

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4048 OF 2022

Murlidhar Narayan Kachare

...Petitioner

Versus

The State Of Maharashtra And Anr

...Respondent

Mr.Siddhesh Pilankar i/by Mr. Uday P. Warunjikar Advocate for
Petitioner.

Ms. Leena Patil i/by Mrs. Manisha Jagtap Advocate for
Respondent No.2.

Mr. Y. Y. Dabake, APP for Respondent-State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 4th JANUARY, 2024

P.C.:-

1. The petitioner challenges the order issuing process dated 31st August 2019 passed by learned JMFC (PMC) Court, Pune for offence punishable under Section 8(1) read with 21 (1) of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975.

2. The complaint was filed by Respondent No.2. It is alleged that without prior permission of competent authority and without any reasonable cause, the accused cut down tree Pichkari from the surface of the earth at survey No.3, A/1, Apang Kalyankari Shikshan Sanstha and Sanshyodhan Kendra, Wanawadi, Pune.

3. Learned Advocate for the petitioner submitted that, the petitioner is senior citizen and Advocate by profession. He is the social worker. He worked for the welfare of the differently abled students. He is the chairman

of the trust being the Society for the welfare of the differently abled persons (physically handicapped) Education and Research Centre, Wanwadi, Pune. There was a tree pichkari which was about 7 to 8 years old. Due to rainstorms and winds, the tree had partially been damaged. On 19th August 2018, the petitioner informed the Respondent No.2 about the tree and requested to take appropriate steps as the same can be dangerous to the handicapped students around the campus. However no action was initiated by Respondent No.2. On 27th August 2018 it was found that someone trespassed in the campus and cut the tree and took it away. On 5th September 2018 the petitioner made representation to Respondent No.1 Wanwadi Bazaar Police Station to take necessary action against the culprit who had trespassed and by cutting the said tree and took it away from the compound of the petitioner. Petitioner received show cause notice dated 1st October 2018 from Respondent No.2 thereby fixing the liability of the tree cutting upon the petitioner under Section 8 (1) of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act. The Secretary of the Institute has reply dated 15th October 2018 and clarified that the institute of the petitioner is not responsible for tree cutting. No action was initiated against the culprit. Another show cause notice was issued against the petitioner which was also replied on 20th August 2019. It is submitted that the trial Court has mechanically issued process. There is no evidence to show that the petitioner was responsible for cutting tree.

4. Learned Advocate for Respondent No.2 submitted that, complaint alleges fact that the tree was cut and the petitioner has been charged for the offence under Sections 8 (1) and 21(1) of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1985.

5. Perused the complaint, order issuing process and the documents annexed to this petition. It is evident that the petitioner has brought to the notice of the respondent that, the tree is in danger condition and steps are required to be taken. The complaint was also made to the police that someone had trespassed and took away the tree after cutting. The petitioner is not responsible for cutting tree. The show cause notice issued by respondent No.2 was replied by petitioner. No case was made out for issuing process against petitioner for offences.

ORDER

- (i) Criminal Writ Petition No. 4048 of 2022 is allowed.
- (ii) Order issuing process dated 31st August 2019 passed by learned JMFC (PMC Court, Pune) for offence punishable under Section 8(1) read with 21 (1) of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 and proceedings in Summary Criminal Case No. 11 of 2019 are quashed and set aside.
- (iii) Writ Petition stands disposed off.

(PRAKASH D. NAIK, J.)