

(2023) 11 CAL CK 0017
In the Calcutta High Court
Case No : Criminal Revision No. 1241of 2022

Bhanu Pratap Singh

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 17-11-2023

Acts Referred:

West Bengal Minor Minerals (Concession) Rules, 2016 — Rule 49
Indian Penal Code, 1860 — Section 379, 411, 414
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 397, 482
Mines and Minerals (Development and Regulation) Act, 1957 — Section 4, 21, 23A, 25
Water (Prevention & Control of Pollution) Act, 1974 — Section 25, 26
Air (Prevention & Control of Pollution) Act, 1981 — Section 21
National Green Tribunal Act, 2010 — Section 17

Citation : (2023) 11 CAL CK 0017

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Himanshu De, Pinaki Ranjan Chakraborty, Navanil De, Subhrajit De, Madhusudan Sur, Dipankar Paramanick

Final Decision : Disposed Of

Judgement

Bibek Chaudhuri, J

1. This instant revision petition is filed under Section 482 read with Section 397 of the Code of Criminal Procedure, 1973 for quashing the First Information Report No. 453 of 2021 dated 26.10.2021 in connection with Chinsurah Police Station Case No. 453 of 2021 against one Bhanu Pratap Singh, under Section 379 of the Indian Penal Code read with Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 and the proceeding initiated thereunder being G.R. Case No. 2396 of 2021 pending before the Learned Chief Judicial Magistrate, Hooghly.

2. The petitioner, Bhanu Pratap Singh, is the owner of the brickfields being M/s. Keota Brickfield having Unit 1 and 2 situated at Mouza- Keota, J.L. No. 07, Plot Nos. 8782, 8629, 8633, 8582 and 8538; Police Station-Chinsurah, District-

Hooghly. This brickfield has been operating from 1960 having two units. The District Mining Authority of Hooghly treated the petitioner's brickfield as authorized and regularized and accepted royalty on brick earth which is a demand under Mines and Minerals (Development and Regulation) Act, 1957. By such long operation of brickfield on the concerned plots, the said plots have already been converted into mines and the business of the petitioner is governed under the said Act of 1957.

3. In respect of the plot in question, the petitioner's predecessor in interest obtained the same from the Government of West Bengal under a valid lease initially for a period of 30 years in the year 1960. In the said lease although there was a renewal clause, in the year 1990 the State authorities initially refused to renew the same for which the petitioner's father filed Title Suit No.51 of 2003 in the Court of the Learned Civil Judge (Junior Division) Additional Court, Hooghly and pursuant to the Judgment and decree passed in the said suit, the State of West Bengal granted renewal of the lease in the year 2007 for a further period of 30 years till the year 2037.

4. The Department of Land & Land Reforms, Government of West Bengal, by Circular dated 29.09.2000 and the Corrigendum to the said Circular dated 02.02.2001 had granted regularization to all the brickfields which came into operation on or before 01.09.2000 and/or in respect of which, there is an order from the Hon'ble Court of law allowing the brickfields to continue to operate and in terms of the said Circular, the brickfield of the petitioner stood regularized.

5. The petitioner is a member of the Bengal Brickfield Owners' Association, a Company incorporated under the Companies Act of 1913 and therefore, the petitioner claims that he is entitled to the benefits of the Judgments and orders obtained by the said Association from the Hon'ble High Court at Calcutta which says that:

5.1 The writ application being C.O. No. 4760 (W) of 1991 (Bengal Brickfield Owners Association and Others - Vs. - The State of West Bengal & Ors.) was moved before this Hon'ble Court by the said association and by the Judgment and order dated 19.07.2002, The Hon'ble Justice Amitava Lala disposed of the writ application by directing the State authorities not to disturb the carrying on of the usual business of the petitioner upon payment of royalty in any manner whatsoever.

5.2 The writ application was moved being W.P. No. 992 (W) of 2000 by the said Association before this Hon'ble Court challenging inter alia the enhancement of the rate of royalty during the pendency of the appeal before the said Hon'ble Court being F.M.A. No, 420 of 2004 involving the same subject matter and by Judgment and order dated 16.01.2003 the Hon'ble Justice Amitava Lala allowed the writ application by allowing the petitioners to carry on brickfield operation upon payment of royalty in terms of the Judgment and order dated 19.07.2002 passed in CO. No. 4760 (W) of 1991.

