

(2023) 07 CAL CK 0028
In the Calcutta High Court
Case No : Criminal Revision No. 353 Of 2019

Ansuman Banerjee & Ors.

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 04-07-2023

Acts Referred:

West Bengal Mines and Minerals Rules, 2002 — Rule 33
West Bengal Minor and Minerals Rules Concession Rules, 2016 — Rule 2(b), 50, 62
Indian Penal Code, 1860 — Section 120B, 290, 379, 410, 411, 414, 447
Mines and Minerals (Development and Regulation) Act, 1957 — Section 3(aa), 3(d), 4, 21, 21(1), 21(2), 21(5), 22, 33
Mines and Minerals (Development & Regulations) Act, 1951 — Section 21
West Bengal Mines and Minerals (Development and Regulation) Act, 1957 — Section 21(3)
West Bengal Land Reforms Act, 1955 — Section 4(2A), 4(2b)
Code Of Criminal Procedure, 1973 — Section 4(2), 239

Citation : (2023) 07 CAL CK 0028

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Prosenjit Mukherjee, Saptarshi Chakraborty, Binay Panda, Subham Bhakat

Final Decision : Allowed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred against an order of rejection of application for discharge passed on 19.12.2018 being Order No. 17 in connection with Murarai P.S. Case No. 252 of 2017 dated 19.07.2017 under Sections 379/410/120B of the Indian Penal Code and Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 wrongly recorded as Sections 21 and 33 of Mines and Minerals Act.

2. The petitioners' case is that the petitioner Nos. 1, 2 and 3 are the registered owners in respect of two motor vehicles being registration No. WB 53B 2662 and

WB 53A 7700 respectively. For the purpose of livelihood the petitioners No. 1, 2 and 3 started a business of transport of different goods through their tractors. The petitioners regularly cleared the road tax and other charges and till date neither the petitioners nor the tractors have been entangled in any criminal offences. The petitioners usually use their motor vehicle in respect of cultivation and transportation of crops from the agricultural land to the farm house of the respective owners.

3. In the year 2000 the entire Birbhum and Murshidabad District were badly affected due to huge flood and as the petitioners' residence and their concerned agricultural land Mouza – Kalahapur, being Plot Nos. 1011, 129, 138, 1366, 206, 1446, 376, 488, 753, 1678, 1048, 209 etc. are adjacent to the flood affected river namely Balsoi River, the entire agricultural land were badly covered by the sand of the said river. Till the year 2000 the agricultural process has been stopped in the aforementioned plots of the some of petitioners and some of the cultivators of the locality have removed the sand from the said agricultural land. There is no such bank of Balsoi River and each and every year the aforementioned plots are being badly affected by the flood. The petitioners' residence is more than 300 meters away from the aforementioned plot.

4. All on a sudden on 19.07.2017 the concerned Police being the opposite party No. 2 suo motu started a Criminal Case being Murarai P.S. Case No. 252 of 2017 dated 19.07.2017 under Sections 379/411/120B of the Indian Penal Code read with Section 21 of the Mines and Minerals (Development & Regulations) Act, 1951 and Rules 33 of the West Bengal Mines and Minerals Rules 2002 against the petitioners.

5. After investigation, charge sheet has been submitted being charge sheet No. 283 of 2017 dated 21.12.2017 under Sections 379/411/414 of the Indian Penal Code and Section 21 of the M.M. Act and Section 33 of the M.M. Act, though there is no penal provision namely Rule 33 of the M.M. Act. The petitioners challenging the impugned charge sheet being no. 283 of 2017 dated 21.12.2017 and the order of cognizance dated 10.04.2018, passed by the Learned Judicial Magistrate, 3rd Court, Rampurhat, Birbhum, an application for discharge was filed and the same has been dismissed on 19.12.2018 which is under challenge in this revisional application.

6. That in terms of Rule 62 of the West Bengal Minor and Minerals Rules Concession Rules 2016, the West Bengal Minor and Minerals Rules 2002 has already been repealed with effect from 14th September, 2015. In spite of the fact that Minor and Minerals Rule 2002 has been repealed the concerned Sub-Inspector filed this instant case being Murarai Police Station Case No. 252 of 2017 dated 19.07.2017 under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 and West Bengal Minor and Mineral Rules 2002. In terms of the notification dated 24.01.1991 being notification No. 87-C1/GR (D) the concerned Block Land and Land Reforms Officer has been given such power to lodge FIR under sub Section 3 of Section 21 of the West

Bengal Mines and Minerals (Development and Regulation) Act, 1957.

