

(2025) 09 CAL CK 0733
In the Calcutta High Court, Appellate Side
Case No : CRR 1469 Of 2025

Aktar Ali Bhangi @ Akhtar Bhangi

APPELLANT

Vs

State of West Bengal and Ors

RESPONDENT

Date of Decision : 16-09-2025

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 401, 482, 483
Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 442, 528
Indian Penal Code, 1860 — Section 186, 379, 411, 413, 414
Mines and Minerals (Development Regulation) Act, 1957 — Section 21, 21(4), 22

Citation : (2025) 09 CAL CK 0733

Hon'ble Judges : Chaitali Chatterjee (Das), J

Bench : Single Bench

Advocate : Sabir Ahmed, Sudip Kushari, Tasnim Ahmed, Dhiman Banerjee, Ezaz Ahmed, Amita Gaur, Rajashree Tah

Final Decision : Allowed

Judgement

Chaitali Chatterjee (Das), J

1. Heard the submissions .
2. An application has been filed under Section 482 read with Section 401 of the Code of Criminal Procedure 1973, corresponding to Section 528 read with Section 442 of BNSS, 2023 by the petitioner for quashing of the proceedings arising out of the FIR vide Garbetata P.S case number 518 of 2021 dated 13.12.2021, registered under section 379/411/413/414/186 of the Indian Penal Code and 21(4) of the Mines and Minerals (Development & Regulation) Act 1957, pending before the Learned Additional Chief Judicial Magistrate, Garhbeta , West Midnapore.
3. The case of the petitioner is that he is a poor farmer residing in a remote village and maintains his livelihood by cultivating his own land. Suddenly on 16.12.2021, some police personnel of the local Police Station came home of the

petitioner and directed him to meet the officer-in-charge of the Local Police Station, and on the next date he met with the concerned Officer-in-Charge and came to know that an F.I.R is lodged against him by the Opposite Party, alleging that on 13.12.21, the ASI Vikas Dutta, in course of his patrolling duty received source information that the petitioner is excavating murrum illegally with the help of JCB and dumpers at a lonely Place near Bhutasole Bazaar, and accordingly he along with force reached there and found one JCB left, and he managed to apprehend two dumpers. While they were trying to remove the dumpers a group of hooligans under the leadership of the petitioner obstructed, the village Road and also obstructed them to do their lawful duty. It is the case of the petitioner that he is absolutely innocent and falsely, fabricated and is not aware about the alleged incident and in fact on the relevant day, he went to his relatives house for his personal work. He is not the owner or driver of any of the dumper as seized from the place of occurrence and no prima facie proof against the petitioner, which reveals the involvement of the petitioner in the alleged incident.

4. The Learned Advocate representing the petitioner submits the complaint is lodged by a person not competent under the authority of law to lodge such a complaint and it itself, therefore is not maintainable. In this regard, attention is drawn to section 22 of Mines and Minerals. (Development Regulation) Act 1957, where it is specifically stated that no court shall take cognizance of any offence punishable under this Act or any rules made there under, except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government. In this regard relied upon a decision reported in, Chote Lal Choudhury and thers versus State of West Bengal 2008 SCC online Cal 348.

5. The learned advocate further relied upon a decision of a Co-ordinate Bench of this Court in, Anshuman Banerjee and others versus the State of West Bengal and anr CRR 353 of 2019. 2023CHC – AS: 3508, where it was observed that in terms of Rule 2(b) of the West Bengal M.M Concession Rules, 2016 and section 22 of the Mines and Minerals (Development and Regulation) Act 1957, the Sub Inspector was not the authorised person to lodge the complaint punishable under Section 21 of the Act of 1957 and no cognizance can be taken on the basis of the complaint lodged by S.I of police. It is further argued that the written complaint itself manifest that no person was found excepting two dumpers. It is further submitted that on the basis of the complaint, the other provisions of Indian penal code was also mentioned, but when the allegation was regarding violation of Mines and Minerals(Development and Regulation) Act,1957 which is a special Act, the said provision would prevail over the sections levelled under Indian penal code.

6. The learned State /Respondent on the other hand, raises a strong objection and submits that the investigation is still going on, and at this stage when certain injury report primarily shows fractured injury the complaint should not be quashed. In this record relied upon a decision reported in SK. Murshid Ul Islam

versus State of West Bengal and another 1997 SC online Cal 50. Having heard, the Learned Counsel and on-going through the materials on record it transpires that the complaint was lodged at the instance of an A.S.I police to the officer-in-charge of the concerned Police Station who on source information reached at the place and found two JCB left at the place and then a group of Hodigan under leadership of the petitioner obstructed the village Road. The police seized two JCB dumper in the case as relied by the learned State Respondent.

7. It was observed by the Hon'ble Division of this Court that 'it is true that power of High Court under Section 482 CRPC to quash a proceeding is indeed very wide and plenary, therefore, there is no scope for argument that the mere rejection of a petition for bail or anticipatory bail will disqualify the petitioner from moving the High Court under Section 482 CRPC for quashing proceeding on fit grounds. It was further observed that "normally, in disposing of a petition for bail or anticipatory bail, the Courts do not make observation of precipitative nature regarding the merit of the case as the same may have unnecessary or undesirable repercussions elsewhere beyond the Arena of bill or anticipatory bail. But if the any particular occasion has chosen to make observation, touching the merit of the case, while disposing of any application for bail or anticipatory bail the same should not be withheld by the party adversely affected thereby while approaching the court thereafter for relief under Section 482 CRPC". It is submitted on behalf of the State Respondent that in term of the above decision the Court in exercise of its in power CRPC is indeed free to pass such orders as may be necessary to prevent abuse of the process of Court or otherwise to secure the ends of justice, but it is the duty of the party, invoking this in jurisdiction of this Court to disclose full facts to the Court, so that the Court may passionately judge that the order sought for would not itself defeat the aims of justice or lead to an abuse of the process of the Court, contrary to the purpose for which this inherent power of the court exists.