5.3 Both the said Judgments and orders are all still valid and operative and the petitioner is entitled to the benefit of the same.

5.4 Challenging the arbitrary fixation of the rate of royalty on brick earth at the rate of Rs.34/- per 100 cft., the Bengal Brick Field Owners' Association moved another writ application before this Hon'ble Court being W.P.No.2699 (W) of 2012 and by order dated 10.02.2012 The Hon'ble Justice Indira Banerjee passed an interim order directing the parties to maintain status quo with regard to the business of the petitioners and restrained the respondents from enforcing the impugned notification. The said interim order was subsequently extended from time to time by the Hon'ble Justice Soumitra Pal and thereafter the Hon'ble Justice Jyotirmay Bhattacharya extended the said interim order until further order. The said writ application is still pending before this Hon'ble Court and the said interim order is still in force.

6. The petitioner states that he took all measures and erected a pollution control system in accordance with the Guidelines of the West Bengal Pollution Control Board and constructed a high-draught chimney of appropriate height and zig-zag technology in the brick kiln. On the petitioner's application and upon payment of necessary fees, West Bengal Pollution Control Board issued the necessary consent required to operate the brickfield till 2015.

7. The petitioner states that as a Member of the Bengal Brickfield Owners' Association, he is always active for the welfare and protection of the members of the said Association and has always opposed the illegal steps taken by the District Mining Authority in West Bengal against the brickfield business of the members of the said Association. Therefore, he alleges that the District Mining Authority in the District of Hooghly has become vindictive with the petitioner and caused various disturbances and harassment to the petitioner in respect of the brickfield's operation. He states that he has duly applied for issuance of an Environmental Clearance Certificate and for such purpose, the petitioner's mining plan was duly approved. Subsequently, the Environmental Clearance Certificate was also issued in favour of the petitioner, pursuant to an order passed by the National Green Tribunal.

8. The petitioner states that in 2013 in flagrant violation of the Judgments and orders obtained by the petitioner's Association, the District Mining Authority claimed the price of brick earth from the petitioner at an arbitrarily high rate. Challenging such claim, the petitioner moved a writ application before this Hon'ble Court being W.P. No. 37821 (W) of 2013 and by an order dated 8th January 2014, the Hon'ble Justice Sanjib Banerjee directed that subject to the petitioner's putting an amount of Rs.5,00,000/- by way of fixed deposit in any Nationalized Bank, the State will not interfere with the petitioner's business if the business is conducted in accordance with law. In compliance with the said order, the petitioner made such a deposit.

9. The petitioner then states that again a Certificate Proceeding was initiated

by District Mining Authority against the petitioner on the alleged ground of demand for land revenue on the plots of the brickfield. Challenging the said demand and proceedings, the petitioner moved another writ application before this Hon'ble Court being W.P. No. 30030 (W) of 2015 and by an order dated 23.12.2015, the Hon'ble Justice Sanjib Banerjee passed an interim order directing that the petitioner would be permitted to deposit 50% of the claim amount by fixed deposit to any nationalized bank within a fortnight free from all encumbrances and in compliance of the said order, the petitioner duly made the fixed deposit and served copy of the certificate of the same to the learned advocate for the State.

10. The petitioner states that from the year 2016, the District Mining Authority arbitrarily started to show inaction to dispose of the petitioner's application for 'Consent to Operate' on the alleged ground that the petitioner had moved before this Hon'ble Court against the same demand of the District Mining Authority and opined that unless the aforesaid writ application being W.P. No. 37921 (W) of 2013 and W.P. No. 30030 (W) of 2015 were withdrawn and all payments were made in terms of the aforesaid demand, the petitioner's application for 'Consent to Operate' would not be issued. Under such coercive stand of the District Mining Authority, the petitioner was compelled to initiate a proceeding before the National Green Tribunal against the inaction to issue 'Consent to Operate' being O.A. No. 133 of 2016/EZ and obtained necessary orders.

