

(2023) 04 JH CK 0020

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1279 Of 2012

General Manager (Mines) And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 10-04-2023

Acts Referred:

Environment (Protection) Act, 1986 — Section 15, 16, 19
Code Of Criminal Procedure, 1973 — Section 362
Negotiable Instruments Act, 1881 — Section 141
Contract Labour (Regulation And Abolition) Act, 1970 — Section 25
Income Tax Act, 1961 — Section 278B

Citation : (2023) 04 JH CK 0020

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Indrajit Sinha, Rishav Kumar, V.S. Sahay, Prabhash Kumar

Final Decision : Allowed/Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Heard 1. Mr. Indrajit Sinha along with Mr. Rishav Kumar, learned counsel for the petitioners, Mr. V.S. Sahay, learned counsel for the State and Mr. Prabhash Kumar, learned counsel for opposite party no.2.

2. This petition has been filed for quashing the entire criminal proceedings initiated as against the petitioners in connection with C/7 Complaint Case No.28 of 2012 including the order dated 27.02.2012 read with order dated 06.03.2012, pending in the court of the learned Chief Judicial Magistrate, Chaibasa.

3. Opposite party no.2 has filed a complaint petition in the court of the learned Chief Judicial Magistrate, Chaibasa alleging commission of offence under Section 19 of the Environment (Protection) Act arraying officials of the Steel Authority of India Limited, Raw Materials Division, Manoharpur Ore Mines, District- West Singhbhum including the present petitioners as accused, which was registered as C/7 Complaint Case No.28 of 2012 alleging therein that the Dhobil Iron Mining

Project of M/s. Steel Authority of India Limited is located in Village Dhobil, Tehsil Manoharpur Block, District West Singhbhum, Jharkhand. The Ministry of Environment and Forests, Government of India vide letter dated 20.04.2011 has pointed out that the said mine had enhanced production capacity without obtaining the requisite prior Environment Clearance from the Ministry of Environment and Forests as required under EIA Notification, 2006 thereby violated the provisions of Environment (Protection) Act, 1986. It was further alleged that the Ministry of Environment and Forests, Government of India vide the aforesaid letter dated 20.04.2011 has directed the State Government to initiate action against the above unit by invoking power under Section 19 of the Environment (Protection) Act, 1986 for the period for which the above unit has operated without obtaining requisite prior environmental clearance. It was also alleged that the Member Secretary, Jharkhand State Pollution Control Board, Ranchi vide its letter dated 12.11.2011 directed the complainant to file case in the competent court against the accused persons on the basis of the letter dated 20.04.2011 issued by the Ministry of Environment and Forests, Government of India, New Delhi directing the Government of Jharkhand to take action against the accused unit by invoking the powers under Section 19 of the Environment (Protection) Act, 1986 for the period for which the unit has been in operation without obtaining the requisite prior environmental clearance. The offence committed by the accused unit is punishable under Section 19 of the Environment (Protection) Act, 1986. Subsequently on 24.01.2012, opposite party no.2 filed an application for making amendment/correction in the column of offence committed as to under Section 15 of the Environment (Protection) Act instead of under Section 19 of Environment (Protection) Act.

4. Mr. Indrajit Sinha, learned counsel for the petitioners submits that the complaint petition was filed before the learned court on 09.01.2012 and the learned Chief Judicial Magistrate, Chaibasa has taken cognizance vide order dated 27.02.2012 under Section 19 of the Environment (Protection) Act, 1986 and the petitioners have been summoned. He further submits that subsequently vide order dated 06.03.2012 while considering the petition dated 24.01.2012 filed by opposite party no.2 for correction in the complaint petition, the learned Chief Judicial Magistrate, Chaibasa has modified the order dated 27.02.2012 and clarified that the cognizance order dated 27.02.2012 would be treated as if the cognizance of the crime has been taken under Section 15 of the Environment (Protection) Act, 1986. He also submits that in view of further order, the entire nature of the order has been changed which is barred under Section 362 of Cr.P.C. He further submits that the petitioners have been alleged as accused in the capacity of General Manager (Mines) and Mines Manager. He refers Section 16 of the Environment (Protection) Act, 1986 and submits that the employee and officer of the company, who was directly incharge of and was responsible to the company for the conduct of the business of the company shall be deemed to be guilty only if the company is also made an accused and in the instant case the company i.e. Steel Authority of India Limited was the mining lessee and,

therefore, in absence of the company, the entire criminal proceeding is bad in law. On these grounds, he submits that the entire criminal proceedings may kindly be quashed.

5. On the other hand, Mr. Prabhash Kumar, learned counsel for opposite party no.2 submits that in view of provision of Section 16 of the Environment (Protection) Act, 1986, the petitioners are liable to be prosecuted. He further submit that the learned court has rightly taken the cognizance.

6. Mr. V.S. Sahay, learned counsel for the State submits that the learned court has taken cognizance under the said Act, which is special provision and this Court may not entertain this petition.

7. In view of the above submissions of the learned counsel for the parties, the Court has gone through the materials on the record and finds that admittedly these petitioners were posted as General Manager (Mines) and Mines Manager of the Steel Authority of India Limited. The learned court has taken cognizance vide order dated 27.02.2012 under Section 19 of the Environment (Protection) Act, 1986 and vide order dated 06.03.2012, he has modified the said order saying that it would be deemed that the cognizance shall be taken under Section 15 of the Environment (Protection) Act, 1986, which is against the mandate of law as modification which changes the entire nature of the case is prohibited under Section 362 of Cr.P.C. In this regard, a reference may be made to Section 16 of the Environment (Protection) Act, 1986, which reads as under:

"16. Offences by companies- (1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation- For the purposes of this section-

(a) "company" means any body corporate, and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

8. From bare perusal of sub-section 1 of Section 16, it is clear that if the offence is committed by a company, the officer who is directly in charge and was responsible to the company for the conduct of business of the company as well as the company are liable to be punished. In the entire complaint petition, there is no averment that these petitioners were incharge and they were looking to the day-to-day affairs of the company.

9. The provisions of Section 16 of the Environment (Protection) Act, 1986 are pari materia the same of Section 141 of the Negotiable Instrument Act as well as Section 25 of the Contract Labour (Regulation and Abolition) Act 1970 and Section 278-B of the Income Tax Act. The Hon'ble Supreme Court while dealing with the cases under Negotiable Instruments Act in National Small Industries Corporation Ltd. v. Harmeet Singh Pental and Another; [2010 (3) SCC 330] has held that it is mandatory for the complainant to make averments in the complaint petition that the accused is directly in charge and was responsible to the company for the conduct of the business of the company. The said ingredient is missing in the case in hand.

10. Further, the Hon'ble Supreme Court in Aneeta Hada v. Godfather Travels and Tours (P) Ltd.; [(2012) 5 SCC 661] has held that if the company has not been made accused, the prosecution case will be illegal. In the case in hand, the Steel Authority of India Limited is not made an accused.

11. In view of the above facts, reasons and analysis, the entire criminal proceedings initiated as against the petitioners in connection with C/7 Complaint Case No.28 of 2012 including the order dated 27.02.2012 read with order dated 06.03.2012, pending in the court of the learned Chief Judicial Magistrate, Chaibasa is quashed.

12. Accordingly, this petition is allowed and disposed of.

13. Interim order, if any granted by this Court, stands vacated.