7. That in terms of Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 no Court shall take any cognizance of any offence punishable under the Act or any rules made thereunder except upon complaint in writing made by a person authorized in this behalf by the Central Government or State Government. In terms of the notification dated 24.01.1991 the concerned Block Land and Land Reforms Officer has been given power to lodge this complaint.

8. The petitioner states that the Hon"ble High Court in a reported decision being CRR 2721 of 2005 (Chhotelal Choudhury & Ors. vs. State of West Bengal) has held that when there is a specific provision for initiation of any criminal proceeding then inclusion of several Sections of the Indian Penal Code together with the provisions of Special Act is illegal because the offences said to have been committed under Indian Penal Code are only ancillary to the offence which in the instant case is said to be an offence punishable under Section 21 of the M.M. Act and 33 of the M.M. Act, as per the charge sheet submitted.

9. Mr. Prosenjit Mukherjee, learned counsel for the petitioners submits, that for the initiation of a proceeding under Section 21 read with Section 4 of the Mines and Minerals (Development and Regulation) Act, 1957, no person shall undertake any reconnaissance, prospecting or mining operation in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting license or as the case may be of a mining lease granted under the Act, in terms of Section 3(d) of the mining operation has been defined, is an operation undertaken for the purpose of winning any minerals. Section 3(aa) of the Act, 1957 has defined "mineral" including all minerals except mineral oil.

10. It is stated that "Sand" is not a "mineral" and does not fall within the definition of Section 3(aa) of the Act, 1957 and for the purpose of extracting sand neither Section 4 is applicable nor Section 21 of the Act, 1957 is permissible to be applied against the petitioners. So the charge sheet under the provision of Minor and Minerals Act is not permissible against the petitioners. The Learned Magistrate has failed to consider that extraction of sand is not an offence under the provisions of Mines and Minerals (Development and Regulation) Act, 1957.

11. The petitioners further submits that there is a provision of imposing compensation in terms of Section 21(5) of the Mines and Minerals (Development and Regulation) Act, 1957, but without imposing any compensation, a criminal proceeding has been initiated directly without giving any chance, to pay compensation for the alleged loss sustained by the State. The alleged offence has been committed as per the First Information Report, on the bank of the river Balsoi. Adjacent to the alleged place of occurrence, the petitioners have their agricultural land under the Mouza – Kalahapur, under Police Station – Murarai

and in terms of Section 4 Sub Section 2(A) of the West Bengal Land Reforms Act, 1955 no raiyat shall quarry sand or permit any person to quarry sand on a plot of land for any purpose other than his own use except with the previous permission in writing of the State Government and in accordance with such terms and conditions and on payment of fees as may be prescribed and in terms of Section 4(2b) of West Bengal Land Reforms Act, 1955 "if any raiyat commits a breach of the provisions of Sub Section (2A), the prescribed authority may, after giving in the prescribed manner an opportunity to the raiyat to show cause against the action proposed to be taken, impose upon him [a fine not exceeding two thousand rupees, and where the breach is a continuing one, a further fine not exceeding two thousand rupees for each day] during which the breach continues. Such fine, if not duly paid, shall be recoverable as a public demand".

12. Unless and until the impugned order dated 19.12.2018 passed by the Learned Judicial Magistrate, 3rd Court, Rampurhat, Birbhum passed under Section 239 of the Code of Criminal Procedure in connection with Murarai P.S. Case No. 252 of 2017 dated 19.07.2017 under Sections 379/411/120B of the Indian Penal Code and Section 21 of the M.M. Act and Rule 33 of the M.M. Act, is quashed and set aside, the petitioners will suffer irreparable loss and injury.

13. Mr. Mukherjee, learned counsel for the petitioners has filed written notes of argument and relied upon the following judgments:-

"1. AIR 1975 Cal 58 (Shyam Sundar Rathi vs. The Additional District Magistrate, Bankura & Ors.).

Section 4(2A) of the West Bengal Land Reforms Act, 1955 was declared ultravires.

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 concerned Sub-Inspector is not the authorized person to lodge the complaint punishable under Section 21 of the Act, 1957 and Rule 50 of the West Bengal M.M. Concession Rules, 2016 and no cognizance can be taken on the basis of the complaint lodged by S.I. of Police.

2. (1995) I Cal LT 95, (Smt. Seema Sarkar vs. The State).