11. The petitioner states that in 2017, the respondents started to show inaction to dispose of the petitioner's application for 'Consent to Operation' even after payment of necessary fees by the petitioner for this purpose. As a result, the petitioner had to make another application before the National Green Tribunal, O.A. No. 147 of 2017/EZ. The petitioner state that, even after passing of the Judgment and order by the National Green Tribunal, Eastern Bench in this regard, the respondents did not issue Consent to Operate in favour of the petitioner and are still showing mala fide inaction to dispose of the petitioner's application for Consent to Operate although every year, the petitioner paid necessary fees for such purpose. It is alleged that the petitioner made necessary payments of the application fees for obtaining Consent to Operate till 2026 which was duly accepted by the concerned Authority but the said Authority showed total inaction.

12. The petitioners state that although the respondents were accepting royalty on brick earth from the petitioner for the last few years, the respondents started to issue demand notices claiming price on brick earth by treating the business of the petitioner as unauthorized without disclosing the specific reason for not treating the said business as regularized and opined that unless such payments of price on brick earth are made by the petitioner, the petitioner would not be allowed to operate the brickfield and under such compelling circumstances, the petitioner was compelled to make such payment.

13. The petitioners state that in 2017, F.I.R. was lodged against the petitioner in

a mala fide manner being Report No.87 of 2017 dated 27.02.2017 in connection Chinsurah Police Station Case No. 87 of 2017 under Sections 411/414 of the Indian Penal Code. Challenging the maintainability of the said First Information Report, the petitioner moved a criminal revisional application before this Hon'ble Court being C.R.R. No. 637 of 2017 and by an order dated 27th February 2017 His Lordship the Hon'ble Justice Joymalya Bagchi directed stay of all further proceedings of G.R. Case No. 327 of 2017 pending before the learned Additional Chief Judicial Magistrate, Hooghly arising out of the said First Information Report. The said Criminal Revisional Application is still pending before this Hon'ble Court.

14. The petitioner states that during the year 2021, he duly paid a royalty on brick earth according to the demand of the respondents. Due to the pendency of various judicial proceedings before this Hon'ble Court and the Judgments and orders passed therein from time to time, the District Mining Authority in all districts of West Bengal had stopped the formal issuance of query permits and allowed all the brickfield owners in West Bengal to operate the brickfields upon acceptance of royalty and without formal issuance of quarry permits and in the same manner, the petitioner was also allowed till 2021 to operate the brickfield upon payment of necessary lawful dues to the Government and without formal issuance of query permits. Then suddenly, by an Office Memo No. IX-08/BF-2379/MM/88 dated 05.05.2021, the respondents made a demand Rs. 14,26,716/- as outstanding dues of the petitioner without disclosing the basis of such demand and asked the petitioner to make immediate payment of the said outstanding dues within 10 working days with a threat of legal action in the event of non-payment of the same. The petitioner alleges that the said amount was demanded from the petitioner as the alleged price of the earth without taking any valid measurement of the petitioner's actual consumption of brick earth for commercial purposes.

15. In terms of the demand notice dated 5th March 2021, the petitioner duly paid the said amount of Rs.16,70,000/- (Rupees sixteen lakhs seventy-six thousand only). Then, suddenly the petitioner came to know in the month of October, 2021 that on the basis of a complaint of the respondent no.2., the Block Land & Land Reforms Officer, Chinsurah-Mogra, the First Information Report being FIR No. 453 of 2021 dated 26.10.2021 was lodged with Chinsurah Police Station under Section 379 of the Indian Penal Code read with Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 and on the basis of the said First Information Report, a criminal proceeding being G.R. Case No. 2395 of 2021 was initiated in the Court of the learned Chief Judicial Magistrate, Hooghly under the said Sections.

16. The respondents state and contend that the petitioner is carrying on brick manufacturing business illegally as the application for environmental clearance of the brickfield was rejected by the empowered committee and was accordingly prohibited to operate. Despite the rejection of his prayer for environmental clearance, the brickfield has been operating. Moreover, it was discovered that the

petitioner has stored a quantum of 140700 cft of earth over plots no.8767 and 8550 upon an inspection by the appropriate authority. In spite of a closure notice being served on the petitioners, the brickfield continued to operate with mechanized equipment. Huge amounts of finished bricks were seen inside the premises of the brickfield and a substantial amount of unburned bricks, which were ready to be loaded on the kiln were also seen upon inspection. They further noted that the brickfield owner has raised mud embankments in the area adjoining the present stream of the river Ganga to arrest the outflow of the silt that gets deposited inside the area encompassed by the mud embankment during the monsoon or during the high tide. Such an activity was changing and damaging the natural course of the river and also the flora and fauna of the area.

