

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(CRIMINAL REVISIONAL JURISDICTION)**

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 42 of 2022

***TANDRA PAL & ORS.
VS.
STATE OF WEST BENGAL & ANR.***

For the Petitioners	: Mr. Ayan Bhattacharyya, Adv. Mr. Arijit Ghosh, Adv. Mr. Arnab Saha, Adv. Mr. Suman Mazumdar, Adv. Mrs. Swarnali Ghosh, Adv. Mr. Sudhindra Das, Adv.
For the State	: Mr. Aditi Shankar Chakraborty, Ld. APP Mr. Arjun Chowdhury, Adv.
For the O.P. No. 2	: Mr. P.P. Sarkar, Adv. Mr. Sandip Guha Roy, Adv.
Hearing concluded on	: 1 st September, 2023
Judgement on	: 8 th September, 2023

Siddhartha Roy Chowdhury, J.:

1. This revisional application impeaches the proceeding being Kharibari Police Station Case No. 8 of 2022 dated 10th January, 2022 under Section 3(1)(f)(z) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, now pending as Special G.R. Case No. 2 of 2022 before the learned Special Judge, Additional District & Sessions Judge, 1st Court, Darjeeling.

2. Briefly stated, on 20th December, 2021, the Officer-in-charge of Kharibari Police Station received an information from one Dilip Oraon wherein it was alleged that in the year 1920 Lepa Oraon by his own effort cleared up forest land and started cultivating the same. The State of West Bengal recorded the subject plot of land in his name in the year 1952. After the death of said Lepa Oraon his son Khasru Oraon became the raiyat, who was subsequently misled and made to execute some illegal documents, whereby the directors of the Tirrihannath Company Limited took the illegal possession of the said plot of land in through a non registered agreement dated 15th February, 1996.
3. The said act was out and out illegal. Khasru Oraon after execution of the illegal document passed away. He was survived by his son Dilu Oraon, two daughters namely, Teppe Oraon and Sunita Oraon. On or about 1st February, 2021 Ringi Oraon transferred her share of land to her grandsons Dilip and Dipak vide registered deed of gift.
4. Stating from 1996 the subject plot of land in forceful and illegal occupation of the accused persons. The informant and his family members have been driven out of possession of the subject plot. Hence they are forced to take recourse of law.
5. The information since disclosed prima facie offence cognizable in nature Kharibari Police Station Case No. 8 of 2022 dated 10th January, 2022 was registered under Section (1)(f)(g)(z) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Sri

Achinta Ghosh, S.D.P.O. Naxalbari, Darjeeling was entrusted by the Superintendent of Police, Darjeeling to investigate into the case.

6. It is adverted by the petitioners that the directors of Tirrihannath Company Limited were appointed long after the alleged agreement by which possession of the land allegedly transferred in favour of the company.
7. Mr. Ayan Bhattacharyya, learned Counsel representing the petitioners submits that Ghanashyam Das Kankani was appointed as director on 2nd November, 2007 along with Umesh Kankani. Satish Jayant Mehta was appointed as director on 11th March, 2011 and Tandra Pal was appointed as director on 2nd November, 2020 while Piyush Jaju was appointed on 30th March, 2013. To buttress his submission Mr. Bhattacharyya relies upon the hard copy of Company Master Data demonstrating the respective dates of appointment of the petitioners as directors.
8. It is further contended that admittedly it was the grandfather of the de-facto complainant who transferred the possession of land in favour of company. In order to substantiate the allegation one has to prove that the accused persons who are admittedly not a members of scheduled castes or scheduled tribes – wrongfully occupies or cultivates any land, owned by or in the possession of or allotted to, or notified by any competent authority to be allotted to, a member of Scheduled Caste or Scheduled Tribe or gets such land transferred; and/or forces or causes a member of a Scheduled Caste or Scheduled Tribe to leave his house, village or other place of residence. It is

contended by Mr. Bhattacharyya that key expression in the statute that requires attention in order to press the provision of law into services is wrongfully.

9. It is not humanly possible for the grandson to say under what circumstances possession of the land was transferred in favour of company.
10. It is further adverted by Mr. Bhattacharyya that the case was registered against the directors. The company has not been arrayed as an accused. According to Mr. Bhattacharyya, it is no more res-integra that a criminal proceeding is not maintainable against the directors without arraying the company they run as an accused. Therefore, it is contended by Mr. Bhattacharyya that the criminal proceeding is not maintainable as against the petitioners and deserves to be quashed.
11. Refuting such contention of Mr. Bhattacharyya, Mr. P.P. Sarkar, learned Counsel for the opposite party no. 2 submits that under the West Bengal Land Reforms Act, without obtaining permission from the competent authority immovable property of any member of Scheduled Caste and Scheduled Tribe community transfer of such property is not permissible. The accused persons without obtaining any such permission when found to have been occupying the property owned by the predecessor-in-interest of the opposite party no. 2, there is every reason to presume that grandfather of the complaint Khasru Oraon was duped by the directors of the company, the accused persons and it was done wrongfully.

