

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 3531 of 2022

Liton Rakhit

Versus

Jagannath Mondal & Anr.

For the petitioner	:	Mr. Sabir Ahmed Mr. Dhiman Banerjee Mr. Ezaz Ahmed
For the Opposite Parties	:	Mr. Prantick ghosh Ms. Neha Roy
For the State	:	Mr. Suman De Ms. Rita Dutta
Heard on	:	25.11.2024
Judgment on	:	13.12.2024

Dr. Ajoy Kumar Mukherjee , J.:

1. The petitioner prayed for quashing of the proceeding being complaint case no. 323 of 2021 under section 379/506 IPC, read with section 11 of the West Bengal Trees (protection and conservation in forest area) Act, 2006 (in short Act of 2006) pending before learned Judicial Magistrate Basirhat.

2. The petitioner was posted as officer in charge of Hingalganj police station at the relevant period. He has been implicated with the aforesaid criminal proceeding, on the basis of complaint lodged by opposite party

no.2 herein, wherein it has been alleged that on 11.08.2021 and 12.08.2021, the petitioner has sold out 10/11 number of big trees and misappropriated money without any authority, taking advantage of his official position. It has been further alleged that the petitioner/accused persons sold the valuable trees without prior approval of the concerned authority at a valuable consideration and thereby mis-appropriated the sale proceeds for their personal wrongful gain.

3. Being aggrieved by the said proceeding, Mr. Ahmed on behalf of petitioner submits that the Hingalganj area suffered huge cyclone on July 27, 2021 evening and about 10 large trees were uprooted, which were planted inside the Hingalganj police station compound. He further submits that when the trees were uprooted it caused blockage of the road inside Hingalganj police station compound and for which daily works and movement of the police vehicle as well as pedestrians were facing much problem. Accordingly the petitioner immediately after such natural calamity informed by a letter to his superior officer, including Superintendent of Basirhat police district, who informed the petitioner to remove those uprooted trees for smooth functioning of the police administration and accordingly petitioner arranged for removal of those trees. Petitioner also immediately informed the District Divisional Forest officer on August, 13th intimating the inconveniences caused due to fallen of trees within the police station compound causing hindrance in free movement. Thereafter the uprooted trees were cut down and were kept inside the Hingalganj Police Station compound and they have also planned for planting new plants as restoration process for greenery of the Hingalganj police station

compound. It is further submitted that the copy of aforesaid letter was also forwarded to the Range Officer of Rampura Social Forest Range. Thereafter the petitioner also wrote a letter on August, 27th 2021 to the Divisional Forest Officer, requesting the said authority for valuation of the trees giving details of the trees fallen due to tornado on 27th July, 2021. He also submits that he informed the range officer for valuation of the trees and it was also informed that living trees were not cut down and even the trunks/branches are kept within the police station compound and there is a chance of degradation due to natural wear and tear and it requires for auction sale as per Government Rules and thereby he requested the Range Officer by a letter dated September, 24, 2021 to evaluate the trunks and to take necessary action for auctioning the same. However, the Forest Department did not take any step and the trunks are lying within the Police Station compound. Thereafter the petitioner was transferred from Hingalanganj police station on November, 18, 2021 and thereafter joined in his new place of positing.

4. Mr. Ahmed on behalf of the petitioner further submits that the learned Magistrate while issuing process against the petitioner raised an issue of taking sanction as required under section 197 of the Code before initiation of such proceeding but has misdirected himself and without considering the proposition of law, has mechanically issued the summons to the petitioner.

5. He further submits that due to personal grudge the opposite party no.2 being a local influential political person, to fulfill his personal vendetta has lodged the present complaint against the present petitioner. Previously

on the basis of the complaint lodged by one Moyna Bibi, the opposite party no.2/complainant herein was made an accused and the petitioner herein being the officer-in-charge of the police station investigated the offence and found involvement of the opposite party no.2 being Hingalganj police station Case no. 71 of 2021 dated 18.04.2021. Petitioner's specific case is that instant criminal proceeding has been attended with malafides with an ulterior motive for wrecking vengeance with a view to spite the petitioner due to private and personal grudge as above.

