of Budge Budge Police Station case no. 259 of 2011 dated 02.10.2011 pending before the Ld. 3rd Court, Alipore, 24 Parganas (South) under Section 188 of the Indian Penal Code read with Section 20 of West Bengal Inland Fisheries Act, 1984. The petitioner contends by virtue of three registered deed of conveyances being deed nos. 705 of 2011, 704 of 2011 and 702 of 2011 each dated 14.03.2011 property of land measuring about 216

decimals comprised in R.S. Dag No. 693, 694, 695, 696, 708 and 716 corresponding to L.R. Dag No. 881, 882, 883, 884, 898 and 909 recorded in L.R. Khatian No. 4410 and 4411 under Mouza Gurbakhta Nandanpur J.L. No. 8, being the part of holding no. 20 M.G. Road under ward no. 12 Budge Budge Municipality were purchased. Subsequently another Deed of Conveyance was registered through the office of the Additional District Sub-Registrar at Budge Budge, 24 Parganas (South), being Deed no. 760 of 2011 dated 18.03.2011 whereby the petitioner company purchased 3 decimals of land under R.S. Dag No. 708 corresponding to L.R. Dag No. 898 recorded in L.R. Khatian No. 2746 under Mouza Gurbakhta Nandanpur J.L. No. 8, being part of holding no. 20 M.G. Road under ward no. 12, Budge Budge Municipality. The aforesaid land purchased by the Company had been classified as “shali” (agricultural), “bastu” (homestead) and “bagan” (garden) as depicted in the records of rights issued by the concerned Block Lands and Land Reforms Department, Government of West Bengal. Subsequently the process of mutation was accomplished recording the name of the petitioner in Khatian no. 4610 at the concerned office of Block Lands and Land Reforms Officer.

The Chairperson of Budge Budge Municipality lodged a complaint being memo no. 1361 dated 01.10.2011 against the petitioner resulting in Budge Budge police station case no. 251 of 2011 dated 03.10.2011 (B.G.R no. 5945/11) implicating the petitioner company under Section 188 of the Indian Penal Code read with Section 20 of the West Bengal Inland Fisheries Act 1984. Investigation commenced and charge sheet was submitted on completion being

Budge Budge police station charge sheet no. 156/2012 dated 25.05.2012, owing to which cognizance of the aforesaid offences was taken by the Ld. Magistrate. The petitioner contended the absence of any water body or pond either physically, constructively or in records of the Department of the Government of West Bengal. The complaint against the petitioner company filed by the Chairperson of the Budge Budge Municipality as aforesaid was malicious and unjustified contravening the provisions of the West Bengal Inland Fisheries Act. The cognizance taken by the Ld. Magistrate was contrary to law and therefore not maintainable.

The Ld. Advocate for the petitioner submits that the Ld. Magistrate without considering the provisions under Section 22 of the West Bengal Inland Fisheries Act proceeded with the matter based on the charge sheet submitted as aforesaid disregarding the point of law not empowering him to take cognizance under the statute. Moreover, there was no existence of water body or pond on the aforesaid lands purchased by the petitioner company either physically or as delineated in the records maintained in the concerned department of Block Lands and Land Reforms, Government of West Bengal. The petitioner company should not be allowed to undergo the rigor and austerity of trial being falsely indicted in the offences mentioned above.

The Ld. Advocate for the state conceded to the submission of the Ld. Advocate for the petitioner emphasizing the materials in the case diary conspicuously stated the land purchased by the petitioner company to be shali,

bastu and bagan without any reference of the same being a water body or a pond. He further concurred it is apposite to mention that the Ld. Trial Court acted in contravention to Section 22 of the West Bengal Inland Fisheries Act.

The complaint addressed to the officer in charge, Budge Budge police station, Budge Budge, 24 Parganas (South) dated 01.10.2011 revealed the filling up of an authorized pond/tank/water body on R.S. Dag no. 693, 694, 965, 966, (L.R. Dag No. 881, 882, 883 and 884 under L.R. Khatian No. 4410 and 4411) R.S. Khatian No. 1434, under Mouja Garbhuata Nandanpur, J.L. No. 8, Budge Budge Dist. 24 - Parganas (South) i.e., land and pond by the side of Budge Budge Telephone Exchange in ward no. 12 within the jurisdiction of Budge Budge Municipality by Sri Manish Kakrania, proprietor of Smt. AVK Warehousing Pvt. Ltd. of 8/3, Rupchand Roy Street, Kolkata – 700007.

**Section 188** of the Indian Penal Code states as follows:

***“Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.***

***Explanation.— It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.***

***Illustration - An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.”***

**Section 22 of the West Bengal Inland Fisheries Act** states as follows:

***“No court shall take cognizance of any offence punishable under Cognizance this Act, save on complaint made by a fishery officer not below the rank of offences of a District Fishery Officer or a police-officer not below the rank of a Sub-Inspector.”***

A circumspection of the materials on record is in congruity with the fact that the land records in the name of the petitioner company did not signify an act to have been committed in disobedience to an order duly promulgated by the public servant. Since the land in question did not circumscribe a pond or tank or water body as per the official record mentioned above the filling of the same cannot be attributable to the petitioner company indicting the same. Moreover there is a legal bar in accordance to Section 22 of the aforesaid Act precluding any Court to take cognizance of any offence punishable under the West Bengal Inland Fisheries Act by any person other than exclusively on a complaint of a District Fishery Officer or a police officer not below the rank of a

sub inspector. The Chairperson of Budge Budge Municipality is neither a District Fishery Officer nor a police officer as enunciated under the said Act. The complaint lodged by him is without legal authority and cannot be allowed to be acted upon in order to prevent the process of abuse of the Court and to further secure the ends of justice.

This criminal revision application being CRR No. 3192 of 2013 is allowed.

The proceedings of B.G.R – 5945 of 2011 arising out of Budge Budge Police Station case no. 259 of 2011 dated 02.10.2011 pending before the Ld. 3rd Court, Alipore, 24 Parganas (South) under Section 188 of the Indian Penal Code read with Section 20 of West Bengal Inland Fisheries Act, 1984 is quashed.

Let the copy of this judgment be sent to the learned trial court as well as the police station concerned for necessary information and compliance.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

**(Ananya Bandyopadhyay, J.)**