



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 369 OF 2016

Amit Satish Dhutia

.. Applicant

Versus

1. The State of Maharashtra
Through Khar Police Station ..
2. Abhishek Bharat Soparkar

.. Respondents

Mr. Girish Kulkarni Senior Advocate a/w. Krupashankar N. Pandey,
Ms.Mrunmai Kulkarni for the Applicant.
Ms. A.A.Takalkar APP for the Respondent-State.

CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.

RESERVED ON : 13th DECEMBER, 2023

PRONOUNCED ON : 15th JANUARY, 2024

JUDGMENT [PER: SHYAM C. CHANDAK, J.]

1) Present Application is filed under Section 482 of the Criminal Procedure Code, seeking to quash C.C.NO.3437/PW/2015 pending before the learned Chief Metropolitan Magistrate, 9th Court at Bandra, Mumbai

arising out of C.R. No. 204/2014 dated 13th May, 2014 registered at Bandra Police Station, for the offences punishable under Section 428 and 429 of the Indian Penal Code alongwith Section 9 and 51 of The Wildlife Protection Act, 1972 and Section 8 and 21 of Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 registered with Khar Police Station, Mumbai.

2) Heard learned Senior counsel Mr.Girish Kulkarni for the Applicant and Ms.A.A.Takalkar learned APP for Respondent-State. Perused the record.

3) Record of the application reveals that, by an Order dated 19th December, 2016 ad-interim relief in terms of prayer clause (d) was granted. Rule was issued on 13th April, 2017. However, *Rule Nisi* was not served upon the Respondent No.2. Hence, by an Order dated 7th October, 2023, this Court directed to issue fresh notice to the Respondent No.2.

3.1) Thereafter, this Application was finally heard on 13th December, 2023. However, when the matter was taken up for dictating judgment, it was noticed that *Rule Nisi* was not served upon Respondent No.2. Therefore, the matter was placed on board on 5th January, 2024, for direction. On that date, learned counsel for the Petitioner submitted an affidavit of service of notice upon Respondent No.2. Said affidavit was taken on record.

4) In short, the facts giving rise to this Application are as under:-

4.1) On 12th May 2014, Ms.Puja Sakpal, founder of YODA (NGO namely Youth Organisation in Defence of Animals) complained with Khar Police Station that trees in the Bandra area being destroyed at Nector Building No.3, Sherley Rajan Road, Carter Road, Bandra (W), Mumbai. Said trees have been a habitat and nesting ground for several birds over the years. Certain numbers of birds along with their fledglings have fallen to the ground and have been trapped by nets. Many birds have been found injured. The trees chopped down have made many birds homeless as this is a nesting period. Hence, it was requested to take necessary action under the relevant provisions of law.

5) Thereafter, on 13th May 2014 the Respondent No.2 lodged a report that, he is a co-founder in the said NGO. On 12th May 2014, at about 11:15 a.m., they received a telephonic information that, some people cutting a Tamarind tree in the premises of Nector Building No.3, Sherley Rajan Road, Carter Road, Bandra (W), Mumbai. The Respondent No.2 and Ms.Puja Sakpal went to the spot. There, they found that branches of the trees cut alongwith the nests on them and the injured birds were thrown in the adjacent area of Petit School. About 40-50 injured birds were lying in the said area of the School, hence they carried them for first aid in Phoenix

Animal Clinic of Dr.Shivaji Tandel, at Prabhadevi. Thereafter, they inquired and it revealed that, the Applicant and Sunny Bhutani, both residing at Nector building, gave the contract of cutting the Tamarind tree there and thus they were responsible for cutting the branches of the said tree, breaking of the bird nests thereon and injury to the birds due to falling. Therefore, the Respondent No.2 lodged a report. The police registered the said report at F.I.R. bearing Crime No. 204/2014. After completing the investigation, the police submitted the charge-sheet against the Applicant and Sunny Bhutani, which is registered as C.C. No.3437/PW/2015 before the learned Chief Metropolitan Magistrate 9th Court at Bandra, Mumbai.

6) The learned counsel for the Petitioner submitted that, the Tamrind tree was located inside the compound wall of Petit School and not in the compound wall of Applicant's building. As such there was no reason for the Applicant to get the said tree trimmed. The spot panchanama does not show that, the carcass of any bird or broken eggs were found at the spot. From the investigation material, it can be gathered that, all the injured birds were subsequently released into the forest of Airoli. Therefore, it is quite clear that none of the birds were killed or amputated in the incident of cutting the tree branches. There was no necessary *mens rea* on the part of the Applicant. Mr.Marie, accused No.3 is not apprehended and he is shown

absconding by the police, without any efforts to trace him. As such even if the prosecution case is taken as it is, it still wouldn't make out a *prima facie* case of the offences alleged against the Applicant. However, the said FIR has been registered against Applicant and he has been prosecuted in the said case is illegal. Hence the CC.NO.3437/PW 2015 may be quashed.

7) Per contra, learned APP vehemently submitted that the F.I.R. and statement of the witnesses indicate that, the Applicant engaged the absconding accused No.3 Mr.Mari to cut the branches of the Tamarind tree. Accordingly, Mr.Mari and his associates cut the said tree. However, the Applicant did not seek any lawful permission to cut the tree. Therefore, the Applicant is responsible for the illegal cutting of the tree and injury to the birds due to falling alongwith their nests. Thus, there is a *prima facie* case against the Applicant.

8) In the light of the rival submissions we have carefully perused and considered the final report alongwith the FIR and statement of witnesses etc. enclosed therewith.

9) The statement of the witnesses and the watchman – Prabhunath Yadav revealed that on 11th May, 2014 the Applicant and co-accused Sunny Bhutani showed the Tamarind Tree to the absconding accused No.3 Mr.Mari and took him to the said watchman. Then, the Applicant told the watchman

that the accused No.3-Mr.Marie would come on 12th May, 2014 for cutting the trees, he should allow Mr.Mari to enter in the society and to take care that, there is no hurdle before Mr.Mari to cut the trees. On 12th May, 2014 the absconding accused No.3 Mr.Mari alongwith 4 people came to the spot and cut the branches of the trees in the society. Consequently, the birds alongwith their nests fell down and got injured. The statement of the other witnesses shows that, after cutting the tree, Mr.Marie and his associates threw the tree branches alongwith nests and injured birds in the adjacent area of Petit School. The statements of the witnesses indicate that, immediately after cutting the tree, the watchman disclosed to the residents of the society that it was at the behest of the Applicant and the co-accused. The record indicates that, the eggs of birds were broken, fledglings were trapped by nets and some birds died in the incident.

10) The Spot Panchanama clearly shows that, all the branches of the subject tree were cut. Thus, it corroborates the F.I.R. and statement of witnesses. Cutting of a tree in such a manner falls under the expression “*to fell a tree*” as defined in Section 2 (c) of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975, which includes burning or cutting or “[in any way damaging a tree]. It is not the case that, before cutting the tree the Applicant had taken prior permission of the concerned

Authority. On the contrary, the letters by the concerned Assistant Commissioner of the Corporation show that, no such permission was taken, hence police was requested to take appropriate action under the said Act.

11) In the backdrop, we are of the considered opinion that there is a *prima facie* case of the offence alleged in the impugned F.I.R. Hence, the Applicant cannot escape the prosecution from the said offence. As a result, this Application is liable to be dismissed and is accordingly dismissed.

(SHYAM C. CHANDAK,J.)

(A. S. GADKARI, J.)