17. Next, the respondents state and argue that the Environmental Clearance was granted to the petitioners only for the purpose of mining and the grant of the Environmental Clearance in favour of any incumbent does not allow or permit them to operate or run a brickfield. For running any brickfield, issuance of Consent to Establish (CTE) and Consent to Operate (CTO) in favour of the brickfield is mandatory. The same is issued in terms of Section 25 and Section 26 of the Water (Prevention & Control of Pollution) Act, 1974 & Section 21 of the Air (Prevention & Control of Pollution) Act, 1981 and ADM and DL & LRO is the competent authority to issue the same. Moreover, other statutory documents like a Fire license, trade license, GSTN Id etc. are also required. They state that the petitioner's brick factory had CTO valid till 30.04.2015. After that, no CTO had been issued in their favour. Therefore, the factory was operating unauthorizedly since then. Also, the Brickfield has two units at present and with regards to the second unit, no application for CTO had been filed. Lastly, the respondents also state that the amount which is claimed by the petitioners as royalty was not in fact a royalty payment and they treated such amount as fine.

18. The Learned Counsel for the petitioner argues firstly that, it appears from the F.I.R. that the Environmental Clearance Certificate which was supposed to be issued in favour of the petitioner was rejected without giving the petitioner any opportunity of hearing, without any prior intimation to the petitioner and that such rejection was allegedly made by an empowered committee through the Resolution of the 34th Screening and Scrutiny Committee on 24th January, 2020. Therefore, this is in clear violation of the principles of natural justice. He also contends that it appears from the F.I.R. that during the field inspection in question on 06.03.2020, no illegal mining operation or brickfield operation was detected and the allegation of unauthorized extraction was made against the petitioner only due to the existence of some stag earth over Plot nos. 7867 and 8550 in Mouza- Keota, J.L. No.07, District- Hooghly. Moreover, when the petitioner received the intimation of such cancellation of the Environmental Clearance certificate in the last week of March 2022, he submitted an application under the Right to Information Act, 2005 before the Opposite Party No.2 (BL and LRO) on 01.04.2022 as to whether any resolution was taken for cancellation of Environmental Clearance Certificate and whether any government land was

occupied by the petitioner and whether any closure order was issued in respect of petitioner's brickfield. But to date, no answer to the said application is given, and therefore, he contends that there is/was no reason/valid ground to treat the brickfield to be without any lawful authority.

19. Next, the petitioner contends that in view of the notification 297-MOM/LR/A-11-26/2010 dated 09.02.2022 Environment Clearance Certificate is required for the operation of the brickfield if the depth of the quarry is not more than 1.5 metres and as such, the allegation of cancellation of Environmental Clearance Certificate does not make the brickfield of the petitioner unauthorized and as such, no offence either under Section 379 of the Indian Penal Code or Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 is disclosed against the petitioner. Therefore, the F.I.R. and the proceedings initiated thereunder are liable to be quashed. Moreover, in view of the provisions of West Bengal Minor Minerals (Concession) Rules, 2016, no Environmental Clearance Certificate is required for operating a brickfield, particularly when the brickfield business is seasonal and is not a permanent establishment and as such there is no cogent ground for cancellation of the certificate, therefore, the F.I.R. needs to be quashed. The Brickfield operations are governed under the short-term permits granted under the West Bengal Minor Minerals Concession Rules, 2016 and under Rule 49 of the said rules, the Environmental aspects of mining given in Chapter V of the said Rules are not applicable because of the fact that the brickfield business is a seasonal business and therefore, it is a short-term business.

20. Next, the Learned Counsel contends that the petitioner had obtained 'Consent to Operate' on earlier occasions and having duly applied for issuance/extension of 'Consent to Operate' upon payment of necessary application fees to the year 2026 and such application having not been rejected, the petitioner is entitled to carry on brickfield operation upon deemed consent under the relevant Laws and as such, no offence is disclosed against the petitioner and the First Information Report and the proceedings initiated thereunder are liable to be quashed. Moreover, the petitioner has constructed the necessary pollution control system according to the Guidelines of the West Bengal Pollution Control Board, the petitioner is not under obligation to obtain necessary consent and/or Environmental Clearance every year and in view of the issuance of the Environmental Clearance Certificate in favour of the petitioner and in view of the approval of the petitioner's mining plan, it shall be deemed that the operation of brickfield by the petitioner is in strict compliance of the law and the First Information Report and the proceedings initiated thereunder are liable to be quashed. In view of the grant of the Environmental Clearance Certificate and in view of the approval of the mining plan in favour of the petitioner, no allegation of cutting any soil or ordinary earth in any illegal or unauthorized manner is maintainable in law and therefore, the F.I.R. needs to be quashed.