12. Mr. Aditi Shankar Chakraborty, Ld APP assisted by Mr. Arjun Chowdhury submits that after investigation the Investigating Authority has submitted charge sheet which demonstrates the existence of prima facie case committed by the petitioners. Therefore, the petition under Section 482 of the Code of Criminal Procedure cannot be held to have any merit for consideration. The proceeding cannot be said to be harrasive or malafide nor it can be said that it abuses the process of law. To buttress his point Mr. Chowdhury produces the charge sheet submitted by Achinta Ghosh, DSP and from the charge sheet I find that even in the charge sheet company has not been arrayed an accused.

13. The petitioners and one Vivek Bajoria have been arrayed as accused persons. To my surprise I further find that the Investigating Officer has quoted the judgement/ order passed by one of the Hon'ble Judges of this Hon'ble High Court in CRR 42 of 2002. It is something unprecedented as the judgement cannot be considered to be a piece of evidence that is required to be incorporated in the charge sheet.

14. Section 3(1)(f)(g)(z) envisages :-

3. Punishments for offences of atrocities – (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -

(a) xxxx (b) xxxx (c) xxxx (d) xxxx (e) xxxx

(f) wrongfully occupies or cultivates any land, owned by or in the possession of or allotted to, or notified by any competent authority to be allotted to, a member of Scheduled Caste or Scheduled Tribe or gets such land transferred;

(g) wrongfully dispossesses a member of a Scheduled Caste and Scheduled Tribe from his land or premises interferes with the employment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.

(h)xxxx (i)xxxx (j)xxxx (k)xxxx (l)xxxx (m) xxxx (n) xxxx (o) xxxx (p) xxxx (q) xxxx (r) xxxx (s) xxxx (t) xxxx (u)xxxx (v)xxxx (w)xxxx (x)xxxx (y) xxxx

(z) forces or causes a member of a Scheduled Caste or Scheduled Tribe to leave his house, village or other place of residence;

Provided that nothing contained in this clause shall apply to any action taken in discharge of a public duty;"

15. The explanation appended to the provision laid down in 3(g) says that for the purpose of clause (f) the expression 'wrongfully' includes (a) against the person's will; (b) without the person's consent; (c) with the consent of the person where such consent have been obtained by putting the person or any other person in whom the person is interested in fear of death or of hurt.
16. The allegation regarding commission of offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as has been disclosed by de-facto complainant, which has been endorsed by the Investigating Officer when considered from the point of view of human probability, it really becomes difficult to accept the proposition that accused persons are occupying the land owned by the predecessor-in-interest of the informant wrongfully for the simple reason that it is not possible for the grandson, after the demise of his

grandfather to come and say that possession of the land was taken against the will of the grandfather of the de-facto complainant namely, Khasru Oraon. It is equally not possible for the grandson to say that possession was obtained without the consent of his grandfather wrongfully.

17. In his written information Dilip Oraon stated that the possession of land was taken on the basis of an agreement dated 15th February, 1996, knowing fully well that the petitioner has got deed of gift executed by his mother in his favour only to make have the locus standi to file the complaint out a case.

18. Hon'ble Supreme Court in the case of **STANDARD CHARTERED BANK VS. DIRECTORATE OF ENFORCEMENT** reported in (2005) 4SCC 530 held :-

“6. There is no dispute that a company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the effect that corporations cannot commit a crime, the generally accepted modern rule is that except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agents.”

19. Hon'ble Apex Court in **MAKSUD SAIYED VS. STATE OF GUJARAT** reported in (2008) 5 SCC 668 held :-

“13. Where a jurisdiction is exercised on a complaint petition filed in terms of [Section 156\(3\)](#) or [Section 200](#) of the Code of Criminal Procedure, the Magistrate

is required to apply his mind. Indian Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.”

20. In the case of **SUNIL BHARATI MITTAL VS. CBI** reported in **(2015) 4 SCC 609** wherein Hon’ble Supreme Court held :-

“44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect.”

21. In my humble opinion, the entire proceeding is attended with malafide. The criminal proceeding, as I have already pointed out cannot continue against the directors in absence of the company or without the company being arrayed as an accused.
22. In the aforementioned facts and circumstances, I am inclined to invoke the provision of Section 482 of the Code of Criminal Procedure to quash the proceeding.

23. Let a copy of this judgement be sent down to the learned Trial Court for information and necessary compliance.
24. Urgent photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)