

(2009) 04 JH CK 0132

In the Jharkhand High Court

Case No : Criminal M.P. No. 59 of 2009

B. Muthuraman @ Balasubramanian Muthuraman and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2, 4, 482

Jharkhand Mineral Transit Challan Regulations, 2005 — Rule 3, 9

Mineral Concession Rules, 1960 — Rule 52

Mines and Minerals (Development and Regulation) Act, 1957 — Section 21, 22, 23

Penal Code, 1860 (IPC) — Section 41, 468

Citation : (2009) 57 BLJR 2165

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : H.K. Sikarwar, for the Appellant; R.R. Mishra, for the Respondent

Final Decision : Allowed

Judgement

R.R. Prasad, J.—This application u/s 482 of the Code of Criminal Procedure has been filed for quashing of the first information report of Mandu P.S. case No. 493 of 2008 (G.R. No. 4585 of 2008) instituted u/s 468 of the Indian Penal Code and also under Rule 9 of the Jharkhand Mineral 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 enquiry 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.

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

4. Learned Counsel appearing for the petitioners submits that Jharkhand Mineral Transit Challan Regulations, 2005 was framed by the State of Jharkhand in exercise of power conferred by Section 23(C) 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 Concession Rules, 1960 and Jharkhand Minor Mineral Concession Rules, 2004 and thereby he will be liable to be prosecuted under the said Act and Rules and therefore, allegations upon which the case has been lodged do fall within the purview of "Special Legislation", namely, Jharkhand Mineral Transit Challan Regulations, 2005 and Mines and Minerals (Development and Regulation) Act, 1957 and in that event the cognizance of such offence in terms of the provision as contained in Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 can be taken by the court only upon 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. Since instant prosecution has been launched by way of first information report, it is fit to be quashed.

5. Having heard learned Counsel appearing for the parties, it appears that on finding coal being transported without there being any transit challan, a case was registered under Sections 468 of the Indian Penal Code as also under Rule 9 of the Jharkhand Mineral Transit Challan Regulations, 2005, as well as under Sections 21 and 23 of the Mines and Minerals (Development and Regulation) Act and also u/s 52 of the Mineral Concession Rule, 1960 but the question falls for consideration is as to whether in view of the special law, namely, Jharkhand Mineral Transit Challan Regulations, 2005 and also Mines and Minerals (Development and Regulation) Act, the prosecution under the penal code would be valid?

6. For adjudicating this issue one needs to take notice of the definition of the "special law" as has been defined u/s 41 of the Indian Penal Code which reads as follows:

Special law- A "special law" is a law applicable to a particular subject.

7. Obviously "Special law" means the provision of law which is not applicable generally but which applies to a particular or specified subject or class or subject. In other words where there is a specific punishment provided in a special Act it takes precedence over of the general punishment under the penal code and that

where there is no specific punishment provided under special law, general law of the land, under the penal code comes into operation if the requirements under any section thereof are satisfied. In that view of the matter, one needs to examine as to whether Mines and Minerals (Development and Regulation) Act and also Jharkhand Mineral Transit Challan Regulations, 2005 do prescribe punishment for illegal extraction, transportation, storage etc. of the minerals. In this respect one can take notice of Clause 9 of the Jharkhand Mineral Transit Challan Regulations, 2005 which reads as follows:

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, 1957, 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.

8. From perusal of the aforesaid provision, it is evidently clear that it does prescribe punishment in case of storage and transportation of minerals in contravention of the provision of the aforesaid Regulation. That being the position, the provision contained in special legislation will certainly take precedence over the general punishment prescribed under the penal code and as such, provision of penal code would have no application in the matter of transportation of the minerals in contravention of the provision of the Act or rule or even regulation made under the Act.

9. That apart, procedure for initiation of the penal action in terms of the said regulation has also been prescribed u/s 22 of the Mines and Minerals (Development and Regulation) Act, 1957 which reads as follows:

22 - Cognizance of offences - No Court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorized in this behalf by the Central Government or the State Government.

10. Thus, it appears that law under the provision of the Mines and Minerals (Development and Regulation) Act or Regulation made thereunder such as Jharkhand Mineral Transit Challan Regulations, 2005 can be set at motion only through a complaint that too in writing made by the person authorized.

11. The word complaint has been defined under Clause (d) of Section 2 of the Code of Criminal Procedure which reads as follows:

(d) "complaint" means any allegation made orally or in writing to a Magistrate,

with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but it does not include a police report.

Explanation - A report may be by a police officer in a case which disclosed after investigation, the commission or a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.

12. Regard being had to the definition as noticed above if one makes a complaint in writing then it needs to fulfill following conditions:

- (1) it must be made to a Magistrate;
- (2) it must be made with a view to his taking action under the Code;
- (3) it must contain an allegation that some person, whether known or unknown, has committed an offence
- (4) it must not be the report of a police officer [Explanation to Clause (d)].

13. Admittedly, so far this case is concerned, complaint has never been made to the Magistrate by the informant, though u/s 22 of the Mines and Minerals (Development and Regulation) Act, 1957, any prosecution under that Act or Rules or Regulation made under the Act such as, Jharkhand Mineral Transit Challan Regulations, 2005 needs to be set at motion by filing complaint by an authorized person before a Magistrate. Further any investigation, enquiry or trial of the offences under the aforesaid Act and the Rules needs to be dealt with in accordance with procedure laid down under the Special Law which would have precedence over the procedure laid down under the general law in view of the mandate of Section 4 of the Code of Criminal Procedure which reads as follows:

Trial of offences under the Indian Penal Code and other laws:

(1) " All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying of otherwise dealing with such offences.

14. Having noticed all the provisions, as mentioned above it can conclusively be said that offence relating to transportation of the minerals in contravention of the provision of the Mines and Minerals (Development and Regulation) Act 1957 and also Jharkhand Mineral Transit Challan Regulations, 2005 comes within the purview of the said Act and Regulation and as such, any investigation, inquiry or trial shall be governed by the Special Law and not under the general law. Therefore, any prosecution launched by the informant not by way of complaint

but by way of information to the police is quite illegal. In other words, instant prosecution can be said to be honest in the eye of law and hence, it is not sustainable in law.

15. Accordingly, the first information report of Mandu P.S. case No. 493 of 2008 (G.R. No. 4585 of 2008) is hereby quashed so far as the petitioners are concerned. Consequently, this application is allowed.