

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 18247 of 2024

Reserved on : 17.09.2024
Pronounced on: 04.10.2024

Ashok Kumar Samanta & Ors.

...Petitioners

-Vs-

State of West Bengal & Ors.

...Respondents

Present:-

Mr. Rajdeep Majumdar
Mr. Moyukh Mukherjee
Ms. Sagnika Banerjee

... for the petitioners

Mr. Amitesh Banerjee, Ld. SCC
Mr. Tarak Karan

... for the State

Mr. Achintya Banerjee
Mr. Barun Kumar Samanta

... for the respondent nos. 5 & 6

Rajarshi Bharadwaj, J:

1. The Learned Counsel for the Petitioners submits that Petitioner No. 1 is the elected Pradhan, and Petitioners Nos. 2 and 3 are elected members of the Haipur Gram Panchayat, Contai-I. An FIR was lodged by Respondent No. 5, leading to Contai Police Station case no. 418/2024 dated 2nd July 2024,

under Section 379 of the Indian Penal Code (IPC), alleging that on 25th June 2024, the petitioners, along with co-accused one Ananta Jana, unlawfully felled 65 Akashmoni trees worth Rs. 3,00,000 from the government land near Pachla Geria and Dakshin Chourai Kheya mouza.

2. Further, on 6th July 2024, an additional complaint was lodged by Respondent No. 6, Jaydeb Manna, alleging that the petitioners, along with the co-accused, unlawfully felled 80 trees from government land on 20th June 2024. Pursuant to this complaint, Contai Police Station Case No. 425/2024 was duly registered under Sections 379 and 120B of the Indian Penal Code.

3. The petitioners contend that even though the allegations were filed under Section 379 IPC, which is punishable by a term of lesser than seven years, the investigating agency did not follow the binding mandate of the Hon'ble Supreme Court in ***Arnesh Kumar v. State of Bihar*** reported in **(2014) 8 SCC 273**, which requires a notice under Section 41A CrPC (now under Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023) for offenses of this nature. Instead, the respondent authorities proceeded to arrest one of the co-accused, one Ananta Jana, on 3rd July 2024, without issuing the required notice. This failure to comply with due process indicates a deliberate attempt to implicate the petitioners unjustly.

4. After one Ananta Jana was granted bail on 8th July 2024, the police, in an apparent attempt to cover their procedural lapses, added Sections 120B, 406, 409, and 411 of the IPC on 9th July 2024, which entail higher punishments exceeding seven years. This belated addition of charges, after the bail was granted, further demonstrates the police authorities' overreach and ill-motivation in registering these cases, as also noted by the Learned Lower Court.

5. The petitioners further argue that the law governing offenses alleged prior to 1st July 2024 but registered after 1st July 2024 stipulates that such cases should be registered under the IPC, while the procedures to be followed

should align with the Bharatiya Nagarik Suraksha Sanhita, 2023. However, in both cases, the police authorities disregarded this mandate by not issuing the requisite notice under Section 35(3) of the BNSS, thus violating established legal precedents and guidelines.

6. The petitioners contend that the complaints were initiated by private individuals, despite the fact that the trees in question allegedly belonged to the government. As per established legal principles, it is the rightful owner of the property—in this case, the State authorities—that should have initiated the proceedings. Notably, the District Forest Officer, who would be the competent authority under the West Bengal Trees (Protection and Conservation in Non-Forest Areas) Act, 2006, has not lodged any complaint. The absence of action by the relevant State authorities raises doubts about the legitimacy of the FIRs.

7. Even if the allegations in both the complaints are accepted at face value, the essential elements required to constitute offenses under Sections 379, 406, and 409 IPC are not satisfied. The sine qua non for establishing an offense under Section 406/409 IPC is "entrustment," which involves the accused being entrusted with property or dominion over it. In the present case, there are no allegations that the petitioners were entrusted with the trees or any related property, thereby making the application of these sections inapplicable. Furthermore, the inconsistencies in the monetary value of the felled trees, as mentioned in the FIR, further cast doubt on the accuracy and credibility of the allegations.

