

(2015) 05 JH CK 0048
In the Jharkhand High Court
Case No : Criminal M.P. No. 59 of 2009

B. Muthuraman and Others	Vs	APPELLANT
State of Jharkhand		RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 4, 482
Mines and Minerals (Development and Regulation) Act, 1957 — Section 21, 21(1), 21(6), 22, 23
Penal Code, 1860 (IPC) — Section 468

Citation : (2015) 3 AJR 165 : (2015) 5 FLT 598

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Indrajeet Sinha and H.K. Shikarwar, for the Appellant

Final Decision : Dismissed

Judgement

Rakesh Ranjan Prasad, J.

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the first information report of Mandu P.S. Case No. 493 of 2008 (G.R. No. 4585 of 2008), instituted under Sections 468 of the Indian Penal Code and also under Rule 9 of the Jharkhand Minerals Transit Challan Regulations, 2005 as well as Section 52 of the Jharkhand Mineral Concessions Rule, 1960 as also under Sections 21 and 23 of The Mines and Minerals (Development And Regulation) Act, 1957.

2. The case of the prosecution is that one Rameshwar Rana Prasad, Assistant Mining Officer, Ramgarh, in course of patrolling and inspection when found coal loaded on 4 trucks without there being transit permit (Form-D) as required under Rule 3 of the Jharkhand Minerals Transit Challan Regulations, 2005 an inquiry was made and it could be known that coal had been loaded at Ghato Colliery belonging to TATA. Thus, it has been alleged that accused persons by indulging themselves, in the manner stated above, have put the State Government to a

great loss.

On the basis of the information given to Mandu police, a case was registered as Mandu P.S. Case No. 493 of 2008 under the offences mentioned above.

3. Institution of the said case was challenged on the ground that Jharkhand Minerals Transit Challan Regulations, 2005 was framed by the State of Jharkhand in exercise of power conferred by Section 23(C)(1) of the Mines and Minerals (Development and Regulation) Act, 1957, in order to prevent illegal mining, transportation, storage of minerals and mineral products, whereas clause 9 of the said Regulation does prescribe that whenever any mining lessee transports the minerals raised in his mine without any valid permit or challan, it will be treated as a transgression of the conditions of the lease and provisions of Mines and Minerals (Development and Regulation) Act, 1957 and also Mineral Concessions Rules, 1960 and Jharkhand Minor Mineral Concession Rules, 2004 and, thereby, would be liable to be prosecuted under the said Acts and the Rules and, thereby, the allegations upon which the case has been lodged do fall within the purview of "Special Legislation" namely, Jharkhand Minerals Transit Challan Regulations, 2005 and Mines and Minerals (Development and Regulation) Act, 1957. The cognizance of which offence can be taken by the Court under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 only upon a complaint in writing made by a person authorized in this behalf by the Central Government or the State Government and, therefore, any prosecution initiated on the basis of the first information report would be quite illegal and, thereby, the first information report is fit to be quashed.

4. The Court, having regard to the provisions of Clause 9 of the Jharkhand Minerals Transit Challan Regulations, 2005, prescribing penalties for transgression of the conditions of the lease in terms of the Act and the Rules, did come to the conclusion that the allegations do constitute offence under the aforesaid Jharkhand Minerals Transit Challan Regulations, 2005 as well as the Mines and Minerals (Development and Regulation) Act, 1957, the special legislation and, thereby, any investigation, inquiry or trial shall be governed, in view of Section 4 of the Code of Criminal Procedure, by the special law and not under general law. In that event, it was held that any prosecution launched by the informant not by way of complaint but by way of information to the police is quite illegal and, thereby, the first information report of Mandu P.S. Case No. 493 of 2008, was set aside vide order dated 16/04/2009.

5. That order was challenged by the State of Jharkhand before the Hon''ble Supreme Court in SLP (Cr.) No. 7126 of 2010/Cr. Appeal No. 562 of 2011, which was heard along with other Criminal Appeals bearing Nos. 560/2011 and 561/2011. Their Lordships set aside the order passed by this Court and remanded the matter back for taking a decision afresh in accordance with law in terms of the observations made in para-5 of the order, which reads as follows:-

"5. We have scanned the impugned judgments. We find that the effect of Section

21(6) of the Act has not been considered at all by the High Court. Under these circumstances, in our view, the High Court should re-consider the whole matter on all the questions including the effect of Section 21(6) of the Act. We, accordingly, set-aside the impugned judgments and remit the matters to the High Court for a decision afresh in accordance with law. Needless to mention here, all the parties shall be at liberty to agitate all the questions before the High Court."

6. That is how the matter has again come up before this Court for reconsideration of the whole issue involved in this case.

7. Mr. Indrajeet Sinha, learned counsel appearing for the petitioner submits that Jharkhand Minerals Transit Challan Regulations, 2005, was framed by the State of Jharkhand in exercise of the power conferred by Section 23(C)(1) and 23(2) (C) of the Mines and Minerals (Development and Regulation) Act, 1957, in order to prevent illegal mining, transportation, storage of minerals and minerals products, whereby Clause-9 of the said Regulation, 2005, does prescribe that whenever any mining lessee transports the minerals raised in his mine without any valid permit or Challan, it will be treated as a transgression of the conditions of the lease and provisions of Mines and Minerals (Development and Regulation) Act, 1957 and also Mineral Concessions Rules, 1960 and Jharkhand Minor Mineral Concession Rules, 2004 and, thereby, would be liable to be prosecuted under the said Acts and the Rules.

Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957, does prescribe that whosoever contravenes the provisions of Sub-section (1) or Sub-Section (1-A) of Section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty five thousand rupees, or with both. The said penal provisions further does stipulate that any rule made under any provisions of the Act [the Mines and Minerals (Development and Regulation) Act, 1957] may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both and in the case of a continuing contravention, with an additional fine which may extend to five hundred rupees for every day during which such contravention continues. Further, Sub-section (6) of Section 21 of the Act, does stipulate that an offence under Sub-section (1) notwithstanding anything contained in the Code of Criminal Procedure, shall be cognizable.

Learned counsel by putting emphasis on the clauses and "offence under Sub-section (1) appearing in Sub-section 6 of Section 21", submits that only those offences falling within Sub-section (1) of Section 21, shall be cognizable and in terms of the provision of 21(6) of the Mines and Minerals (Development and Regulation) Act, 1957 and not the offences, which are there in Sub-section (2) of Section 21. In other words, the submission, which was advanced is that allegations, which have been made against the petitioners relate to the contravention of the provisions of the Jharkhand Mineral Transit Chalan

Regulation, 2005, which is punishable by virtue of Clause 9 of the Jharkhand Mineral Transit Chalan Regulation, 2005 in terms of the Acts and Rules and, thereby, it will not be covered by Sub-section (1) of Section 21 and, hence, the offence alleged, cannot be said to be cognizable and under the circumstances, the police will not have power to register an F.I.R. and to proceed with its investigation without there being order of the Magistrate.

8. As against this, learned counsel appearing for the State submits that any contravention of the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 as well as contravention of any Rule made under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957, would be punishable either under Section 4(1) or 4(1)(A) of the the Mines and Minerals (Development and Regulation) Act, 1957 and, thereby, all the offences in terms of Sub-section (6) of Section 21 would be cognizable where the police is competent to register a FIR and to proceed with the investigation.

9. Having heard counsel appearing for the parties, I do find that an FIR was registered when it was found that coal taken out from Ghato Colliery belonging to TATA, to which the petitioners, at relevant point of time, were the Managing Directors, and thereby the petitioners have alleged to have transgressed the conditions of the license as well as provisions of the said Regulation punishable under MMRD Act and the Rules. At the same time, offence under Sections 468 of the Indian Penal Code, has also been alleged to have committed. The said prosecution seems to have been launched in view of Sub-section (1-A) of Section (4) of the Mines and Minerals (Development and Regulation) Act, 1957, which reads as follows:-

"4. Prospecting or mining operations to be under licence or lease.-(1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder.

.....

(1A). No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder."

10. Contravention of the provisions as contained in Section 4(1) and 4(1-A) is punishable in terms of Section 21 of the Act, which reads as follows:-

"21. Penalties- (1) whosoever contravenes the provisions of Sub-section (1) or Sub-Section (1-A) of Section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty five thousand rupees, or with both.

(2). Any rule made under any provisions of the Act [the Mines and Minerals (Development and Regulation) Act, 1957] may provide that any contravention

thereof shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both and in the case of a continuing contravention, with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention."

11. At the same time, Rule 9 of the Jharkhand Mineral Transit Chalan Regulation, 2005, also does stipulate penalties for transgression of the conditions of the lease, which reads as under:-

"9 (a). Whenever any mining lessee transports the minerals raised in his mine without any valid permit or challan, it will be treated as a transgression of the conditions of the lease and provisions of Mines and Minerals (Development and Regulation) Act, 1857, Mineral Concession Rules, 1960 and Jharkhand Minor Mineral Concession Rules, 2004 as the case may be, and actions shall be taken accordingly under the penal provisions of the lease deed and the said Act and Rules.

(b) The mining lessee shall be responsible for the strict compliance of these regulations by the carriers engaged by them and shall ensure that the carriers produce necessary transit challans at the check gates/weigh bridge for verification."

12. Thus, it is evident that the punishment which can be inflicted for transgression of the conditions of the license or contravention of the provisions of the Minerals Concessions Rule and Jharkhand Mineral Concessions Rule, 2004, in terms of the Section 21 which may extend to two years or with fine. The said offence, on account of contravention of the Act and the Rules has been made cognizable in terms of the provisions as contained in sub-section (6) of Section 21.

13. I have already noted that any contravention of the Act and the Rules relating to transportation and storage of the Minerals is an offence under Section 4(1-A), which is punishable under Section 21(1) of the MMRD Act. If that is so, the said offence would be cognizable in terms of Sub-section (6) of Section 21.

14. However, according to the learned counsel appearing for the petitioners, the allegations, which have been made against the petitioners are of contravention of the provisions of Mineral Concessions Rules and also Jharkhand Mineral Concessions Rule and also the transgression of the conditions of the license and, thereby, it would be governed by Sub-section (2) of Section 21 of the Act.

15. The said submissions appeared to be misconceived as Section 4(1-A) does stipulate quite clearly that no person shall transport or store or cause to be transported or stored any minerals otherwise than in accordance with the provisions of this Act and the rules made thereunder. Even if the contravention is there of any rule and the provision of the Act, it would be punishable in terms of Section 4(1-A) of the Act and, thereby, the offences alleged, would be cognizable.

16. So far Sub-section (2) of Section 21 is concerned, that seems to have been laid down for a guidance as to in what terms punishment can be inflicted for contravention of the rules.

17. Thus, I am of the considered view that offence being cognizable can be inquired into and investigated upon by the police.

However, submission was also advanced to the effect that in terms of the provisions of the MMRD Act, cognizance can be taken only upon filing of the complaint by a competent officer but the case is being investigated upon by the police, submission of the charge sheet by him would not amount it to be a complaint and, thereby, cognizance cannot be taken upon such final form.

18. That stage has still not come up. Therefore, that issue never requires to be addressed with at this stage. However, since I did find that FIR can be maintained for contravention of the provisions of the Act and the rules as aforesaid, I do not find any merit in this application and, hence, it is dismissed.