6. Mr. Ahmed further submits that an inquiry ought to have conducted by the Magistrate under section 202 of the Code and in the event of making such enquiry, the fact of discharging petitioner's official duty and that the immediate intimation of falling of the trees to his superior officer and also to the forest department would have been surfaced. Had there been any order of inquiry by the Magistrate, the fact ought to have been surfaced that the petitioner in discharge of his official duty and for the purpose of smooth functioning of police has acted in discharge of his official duty and had not sold out the fallen trees and the said trunks are kept in the P.S compound. He further submits that complaint even if taken in its entirety, does not disclose any cognizable offence against the present petitioner. He further submits that the petitioner while in his official duty was the custodian of the trees and he cannot be said to have stolen the property, which he himself is the custodian by virtue of his official capacity and as such the basic ingredients of Section 379 of IPC have not been made out in the present context. Moreover, the proceeding is also barred

under section 197 and section 202 of the Code and as such the petitioner has prayed for quashing of the impugned proceeding.

7. Mr. Ghosh learned Counsel appearing on behalf of the opposite party/complainant submits that the allegation against the present petitioner does not come within the ambit of section 197 of the code because commission of theft must not come within the meaning of “acting in the discharge of his official duty” by a public officer and as such sanction is not required in the present context. Though petitioner has argued that the opposite party no.1/complainant has no locus to file the present case but he being the local inhabitant has every right to protect the public property against any crime. It is further argued that the petitioner has not supported his contention by placing any government notification that before or at the time of commission of offence there was any natural calamity.

8. Mr. Ghosh further argued that the complaint prima facie discloses cognizable offence and as such exercise of power under section 482 for quashing of the complaint is not permissible. The authenticity, propriety and legality of the offence has to be adjudged upon recording evidence by the learned Trial Court. The complainant also expressed doubt about the authenticity of the letter dated 9th September 2024 issued by Divisional Forest Officer about the e-auction because the said report does not specify what property was put under e-auction and who was the auction bidder, what was the reserve price and who was the successful bidder. Therefore, the report submitted by the opposite party 2 herein is attended with suspicious circumstances. A full-fledged trial is required to examine

officials of the Forest Department to ascertain whether the valuable trees were put under e-auction or not. Since the allegation made herein clearly constitutes a cognizable offence, so it does not call for the exercise of extraordinary jurisdiction of the High Court to quash the complaint and as such he prayed for dismissal of the instant Application.

9. I have considered submissions made by both the parties.

10. In the present case it appears that process against the petitioner was issued for commission of offence under section 11 of the West Bengal Tree (protection and conservation in non forest areas) Act, 2006 and also under section 379 and 506 of IPC.

11. Section 4 of the Act of 2006 states that no person

(a) Shall fell any tree in the non-forest area

(b) Cut remove or otherwise dispose of any tree other than a tree which has felled without the aid of human agency

12. Section 11 of the Act of 2006 provides

11.(1) whoever fells or causes to be felled any tree or cuts, uproots or otherwise disposes of any fallen tree, in contravention of the provisions of section 4, or contravenes any condition of any permission granted under this Act, shall be punished with imprisonment which may extend to one year or with fine which may extend to five thousand rupees or with both and until the plantation of requisite number of trees are undertaken, shall be fined for each day of default of fifty rupees.

(2) if any person, or development agency or the benevolent activists, or the entrepreneur of the promoter, as the case may be, fails to implement the plantation plan as approved under sub-section (4) of section 9, shall be punished with imprisonment which may extend to two years or with fine which may extend to ten thousand rupees or with both.

13. However, section 12 of the said Act reads as follows:-

“No prosecution shall be instituted against any person in respect of any offence under this Act without the previous sanction of the State Government or such officer or authority as may be authorised by the State Government by order in writing in this behalf.”

Admittedly in the present case no previous sanction of the State Government has been taken.

14. Now so far as section 379 of IPC is concerned it is not required to be reiterated that the essential ingredients are

- (i) The accused removed the movable property.
- (ii) He removed it out of possession of another person without his consent.
- (iii) He did so with a dishonest intention.