8. As the allegations pertain to the felling of trees, the Learned Counsel for the petitioners argue that the investigation should have been conducted under the West Bengal Trees (Protection and Conservation in Non-Forest Areas) Act, 2006, which specifically governs such offenses. The failure of the investigating agency to invoke this special law, coupled with the omission of obtaining prior sanction from the State Government or the competent authority as required

under Section 12 of the said Act, renders the FIRs legally untenable. This selective application of the law further reinforces the contention that the petitioners are being unfairly targeted.

9. In light of the submissions made, including the non-compliance with procedural mandates, the failure to follow the special legislation in place for tree-related offenses, and the lack of locus standi of the complainant, the petitioners submit that the FIRs are not maintainable and respectfully urged this Court to quash the FIRs and grant appropriate relief to the petitioners.

10. Mr. Amitesh Banerjee, Learned Senior Standing Counsel appearing for the State, submits that on 2nd July 2024, one Nantu Kumar Maity (Respondent No. 5) lodged a complaint at Contai Police Station against Petitioners Nos. 1, 3, and Ananta Jana, alleging that on 25th June 2024, they felled 65 Akashmoni trees from government land at Kanchlageria and Dakshin Charaikheya mouza for their wrongful gain. On the basis of this complaint, Contai PS Case No. 418/24 was registered under Section 379 IPC.

11. The Investigating Officer (hereinafter referred to as the 'IO') visited the site, examined local witnesses, and recorded their statements, which implicated the accused. To prevent further offenses and ensure a proper investigation, the Investigating officer arrested one Ananta Jana on 3rd July 2024. The court granted five days of police custody after a hearing.

12. Based on the statements of one Ananta Jana, 42 tree logs were recovered from the house of one Rafijul Saha. This recovery was videographed as per Section 105 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. The IO also inquired about any Gram Panchayat resolutions permitting the tree felling but found no such authorization.

13. On 6th July 2024, another complaint was lodged by Jaydeb Manna herein the Respondent no.6, alleging that the accused, including the petitioners, felled 80 trees from government land on 20th June 2024. Contai PS Case No. 425/24 was registered under Sections 379 and 120B IPC.

14. The State respectfully submits that while the FIRs were initially registered under the provisions of the Indian Penal Code (IPC), the investigation has been conducted in accordance with the provisions of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which replaced the old procedural laws effective from 1st July 2024. This transition is evident from the fact that the raid carried out during the investigation was duly video recorded, in compliance with Section 105 of the BNSS, 2023.

15. Furthermore, the State emphasizes that the arrest of the accused, one Ananta Jana, was lawful and in line with the judgment in *Arnesh Kumar (Supra)*. As per the guidelines set forth by the Hon'ble Supreme Court, there is no absolute bar on arresting an accused in cases where the punishment is less than seven years. The Investigating Officer has the discretion to make an arrest if the grounds, as outlined in the statutory checklist, are met. In this case, the arrest was necessary to prevent further offenses and ensure proper investigation, as the circumstances warranted.

16. It is also submitted that the case does not meet the conditions laid down in ***State of Haryana v. Bhajanlal*** reported in ***AIR 1992 SC 604***, particularly the grounds mentioned in paragraph 108 of the judgment, which delineate situations where an FIR can be quashed. The procedural conduct of the authorities in this case was in strict conformity with the law, and the initiation of the cases under the IPC, followed by the investigation under the BNSS, 2023, is valid and legally sustainable. The FIRs were filed appropriately, and the investigation continues in line with the relevant legal frameworks, thus justifying the actions of the State authorities.

17. Learned counsel for the private respondent no. 5 and 6 submits that the writ petitioner no. 1 is the elected Pradhan, and respondents nos. 2 and 3 are the elected members of the Haipur Gram Panchayat, Contai-I Block. A complaint of theft of government property, specifically trees planted by the government, was lodged by respondents nos. 5 and 6. Initially, the police

registered an FIR under Section 379 of the IPC. Later, Sections 120B, 406, 409, and 411 were added. The petitioners have approached this Hon'ble Court for quashing the FIR.