21. Next, the Learned Counsel contends that it transpires from the F.I.R. that at the time of field enquiry in respect of the petitioner's brickfield, no unauthorized

operation of brickfield was detected and the First Information Report was lodged only because of the existence of the stag of ordinary earth in the brickfield which does not disclose any offence against the petitioner either under Section 379 of the Indian Penal Code or under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 and as such the First Information Report and the proceedings initiated thereunder are liable to be quashed. Section 21 of the Act has no manner of application in the present case since the allegation against the petitioner is relating to the storage of earth and there is no allegation of unauthorized mining operation in respect of any minerals and as such no ingredient to attract Section 21 of the Act can be proved. The brick of earth being minor minerals, the brickfield business is covered under the Mines and Minerals (Development and Regulation) Act, 1957 and the question regarding Consent to Operate and/or Environmental Clearance Certificate' is also issued under the Air, (Prevention and Control of Pollution) Act, 1981 and the Environmental Protection Act, 1986 and all the said Acts of 1957, 1981 and 1986 being special Statutes, any allegation of violation of any of the provisions of the same cannot be governed under General Statute being Indian Penal Code, 1860 and as such, no ingredients to constitute any offence by the petitioner is disclosed under Section 379 of the Indian Penal Code, 1860 which has no manner of application in respect of brickfield and as such the proceedings need to be quashed.

22. The petitioner alleges that after the lodging of F.I.R., the concerned police authority caused the seizure of the petitioner's vehicles on May 23, 2022, in the evening and prepared a seizure list. The police authorities also put the brickfield closed and under lock and key on and from February 19, 2022, and had beaten one employee of the petitioner, namely Ujjal Maji causing injury to his body, took custody of the petitioner's order book, expense sheets and the files related to the petitioner's business. As such the petitioner lodged a complaint to the Commissioner of Police at Chandannagar on February 20, 2022. But no step was taken in this regard by the said Commissionerate.

23. The respondents contended that the location of the petitioner's brickfield is disturbing and changing the course of the basin of the river Ganga. The petitioner took photographs by drone operation in respect of the location of the petitioner's brickfield which shows that the brickfield is not at all disturbing and/or affecting and/or changing the course of the basin of river "The Ganga". The petitioner further states that just at the point of bending of the course of the river the Ganga, there is another brickfield which has no connection with the petitioner and as such it is proved that the allegation of changing the course of the river by the petitioner is absolutely false and incorrect since there is no bending of the river basin adjacent to the petitioner's brickfield.

24. Next, the petitioner contends that it had been held by the Supreme Court of India that the sub-soil rights relating to mines do not vest in the State Government and as such the F.I.R. and subsequent proceedings are without

jurisdiction and should be quashed. He also contends that as per the decision of this Hon'ble Court in Chhotelal Choudhury vs State of West Bengal reported in 2008 (3) CHN 1060, Section 379 of the Indian Penal Code has no manner of application in respect of brickfields as they are governed by a special statute, which is Mines and Minerals (Development and Regulations) Act, 1957.

25. Next, the petitioner argues that Section 23A of The Mines and Minerals (Development & Regulations) Act, 1957 contemplates of compounding of offences and therefore if the authority contemplates any offences under The Mines and Minerals (Development & Regulations) Act, 1957, the petitioner undertakes to pay the fine which the authority thinks fit and proper. Although the authority Demand Notice dated May 05, 2021, directed the petitioner to pay outstanding dues of Rs.14,26,716/- but at first the petitioner paid only Rs.1,38,396/-. Thereafter, the petitioner paid Rs.6,00,000/- on February 28, 2022, Rs.8,27,000/- on March 01, 2022, Rs.2,00,000/- on March 02, 2022, and Rs.49,000/- on March 03, 2022. Therefore, the petitioner paid Rs. 18,14,396/- against the demand of Rs. 14,26,716/- which is more than the authority had demanded.