15. In the present context it is not in dispute that at the relevant point of time the petitioner being inspector of police was posted as officer-in-charge Hingalganj police station. The petitioner's specific case is that on 27.07.2021 cyclone hit the Hingalganj area and 10 trees were uprooted which caused road blocked and caused hindrance in daily works and he immediately reported the matter to the superintendent of police who instructed to remove those fallen trees and thereafter he also informed the Divisional Forest Officer on 13.08.2021. In the said letter addressed to the Divisional Forest Officer, petitioner has clearly mentioned about the natural calamity for which ten large trees were uprooted and he also mentioned in the said letter that the said trees were planted inside Hingalganj P.S. compound which is under the control of Superintendent of Police and he also mentioned in the said letter that those uprooted trees are causing blockade of pathway inside P.S. compound, and interruption of daily movement of police personal and the public.

16. Petitioner in support of his contention annexed the following documents as annexure with the present Application:-

- (i) Letter by petitioner about cutting down trees addressed to Divisional Forest Officer dated 13.08.2021, copy to Range officer, marked annexure P-2.
- (ii) Letter addressed to Divisional Forest Officer to evaluate the trunks of trees already cut down with details of trees dated 27.08.2021 by the petitioner marked annexure P-3.
- (iii) Letter by petitioner dated 27.09.2024 addressed to Range Officer informing about planning for new plantation and that trunks has to be auctioned as per Government Rules marked as annexure P-4.

17. It appears from annexure P-3 that the petitioner had written a letter to the Divisional Forest Officer mentioning details of the uprooted trees which caused interruption of daily movement and by that letter he also made a request to cut those trees to clear the pathways and for restoration of free movement of men and vehicle. In the said letter it has also been mentioned that those fallen trees have been cut down and kept aside in P.S. compound and it was also mentioned that no living tree has been cut down and they are planning to plant new plants as restoration process of greenery of Hingalganj P.S. compound. The concerned forest officer received said letter on 31st August, 2021. Thereafter another letter was sent to the Range Officer, Rampura Social Range marked as annexure P-4, wherein also the same request was made stating that the said properties are required to be auctioned as per Government Rules. It further appears that another correspondence was made in between the officer in charge and the

Divisional Forest Officer dated 09.09.2024 where the concerned police officers were reminded about the process of e-auction.

18. It appears from the order impugned being order no.1 dated 07.09.21 that immediately after receipt of complaint Magistrate took cognizance of the offence. Thereafter on 20.11.2021, he recorded initial deposition of complainant Jaganath Mondal and on the next date he held that prima facie case under section 379/506 IPC read with Section 11 of the Act of 2006 have been made out against the accused person.

19. Before issuing process learned Magistrate ought to have inquired about the allegations levelled in the complaint. While saying so I am conscious about the settled law that while dealing with an application under section 482 of the Code the High Court is not required to deal with the annexure filed by the accused/petitioner except in exceptional circumstances where complaint prima facie discloses offence against the petitioner. However, it is also settled proposition of law that it is the duty of magistrate, receiving a complaint to find out, if there is any matter which calls for investigation by a criminal court (though the scope of inquiry under this section is restricted) to find out the truth or otherwise of the allegations made in the complaint, in order to determine whether process has to be issued or not. In other words investigation under section 202 Cr.P.C. is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further.

20. In the present context when the complaint was lodged under section 11 of the Act of 2006 as well as section 379 and 506 of IPC alleging that a government official has committed theft in respect of a property in respect

of which he is the official custodian, the concerned magistrate before issuing process under section 204 of the Cr.P.C. ought to have conducted an inquiry following the provision laid down in section 202 of the code of Criminal Procedure to inspect veracity of the allegation from the documents available in the office Registers. Instead of that without recording, even prima facie satisfaction about commission of offence, either under the provision of the Act of 2006 or under the provision of the Indian penal Code, the court below mechanically issued process against the accused persons, which in my considered opinion, is bad in law.

21. In such view of the matter the order dated 22.11.2021 and all subsequent orders are hereby quashed. Ld. Magistrate is directed to take up the matter afresh for making inquiry into the case from official documents and/or otherwise in accordance with section 202 either by himself or by such other person as he thinks fit, for deciding whether or not there is sufficient ground for proceeding and thereafter to pass fresh order in accordance with law preferably within a period of four weeks from the date of communication of this order.

22. CRR 3531 of 2022 accordingly disposed of.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)