8. In the Instant case petition filed by the petitioner no such averment regarding grant of bail by any Court of law is mentioned. From the document annexed with the petition and the order sheet, it transpires that an application under section 438 CRPC was filed by the petitioner and for that the Trial Court record was called for but on the date of hearing, no one appeared on behalf of the petitioner and as the statutory period of hearing of such application expired, the petition was rejected. No further order can be seen in respect of passing of an order of bail. However, the division while refusing to entertain the petition for quashing the proceeding observed that since the petitioner in that case did not disclose about the fate of the application find for anticipatory bill and also in merit, the Court did not find the same as a fit case for quashing such FIR. In this case this Court is in dark about any order granting bail in favour of the petitioner. But in this case the pertinent question raised by the Learned Advocate appearing on behalf of the petitioner that the very foundation of the written complaint is not stable since the person who launched such FIR was not authorised under law to lodge the same.

9. According to the provision the person lodging the F.I.R must be an officer to be authorised under Section 22 of the Mines and Minerals, (Regulations and Development Act), 1957 and an officer authorised by the collector under Section 4(D) of the West Bengal Land Reforms Act, 1955. In the decision of Chhote Lal Chowdhury and others (Supra) a coordinate bench of this court, observed that "Section 21(1) of the Act, 1957 is a penal provision for contravention of the provision of sub Section(1) of Section 4 of the Act and Section 4(1) provides that no person shall undertake any reconnaissance prospective or mining operations in any area, except under and in accordance with the terms and conditions of prayer or license". In the same case the complaint was lodged alleging of theft and the charges were 290/379/447 of the Indian Penal Code, 1860 along with the Mines and Minerals Act. The Learned Co-ordinate bench in paragraph 6 of the judgement observed that:-

"It is not the case of the de-facto complainant that the petitioners had committed theft of mines and minerals from lands belonging to a definite individual. It does not appear that any person lodged complaint with the authority against the petitioner alleging trespass into their lines and extraction of brick earth there from. According to the petitioners, they had been carrying on brick manufacturing business in the name and style of Chawdhury Brookfield situated on a good number of plots. If according to the prosecution extraction of brick earth or mines is an offence under section 21(1) and 21(2) of the Mines and Minerals, (Regulation and Development Act) 1957, then obviously prosecution under Section 379 of the Penal Code 1860 for that matter under Section 447 of the Penal Code, 1860 is total misnomer. In this connection, reference may be made to the decision in Hiralal Bonka versus P.S Bose, 1993 (2) CHN 15, where it was held that when the offences alleged fall under specific provision of any Special Act, then inclusion of several sections of the Penal Code, 1860 are only ancillary to the offence, which in the instant case is said to be the offence punishable under Section 21(1) and 21(2) of the Act of 1957. Prosecution under section 290 of the Penal Code, 1860 is in the context of the revisional application vis-a-vis the FIR is ludicrous, because section 290 of public nuisance and it is not understood how there could be an offence of the public nuisance punishable under Section 290 of the Penal Code, 1860 when the allegations are that without any valid permit extraction of sand and the brick art was made by the petitioners. Therefore, prosecution under the Penal Code, 1860 is clearly bad in law, particularly when specific offences have been alleged, quoting the provisions of the special law".

10. In the case in hand, the charges levelled under Section 379/411/413/414/186IPC and 21(4) of Mines and Minerals, (Development and Regulation Act) of 1957. Therefore, in view of the observation as above by the coordinate bench of this Court when the specific offences have been alleged under the provision of the special law, prosecution under the Penal Code, 1860 is clearly bad in law. In fact, in this case, nobody was found and similarly no complaint was lodged on behalf of any person claiming to be the owner of the

said property where alleged JCB were found. That apart it was alleged that the petitioner was excavating murrum illegally, but on going, there found only two damper so even if it is accepted that after being informed, the petitioner left that place nothing can be found primarily to attract Section 21(4) of the act of 1957, as it was very, particularly mentioned in the said provision that when any person raises or caused to be raised or transported, so absence of any person, the case ought not to have been started when only dumpers have been found. No truck or transporting vehicle was there as it is apparent from the contents of the FIR.

11. The other case as relied upon on behalf of the petitioner in Anshuman Banerjee and others also Learned coordinate bench Observed that the complainant A.S.I is not the authorised officer under the act and the sections of Indian Penal Code applied is not applicable as the offence is covered by a special act. Accordingly, the revision application was allowed and the charge-sheet as submitted was quashed.

12. In the instant case, the complaint was launched way back in the year 2021 by the A.S.I, and since thereafter, the investigation is going on and the charge-sheet has not been filed. Therefore, considering the entire fact and circumstances of the case and from the inception, the wrong steps has been taken as the complaint was lodged by an officer not authorised under the relevant provision to lodge the same and further considering the nature of allegation levelled against the petitioner and the law laid down in this regard this court is also the view that if this investigation if allowed further, it would amount to abuse of process of law. `

13. Hence this revisional application stands allowed.

14. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.