26. Next, they argue that in Section 17 of The National Green Tribunal Act, 2010, in the event of any violation of laws relating to the control of pollution, the appropriate remedy is by way of compensation and the said Act does not provide for initiation of criminal procedure. As such, lodging of the First Information Report, on the ground of the alleged operation of Brickfield without an Environmental Clearance Certificate does not disclose any offence and therefore, the jurisdiction falls under the National Green Tribunal Act and not under any investigating authority.

27. Lastly, the Learned advocate argues that if the payment has not been made in due time by the petitioner, then the procedure to recover such a fine is by way of Section 25 of the Mines and Minerals (Development & Regulations) Act, 1957, therefore, the lodging of F.I.R. in the instant case is non-est in the eye of law and liable to be quashed. Therefore, the continuation of the present proceeding is an abuse of the process of law and proves mala-fide intention on the part of the respondent.

28. After hearing the parties at length it is the opinion of the Court that the investigation against the petitioner cannot be quashed under S.478 as a prima facie offence can be made out.

29. It is the contention of the respondents that the petitioner is in violation of S.21 of the Act, 1957. Section 21 reads as:

21. Penalties.—1[(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) 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 provision of this Act may provide that any contravention thereof shall be punishable 2[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 3[five hundred rupees] for every day during which such contravention continues after conviction for the first such contravention.

[(3) Where any person trespasses into any land in contravention of the provisions of sub-section (1) of section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.]

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.] 6[(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable.]

The petitioners have contended that Section 21 has no application here as the allegation against the petitioner is relating to the storage of earth and there is no allegation of unauthorized mining operation in respect of any minerals and as such no ingredient to attract Section 21 of the Act can be proved. But, the report of the District Land & Land Reforms Officer (DL & LRO) says otherwise. In the report, it is stated that the brickfield does not conduct any mining activity on the plots over which the Environmental Clearance is granted. Moreover, according to the report, the EC is only granted for the purpose of mining and the grant of EC in favour of the incumbent does not allow or permit him to operate or run the brickfield. According to the report, the Consent to Operate was valid till 30.04.2015 and after that, no CTO has been issued in the petitioner's favour. Therefore, to date, the brickfield of the petitioner was functioning in an unauthorized manner. According to the report, the brickfield had obtained

Environmental Clearance over plot numbers 8782, 8629, 8633, 8582 and 8538 of mouza Keota J I-07. The brickfield had not undertaken any mining/extraction operation on the plots in respect of which EC has been issued. The brickfield owner is extracting brick earth from the plots adjoining to the present stream of the Ganges and no EC has been granted in respect of these plots. Therefore, it is the contention of the respondents that Section 4 and Section 21 of the Act, 1957 are attracted.

30. In the landmark case *State of Haryana v. Bhajan Lal* (1992 Supp. (1) SCC 335), a two-judge bench of the Supreme Court of India considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Supreme Court summarized the legal position by laying the following guidelines to be followed by High Courts in the exercise of their inherent powers to quash a criminal complaint:

- (a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
- (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;
- (c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;
- (d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;
- (e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;
- (f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;
- (g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

To quash the FIR against the accused, this Court would have to examine if the

facts of the case come under any of the exceptions given in *State of Haryana v. Bhajan Lal* (1992 Supp.(1) SCC 335). It is the opinion of the Court that the facts of the case do not fall under any of the exceptions. According to the report by the BR & LRO, the activities of the petitioner constitute a prima facie offence under Section 21 as there allegedly have been some illegal mining activities and the brickfield was operating without the Consent to operate and the requisite EC. For these reasons, the investigations cannot be stopped and the F.I.R. cannot be quashed.

31. Coming to the issue of the petitioner raising mud embankments in the area adjoining the present stream of the river, to arrest the outflow of the silt that gets deposited inside the area encompassed by the mud embankment during the monsoon or during the high tide, it is not possible for this Court to adjudicate on this issue by looking at the aerial photographs given by the respondents and the petitioners. Only an expert in this field can decide whether the contention raised by the respondent is true, after conducting field visits. Therefore, I do not find any reason to go into this issue and stop the investigation by the respondents and quash the F.I.R.

32. With this, the instant petition is disposed of.