

D/L 6
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C.R.A.(SB)152 of 2022

Bhola @ Bola Mondal @ Bholanath Mondal @ Bhola Mondal
Versus
The State of West Bengal

Mr. Arnab Chatterjee
...for the appellant.

Mr. Subrata Roy,
Ms. Sonail Das.
...for the State.

The subject matter of the present appeal relates to the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, 2nd Court, Bongaon, North 24 Parganas in Sessions Case No.308 of 2019 wherein the appellant was convicted under Sections 379/411 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.5,000/- in default to suffer rigorous imprisonment for another three months under Section 379 of the Indian Penal Code and also to undergo rigorous imprisonment for three years and to pay fine of Rs.5,000/- in default to suffer rigorous imprisonment another three months under Section 411 of the Indian Penal Code.

The genesis of the case was on the basis of a complaint lodged by Inspector Arun Kumar Mondal of BSF. The substance in the allegations were to the effect that on 28th June, 2014 on information received an Indian National namely, Bhola Mondal was apprehended and eight numbers of wild parrots near B.P. No.17/7s

were recovered from him. His movement was found to be suspicious and was trying to cross from Bangladesh to India. The charge in this case was framed under the provisions of Sections 413/414 of the Indian Penal Code and Section 11 of the Prevention of Cruelty to Animal Act.

Having considered the nature of the offence complained of, which is reflected in schedule IV serial no.50 refers in respect of the birds which have been seized. The charge-sheet was submitted under Sections 413/414 of the Indian Penal Code, Section 51 of the Wild Life Protection Act and Section 11 of the Prevention of Cruelty to Animal Act, 1960.

Section 51 (1—A) of the Wild Life Protection Act provides as follows:

“[(1-A) Any person who contravenes any provisions of Chapter V-A, shall be punishable with imprisonment for a term which shall not be less than [three years] but which may extend to seven years and also with fine which shall not be less than [ten] thousand rupees].”

So far as the substantive offence is concerned, 49-B (iv) *prima facie* do make out an offence under the Wild Life Protection Act, 1972 in respect of the factual circumstances of the case as allegedly projected by the prosecution.

Having regard to the purpose for which the present Act has been brought into force with necessary amendments, I am of the view that the learned trial court while refusing to frame charges under Section 51 of the Wild Life Protection Act should have

assigned reasons. The overall issues so canvassed in respect of the evidence do not inspire confidence of this Court as to why the charges were not framed. As such, this Court do not feel it fit and proper to appreciate the merits on the basis of evidence which has been adduced before the learned trial court and the finding which has been arrived at.

Learned trial court will freshly consider the aspect of the applicability of Wild Life Protection Act, see the possibility whether the charges can be framed under the said Act and if required adduce additional evidence along with the evidence which is already available on record, give sufficient opportunity to the appellant to rebut the prosecution case and then arrive at a fresh finding.

In view of the aforesaid observations, the judgment and order dated 23.09.2022 convicting the appellant under Sections 379/411 of the Indian Penal Code is hereby set aside. The case being Sessions Trial Case No.11(02) of 2020 is remanded back to the learned trial court. Learned trial court will cross-check the applicability of the Wild Life Protection Act and thereafter arrive at a fresh finding in the mode and manner as directed above.

With the aforesaid observations, CRA (SB) 152 of 2022 is disposed of.

Pending application, if any, is consequently disposed of.

The appellant is directed to apply before the learned trial court for furnishing a fresh bond, if required.

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

All parties shall act on the server copy of this order 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 compliance of all requisite formalities.

(Tirthankar Ghosh, J.)