

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS).

CRR NO.1088 of 2023

**PARVEJ ANAM
VS.
THE STATE OF WEST BENGAL & ORS.**

**For the Petitioner : Mr. Tapan Dutta Gupta, Adv.,
Mr. Sayantan Hazra, Adv.,
Ms. Rituparna Ghosh, Adv.,
Mr. Sourav Sardar, Adv.**

**For the O.P. NO.1 : Mr. Debasish Roy, learned Public Prosecutor,
Ms. Rituparna De Ghose, Adv.,
Mr. Bikram Mitra, Adv.**

For the O.P. No.2 : Mr. Kusal Kumar Mukherjee, Adv.

Last heard on : 03-12-2025

Judgement on : 03-12-2025

Uploaded on : 05.12.2025

CHAITALI CHATTERJEE (DAS), J. :-

1. This revisional application under Section 482 of the Code of Criminal Procedure filed by the petitioner is for quashing of the FIR and the proceeding thereof being A.C.G.R. No.5093 of 2022 arising out of Haridevpur Police Station Case No.345 of 2022 dated 12-11-2022 under Section 11 of the West Bengal Trees (Protections and Conservation in Non Forest Areas) Act, pending in the Court of learned Additional Chief Judicial Magistrate, South 24 Parganas, Alipore.
2. It is the case of the petitioner that on the basis of a complaint lodged by the Executive Engineer (Civil), Parks and Squares Department, Kolkata Municipal Corporation before the Officer-in-Charge, Haridevpur Police Station, a case has been initiated against the present petitioner when no direct evidence is there against him. He has been false implicated and all the allegations levelled against him are false and concocted. That apart, there is procedural lacuna for which this FIR is not maintainable on the face of it.
3. It is submitted on behalf of the petitioner that in Section 12 of West Bengal Act X of 2006, that is, the West Bengal Trees (Protection and Conservation in Non Forest Areas) Act, 2006, it is specifically mentioned 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 authorized by the State Government by order in writing in this behalf. No such order can be found before lodging of the complaint and, therefore, this prosecution case cannot be proceeded with. That apart, in terms of the Act X of 2006, for violation of any offence committed therein, the punishment is only up to one year with fine. Therefore, pursuant to Section

155(2) of the Code of Criminal Procedure/Section 174(2) BNSS, no police officer shall investigate a non-cognizable case without an order of the Magistrate having power to try the said case or commit the case for trial. In this case, no such sanction was obtained and, therefore, this proceeding is liable to be quashed.

4. It is further submitted on behalf of the petitioner that in terms of Section 3(3) of Act X of 2006, the definition of “feeling of tree” does not consider cutting of the branches as happened in this case. In this case, the complaint lodged before the police officer where it is said that cutting of some branches of different sizes at different places devoid permission of departmental sanction of the concerned authority, does not come under the purview of such provision of Act X of 2006.
5. Learned advocate for the petitioner has relied upon a decision reported in ***(Harilal Shaw Vs. State of West Bengal) and another***¹ decision reported in ***(Badal Adhikary & Ors. Vs. Swapan Adhikary & Anr.)***² in order to substantiate that if a mandatory provision of law is not complied with, then the act complained of has to be struck down.
6. Learned advocate appearing on behalf of the opposite party no.2 raises objection and submits that after compliance of the procedure, the complainant being the Executive Engineer (Civil), Parks and Square Department, KMC, lodged the said complaint as he received the information or complaint from the

¹ 1985 (I) CHN 250

² 2001 C.Cr.L.R.(Cal) 97

Secretary of the Cooperative Housing Society. He also submits that the investigation is at a very nascent stage.

7. The learned prosecution, on the other hand, submits that in terms of Section 3(2) of the said Act, “competent authority” means an authority appointed by the State Government, by notification, to perform the duties and exercise the powers conferred upon a competent authority under this Act and the Parks and Square Department of KMC is the competent authority by virtue of a notification and is exercising such power. Therefore, since the complaint was lodged by the Executive Engineer of that department being the competent authority, the same is well within the power of the authority and compliance of Section 3(2) is duly made. It is, also submitted that the complaint alleges cutting of heads of the trees and therefore, it squarely comes under Section 3(3) of the said Act of X of 2006. However, it is candidly submitted by the learned prosecution that nothing can be found from the Case Diary that any sanction was obtained in terms of Section 155(2) of the Code of Criminal Procedure corresponding to Section 174(2) of BNSS 2023.

