

(2007) 03 KAR CK 0068
In the Karnataka High Court
Case No : Criminal Petition No. 190 of 2007

Bandrappa

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 21-03-2007

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 70
Penal Code, 1860 (IPC) — Section 378, 379, 420

Citation : (2007) ILR (Kar) 3190 : (2007) 4 KCCR 362 SN

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : S.G. Rajendra Reddy, for the Appellant; A.V. Ramakrishna, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Mohan Shantanagoudar, J.—The petitioner being the accused in Crime No. 303 of 2005 of Gadigenur Police Station, Sandur Taluk, which is registered for the offences punishable under Sections 420 and 379 of Indian Penal Code, 1860 read with Section 4(1-A) of Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as MMRD Act" for short), has sought for quashing the proceedings pending before the Court below by filing this petition.

2. The records disclose that the petitioner is the owner of the land in question, and has dug and extracted ore from his land and stored the ore in his land near Ubbalagundi Village. According to the prosecution, the petitioner wanted to stealthily transport the ore without the licence or permit of the State Government. It is not in dispute that the petitioner has not obtained any licence or permit as required under the law for extracting and transporting the minerals. Hence, the charge-sheet is filed against him for the offences punishable under Sections 420 and 379 of IPC read with Section 4(1-A) of MMRD Act.

2-A. Sri S.G. Rajendra Reddy, learned Counsel appearing for the petitioner contends; firstly, that the crime will not fall under Sections 378 and 379 of IPC,

inasmuch as, the petitioner has allegedly extracted the iron ore from his land only; secondly, by relying upon the judgment of this Court in the case of T.L. Channegowda Vs. State of Karnataka, he argued that Section 70 of the Karnataka Land Revenue Act, 1964, does not prohibit the petitioner to extract and transport the minerals. Thirdly, he contends that the crime u/s 4(1-A) of the MMRD Act is punishable u/s 21 of the said Act; that Section 22 of the said Act makes it clear that no Court shall take cognizance of the offence punishable under that Act except upon the complaint in writing by a person authorised in this behalf by the Central Government or the State Government. According to him, in this case, no complaint is lodged by a person authorised and that therefore, the Court below should not have taken the cognizance.

The said submissions are opposed by Sri A.V. Ramakrishna, learned High Court Government Pleader appearing for the respondent-State, by vehemently contending that the crime committed by the petitioner squarely falls within the definition of "theft" and that the judgment relied upon by the learned Counsel for the petitioner may not be of any use to him, inasmuch as, the mineral extracted by the petitioner is not a minor mineral, but is a major mineral. He relies upon the judgment of this Court in the case of State of Orissa v. Sharat Chandra Sahu reported in, AIR 1997 SC 1 , in support of his contentions.

3. It is relevant to note the provisions of Section 70 of the Karnataka Land Revenue Act, 1964, which reads thus:

Section 70. Right to mines and mineral products to vest in Government. - Save as otherwise expressly provided under any law in force before the commencement of this Act or under the terms of any grant made or of any other instrument of transfer executed, by or on behalf of the Government for the time being, the right to mines, minerals and mineral products, shall vest absolutely in the State Government and the State Government shall, subject to the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act No. 67 of 1957), have all the powers necessary for the proper enjoyment or disposal of such rights.

The plain reading of the said section would go to show that the mines, minerals and mineral products shall vest with the State Government and the State Government shall, subject to the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act No. 67 of 1957), have all the powers necessary for the proper enjoyment or disposal of such rights. Thus, it is clear from the said section that the minerals embedded in the earth absolutely vest in the State though such land belongs to a private person. The said section is interpreted by the three Judges Bench of this Court in the case of State of Karnataka Vs. Dundamada Shetty, with reference to the Karnataka Minor Mineral Concession Rules, 1969 and Section 70 of the Karnataka Land Revenue Act, 1964.

It is held therein that the pattadars in ex-Mysore State have got every right to

extract and transport minor minerals embedded in patta lands. In other words, this Court has held that the pattadars in ex-Mysore State may enjoy their rights over minor minerals as sole owners. But, in this case, the petitioner had extracted the major mineral and not the minor mineral. The minor minerals are defined u/s 3(e) of MMRD Act. Iron ore does not fall within the said definition. Therefore, the said ore is a major mineral. If it is so, the petitioner cannot extract and transport the ore without necessary permission of the State Government.

4. Section 378 of the IPC defines "theft". The relevant portion of the said section reads thus:

378. Theft. - Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1. - A thing so long as it is attached to the earth, not being movable property is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

The meticulous reading of the said provision with explanation would make it clear that if a person dishonestly removes any movable property out of the possession of any person without that person's consent, the said person would commit theft. The Explanation 1 to the said section makes it further clear that, if the ore is removed from the earth, then it would be a subject-matter of theft. Illustration (a) to Section 378 of IPC makes it very clear that as soon as petitioner has severed the iron ore from the land in order to transport the same, it is to be said that he has committed a theft. In this view of the matter, the contention of the petitioner that the crime does not fall within the definition of "theft" is liable to be rejected.

5. The third contention of Sri Rajendra Reddy, learned Counsel appearing for the petitioner, also is liable to be rejected, inasmuch as, Section 379 of the IPC is an cognizable offence. The cognizable offence can be investigated into by the police based on information. There is no bar for the police to investigate into cognizable offence. The Investigating Authority need not take consent or permission of the jurisdictional Magistrate to investigate into the offence u/s 379 of IPC. If the crime involves both cognizable as well as no cognizable offences, then, there is no bar for the police to investigate into the crime without taking permission of the Magistrate. So also there is no bar for police to register the crime even if a part of the crime alleged is required to be intimated to the Magistrate by filing the complaint. In view of the same, as the crime in question prima facie discloses the offence u/s 379 of the IPC also, there is no bar to the police to investigate into the crime without the permission of the Magistrate by registering the crime based on information. The third contention of the learned Counsel for the petitioner runs contrary to the judgment of the Apex Court in the case of Sharat Chandra Sahu.

In view of the above, this Court does not find any reason to quash the proceedings. Petition is accordingly dismissed.