Charge sheet and cognizance cannot be taken in respect of penal provision which has been declared ultravires and whether cognizance can be taken under different acts on alleged offence when a special provision exists and splitting up cognizance is not permissible.

3. C.R.R. 2721 of 2005 (Chhotelal Choudhury & Ors. vs. State of West Bengal).

4. Bengal Brickfields Owners' Association & Ors. Vs. State of West Bengal & Ors. reported in 2006 (3) CHN 28 the State Legislature has no independent law making power of their own and as such the cognizance taken in terms of the West Bengal Minor and Mineral Rules, 2002 is not permissible".

14. Mr. Binay Panda, learned counsel for the State has placed the case diary and

submitted that the investigation in this case is in accordance with law and as such the revision is liable to be dismissed.

15. On perusal of the materials on record the following facts are before this Court:-

"(a) The two tractors loaded with sand belonging to the petitioners were seized from Nandigram Magura Balsoi river side. The petitioners' house/land is at a distance of 300 meters from the river side.

(b) Section 3(e) defines ordinary sand as "minor minerals and not mineral as defined under Section 3(aa) of the Act of 1957.

(c) Para 6 of the written notes of argument, reads as follows:-

"6. The alleged incident took place on 19.07.2017. West Bengal Minor Minerals Concession Rules, 2016 came into effect on 29.07.2016 and in terms of Rule 62 of West Bengal Mines & Minerals Rules, 2016 the West Bengal Mines and Minerals Rules, 2002 has been repealed. So the initiation of the criminal case in terms of Rule 33 of West Bengal Minor & Minerals Rule, 2002 is absolutely bad in law."

(d) Sec 2 (n) of West Bengal Minor and Minerals Concession Rules, 2016 defines "mineral" means "minor minerals" as defined in clause (e) of Section 3 of the Act.

(e) The present case has been filed by an Assistant Sub-Inspector of Police. Notification dated 24.01.1991 empowers the concerned Block Land and Land Reforms Officer to initiate the Complaint under the Act.

(f) The judgment of this Court in Chhotelal Choudhury & Ors. vs State of West Bengal (CRR 2721 of 2005) has been relied upon by the petitioners, wherein the Court held as follows:-

"6. Upon hearing the learned Advocates for the parties it is very apparent that the prosecution of the petitioners under Sections 290/379/447 of the Indian Penal Code is not at all maintainable in the eye of law. It is not the case of the de facato 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 lands and extraction of brick earth therefrom. According to the petitioners they had been carrying on brick manufacturing business in the name and style of M/s. Chowdhury Brick Field 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 Indian Penal Code or for that matter under Section 447 of the Indian Penal Code is total misnomer. In this connection, reference may be made to the decision in Hiralal Bonka & Ors. vs. P.S. Bose & Ors. 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 Indian Penal Code together with the provisions of the special Act is illegal because the offences said to have been committed under the Indian Penal Code are only ancillary to the offence which in the instant case is said to be the offence punishable under Sections 21(1) and 21(2) of the Mines and Minerals (Regulation and Development) Act, 1957. Prosecution under Section 290 of the Indian Penal Code is in the context of the revisional application vis-à-vis the FIR is ludicrous, because section 290 of the Indian Penal Code is an offence of commission of a public nuisance and it is not understood how there could be an offence of the public nuisance punishable under Section 290 of the Indian Penal Code when the allegations are that without any valid permit extraction of sand and brick earth was made by the petitioners. Therefore, prosecution under the Indian Penal code is clearly bad in law, particularly when specific offences have been alleged quoting the provisions of the special law.”

(g) Thus, not only has the FIR and charge sheet admittedly been filed invoking the wrong provision of law, which could have been added/altered, applying the provision of Cr.P.C., the Complainant (ASI of Police) is also not the authorized officer under the Act, a defect which cannot be corrected at this stage. The Sections of the Indian Penal Code applied is not applicable, as the offence (if any) is covered by a Special Act (Section 4(2) Cr.P.C.).

16. Though the offence alleged is a serious one, damaging the environment, the inherent defect in the proceedings requires the interference of this Court, in the interest of justice. Public officials responsible for the protection of the environment are required to be serious and diligent in carrying out their duties.

17. The revisional application being CRR 353 of 2019 is accordingly allowed.

18. No order as to costs.

19. All connected applications, if any, stands disposed of.

20. Interim order, if any, stands vacated.

21. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

22. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.