8. Heard the submissions advanced by learned advocates for the parties. The matter pertains to a complaint lodged by the Executive Engineer (Civil), Parks and Square Department, KMC on receiving a complaint from one Sukanta Mukherjee, Secretary, Thakurpukur Co-Operative Housing Society Ltd. alleging that incident of unlawful activities of cutting trees by the petitioner has happened and it was found that on 22nd October, 2022, four small tress (two guava trees, one small jhau tree and one mango tree) found with their

heads cut-off and also some branches of different sizes heaped at adjacent places without any permission from the Parks and Square Department, KMC.

On the basis of which Haridevpur police station case was initiated.

9. On perusal of the decisions as relied upon by the learned advocate representing the petitioner in **Harilal Shaw Vs. State of West Bengal (supra)**, it was held that one a provision of law is held to be mandatory, any question of prejudice of the accused also cannot arise as the same is irrelevant for the purpose. It was further held that if a mandatory provision of law is not complied with, then the act complaint of has to be struck down irrespective of any question of prejudice. In the said case, there was violation of mandatory provision of Section 155 (2) of the Code which relates to Sections 113 and 114 of the Motor Vehicles Act respectively.

10. In the case of **Badal Adhikary & Ors. Vs. Swapan Adhikary & Anr. (supra)**, it was held by a coordinate Bench of this Court that in case of non-cognizable case, investigation by the police without prior requisite permission from the Magistrate is a non-compliance of mandatory provision that was not considered by the Magistrate while refusing to allow the prayer for discharge suffers from serious illegality. In the said case, against an order of refusal to discharge, petition in a non-cognizable case under Section 323 IPC was filed before the Court.

11. In this case on completion of investigation the chargesheet has been submitted and the aforesaid factual matrix suggest the undisputed incident of cutting trees took place within the said housing complex and on the basis of

the specific complaint lodged by the Secretary of that complex, the said complaint was filed by the Executive Engineer (Civil), Parks and Square Department, KMC. However, it is also apparent that the offence is a non-cognizable offence and the mandatory provision which is to be followed in case of non-cognizable offence in terms of Section 174(2) of BNSS has not been followed and in terms of the decision relied upon, this Court is also of the view that in case of violation of any such provision, the case should not be allowed to be proceeded with and if it is allowed to be proceeded with, it will be a gross abuse of the process of law. So far the point raised regarding compliance of section 12 of the Act since the complaint was lodged by the Executive Engineer himself of parks and square department, it is covered and prima facie no such irregularities can be found. The allegation was not only cutting of branches but cutting of head of the trees and that squarely attracts section 3 (3) of the Act X of 2006.

12. Therefore, there though certain materials were found against the petitioner but on account of non-compliance of mandatory provision of Section 174(2) of BNSS and in view of the observation of the co-ordinate Benches this court is of the view that the proceeding is liable to be quashed and if it is allowed to be continued it would be the abuse of the process of law.

13. This Court is also conscious of the importance of the environmental conservation and suggest that the complaint regarding tree cutting should lead to efforts to maintain ecological balance .Planting more trees can help offset the damage and promote sustainability. Therefore as the complaint was

lodged regarding cutting of trees direction is given to the petitioner to plant at least 4 trees and while doing so he can take the assistance of the Secretary of the society and can work together to plant more trees and promote environmental conservation .

14. For that reason, the complaint as filed by the opposite party no.2 is quashed but this Court gives further direction to the Secretary of the said Housing Society to plant further trees and the present petitioner is also directed to fully cooperate with the Secretary and to assist him in planting of at least four trees within the said Housing Complex which would otherwise inure benefit for the residents of the said complex.
15. Accordingly, this revisional application stands allowed and the impugned proceeding being ACGR No.5093 of 2022 arising out of Haridevpur Police Station Case No.345 of 2022 dated 12-11-2022 is hereby quashed.
16. All parties shall act on the server copies of this order duly downloaded from the official website of this Court.
17. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]