

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL MISCELLANEOUS APPLICATION No. 733/2009

(Under Section 482 of the CrPC)

Jagdish Chandra Shah

.....Applicant

Versus

State of Uttarakhand & Another

.....Respondents

Mr. M.K. Ray, Advocate, for the applicant.

Mr. P.S. Danu, Brief Holder, for the State.

28th February, 2014

Hon'ble Servesh Kumar Gupta, J.

Chargesheet No. 225/2009 based on the FIR No. 186/09 lodged in the Police Station Rudrapur is in question. The impregnability of the same has been challenged by the petitioner Jagdish Chandra Shah, which was submitted for his trial under the offence of Section 3 of the Prevention of Damage to Public Property Act, 1984 (Act No. 3 of 1984, hereinafter referred to as the Act).

2. The facts giving rise to the controversy are that Jagdish Chandra Shah and one other Ram Nath or their ancestors were refugees from East Pakistan. In order to settle them, some agricultural land was allotted by the Government within the territorial jurisdiction of Police Station Rudrapur. That land ad measures 0.80 hectare bearing Khasra No. 82 is in favour of Jogendra Shah, whose son is Jagdish Chandra Shah. Another chunk of land ad measuring 0.793 hectare bearing Khasra No. 220 was allotted to Ram Nath or his father. They were purely the lessee of the said land in order to earn their livelihood by doing agriculture on the same. Revenue officials noticed that the land was being sold by these two persons by way of making fragmented plots. Besides that, they were found raising the construction over the said land. So, the First Information Report was lodged on 19.4.2009 against the duo. Chargesheet was filed against Jagdish Chandra Shah

and Ram Nath for the offence as stated above, whereupon the Criminal Case No. 1781/2009 was got registered and the learned Magistrate has taken cognizance on 14.7.2009. He asked them to put their presence and stand trial for the offence. Challenging the said order of cognizance, this petition was filed before this Court. Further proceedings of the entire case were stayed on 24.9.2009.

3. Having heard the learned Counsel of the applicant Jagdish Chandra Shah, it appears that the proceedings were not challenged by the another accused Ram Nath. However, the whole proceedings were stayed by this Court.

4. The learned Counsel has argued that Section 3 of the Act is not attracted and the case (if any) made out against the applicant attracts only civil liability and not the criminal one.

5. Learned Counsel has read Section 3 of the Act, which goes as under:

“3. Mischief causing damage to public property.—

(1) Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

(2) Whoever commits mischief by doing any act in respect of any public property being—

(a) any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy;

(b) any oil installations;

(c) any sewage works;

(d) any mine or factory;

(e) any means of public transportation or of telecommunications, or any building, installation or other property used in connection therewith.

shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine :

Provided that the court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months.”

6. The attention of this Court was drawn to sub-section (2) stressing that this agricultural property was not such a public property as to bring it under the definition of “any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy”.

7. Learned Counsel of the applicant may be right so far as to construe the sub-section (2) is concerned, but the Court is of the view that the application of sub-section (2) comes into play only after the application of sub-section (1) of Section 3. For the application of sub-section (1), the public property need not to be covered to bring it in the definition of “any building, installation or other property....”. Sub-section (1) makes it abundantly clear that besides the property which comes in the domain of sub-section (2), there is other public property as is clear from the opening language of sub-section (1) **“Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2).....”** Obviously, the land allotted to the applicant petitioner for agricultural purpose in order to earn his livelihood is a public property. It was not in the nature of any other property than public property. The applicant petitioner never acquired ownership over the said property enabling him to sell or dispose of the same in any manner whatsoever. No averment in the affidavit of the applicant makes it clear that he has not sold the said property. Besides, the clauses of the affidavit of Lalit Mohan Joshi,

Sub Inspector of Police, filed as a counter affidavit, make it amply clear that the petitioner has fragmented the said land in the form of plotting and was selling the same illegally. This sale after making out the fragmented pieces of the said land drove the revenue officials to lodge the FIR against him.

8. In view of the Court, the chargesheet has rightly been submitted against the applicant. There is no reason for this Court to hamper the course of prosecution. The petition is bereft of merit and it is hereby dismissed. Stay order dated 24.9.2009 stands vacated. Let copy of this order be sent to the court below to proceed the trial.

(Servesch Kumar Gupta, J.)

Prabodh