18. It is further submitted that the Hon'ble Court posed two questions, firstly, whether the new criminal laws apply, given the timing of the alleged offence and complaint and secondly, whether criminal proceedings are maintainable under the West Bengal (Protection and Conservation in Non-Forest Areas) Act, 2006. The Allahabad High Court in an unreported judgment (Criminal Misc. Writ Petition no. 12287 of 2024) in **Deepu and others v. State of U.P and others** has clarified that complaints may be lodged under the old law, but proceedings would continue under the new law.

19. The offence involves theft of government property and the petitioners, as public servants, have breached their duty to protect government assets. The alleged actions are criminal in nature and must be prosecuted under applicable criminal laws. The petitioners cannot be shielded under the Bhajan Lal case. Thus, the writ petition is premature and should be dismissed.

20. Heard the Learned Counsel for the parties at length.

21. On perusal of the documents brought before this Court and considering the submission made on behalf of the parties, it is observed that the alleged offense occurred before the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 came into effect, i.e., on 1st July 2024. However, the procedural laws under the BNSS, 2023 are applicable as the investigation commenced after its enactment. This transition does not invalidate the FIR or the investigative actions taken thereafter. The contention by the petitioners that procedural irregularities exist due to this transition lacks merit. The State has adequately adhered to the procedural norms under the BNSS, 2023. It has been further held by the Allahabad High Court in **Deepu (supra)** that:

“16. The law regarding effect of repealing the IPC and Cr.P.C. by BNS and BNSS respectively and same is being mentioned as below:

(i) If an FIR is registered on or after 1.7.2024 for the offence committed prior to 1.7.2024, then FIR would be registered under the provisions of IPC but the investigation will continue as per BNSS, 2023”

22. The arrest of the co-accused, one Ananta Jana, was carried out lawfully and in compliance with the Supreme Court's ruling in **Arnesh Kumar (supra)**. The investigating agency exercised its discretion appropriately, finding sufficient grounds for the arrest to prevent further offenses and presented statutory checklist before the learned Magistrate. The absence of a Section 41A Cr.P.C (now under Section 35(3) BNSS) notice, as claimed by the petitioners, does not render the investigation unlawful.

23. This Court finds that the FIRs were filed lawfully under the Indian Penal Code (IPC) and that the subsequent investigation, incorporating the provisions of BNSS, 2023, was procedurally sound. The petitioners have failed to establish any valid grounds for quashing the FIR under the principles established in **Bhajanlal's case (supra)**. The grounds presented by the petitioners do not meet the stringent conditions laid down for quashing an FIR.

24. While the petitioners argue that the offense of felling trees should have been prosecuted under the West Bengal Trees (Protection and Conservation in Non-Forest Areas) Act, 2006, this special law does not preclude the prosecution of theft under the IPC. The court does not find any procedural requirement that the FIR be limited to this special law. Specially, when section 22 of the West Bengal Trees (Protection and Conservation in Non-Forest Areas) Act, 2006 states that:

“22. Provision of this Act to be in addition to other Law-

The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force prohibiting or regulating the felling of trees.”

Moreover, the absence of a complaint by the District Forest Officer does not invalidate the private complainants' *locus standi*, as the offense involved public property.

25. The petitioners, holding public office, have been implicated in the theft of government property. The allegations of felling trees without authorization, supported by witness statements and recovery of stolen property, are sufficient to substantiate the registration of FIRs. This Court finds no procedural or legal irregularities warranting intervention at this stage. The investigation must proceed under the applicable criminal laws.

26. The petitioners' plea for quashing the FIR is deemed premature, as the investigation is ongoing and there are no exceptional circumstances justifying intervention at this stage. Judicial interference in the investigative process should be limited to rare cases where fundamental rights or legal procedures are blatantly violated.

27. For the forgoing reasons, WPA 18247 of 2024 is found to be devoid of any merit and are accordingly dismissed.

28. All parties shall act on the server copy of this order duly obtained from the official website of this Court.

(RAJARSHI BHARADWAJ, J)

Kolkata

04.10.2024

PA (BS)