

Sukanta Ghosh Vs. State

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Court : Kolkata

Decided On : Sep-05-2003

Reported in : 2004(1)CHN427

Judge : Pradip Kumar Biswas, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 401 and 482

Appeal No. : C.R.R. No. 2807 of 2002

Appellant : Sukanta Ghosh

Respondent : State

Advocate for Def. : Kasem Ali Ahmed, Adv.

Advocate for Pet/Ap. : Subhashis Pachhal, Adv.

Judgement :

Pradip Kumar Biswas, J.

1. Parties are present before me and heard them.

2. This is an application under Section 401 read with Section 482 of the Code of Criminal Procedure filed at the instance of Sukanta Ghosh, the petitioner herein, seeking to quash the chargesheet No. 75 dated 17.4.2000 submitted in connection with G. R. Case No. 437/2000 arising out of Shibpur P. S. Case No.53/2000 dated

16.3.2000 under Section 277/278/34 of the Indian Penal Code and Section 52 of the West Bengal Town and Country (Planning and Development) Act, 1979.

3. The short facts leading to the filing of this revisional application are as under : --

The father of the petitioner in the year 1998 purchased a plot of land from one Smt. Durgarani Debi and others by a registered deed of Conveyance measuring about two cottahs together with the structure thereon and after the purchase of the said plot of land, the father of the petitioner duly made an application before the statutory authority to record his name in place of original vendor from whom the property has been purchased.

4. According to the petitioner, the aforesaid land is a Bastu land and there was no existence of pond on the said land. It has further been alleged that the petitioner made an application for sanctioning building plan for the proposed construction on the said plot of land before the Howrah Municipal Corporation and upon acceptance of the necessary premium, the Municipal authority has duly sanctioned the building plan on the said plot of land.

5. It has also been alleged that following a judgment passed by this Hon'ble Court dealing with the environmental matters, upon misconception of fact, the instant case has been started against the present petitioner and upon a perfunctory investigation, the police authority has submitted a chargesheet against the present petitioner for which the petitioner has come up before this forum seeking for quashing of the aforesaid chargesheet.

6. This prayer, however, has been opposed by the learned Advocate appearing for the State alleging that the chargesheet and accompanied materials do make out a prima facie case against the present petitioner and as such this is not a stage where the Court should embark upon any sort of enquiry with a view to finding out the fact as to whether there was a pond or otherwise. Bastu land as claimed by the petitioner and according to the learned Advocate appearing for the State as per the settled position of law, the quashing of the investigational proceeding or the chargesheet may only be made in the rarest of rare cases and the present one being not of that kind, such quashing is not possible. Hence, he prayed for

rejection of this application.

7. I have given my anxious consideration with regard to the submissions made by the parties. True it is that in an appropriate case, this Court retains a plenary power to quash a proceeding or chargesheet if it appears to the Court that the continuation of any criminal proceeding on the strength of such chargesheet and/or FIR would be an abuse of the process of the Court and the Court may also quash such a case or chargesheet if it appears to the Court to be essential for the ends of justice. But it is also equally settled position of law that in doing so, the Court is not entitled to embark upon any sort of enquiry for the purpose of ascertaining the fact that whether or not the allegations levelled in the chargesheet or in the petition of complaint, as the case may be, are false or otherwise and the Court is not entitled to hold any parallel enquiry while taking up the matter for quashing.

8. Here, in the instant case, although a good number of documents have been produced from the side of the petitioner claiming the land to be a Bastu and also to the effect that the petitioner has also constructed a building on the basis of plan sanctioned by the Howrah Municipal Corporation, yet, it is not the stage where the Court can embark upon those enquiry for the purpose of ascertaining the fact whether or not that is a Bastu land or a tank, as claimed by the prosecution.

9. Now, examining the present materials available from the chargesheet itself and considering the same in the light of the settled parameter, I am rather constrained to hold that there are prima facie allegations against the present petitioner for filling up of pond in question, and it is rather difficult to accept the other contention as raised by the petitioner in the instant case for giving him relief of quashing since the materials collected so far by the prosecution make out a case as alleged against him.

10. That being the position, the quashing as prayed for, in the instant case is not permissible and as such, prayer for quashing, as made by the petitioner, stands rejected.

11. Liberty is, however, given to the petitioner to raise those pleas and produce those documents before the learned Trial Judge at the appropriate stage and if such pleas are taken and all those documents are produced before him, the learned Trial Judge shall dispose of the case in accordance with law after hearing the parties.

12. Let it be made clear that there has been a considerable delay in proceeding with this case and in that context, I direct the learned Trial Judge to make all earnest endeavour to proceed with this case with utmost expedition, preferably within a year from the date of communication of this order.

13. Let it also be made clear that I have not made any observations with regard to the merit of this case and the learned Trial Judge will be at liberty to dispose of the matter in a way he deems fit and proper.

14. With this, this revisional application stands disposed of.

15. Xerox certified copy of this order, if applied for, be given to the parties with utmost expedition.