

(2012) 02 JH CK 0029

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 826 of 2011

Gulab Bhagat and Ejamul Ansari

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 4
Jharkhand Mining Act, 2004 — Section 40, 54(7)
Jharkhand Minor Mineral Concession Act — Section 54
Jharkhand Minor Mineral Concession Rules, 2004 — Rule 57
Penal Code, 1860 (IPC) — Section 120B, 413, 414

Citation : (2012) 2 JCR 43 : (2012) 1 JLJR 264

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad

1. Heard learned counsel appearing for the petitioners and learned counsel appearing for the State.
2. Both these applications have been filed for quashing of the FIR of Pakur (Malpahari) P.S. Case No. 47 of 2011 (G.R. No. 126 of 2011) which has been registered under Sections 413/414 read with Section 120B of the Indian Penal Code and also under Sections 40 & 54(7) of the Jharkhand Mining Act, 2004, which seems to have been wrongly mentioned in place of Section 54 of the Jharkhand Minor Mineral Concession Rules, 2004.
3. Case of the prosecution is that when four to five trucks were found carrying stone chips, they were intercepted by the ASI of Pakur (Malpahari) Police Station and on being asked, when no document was produced, a case was lodged on an allegation that the stone chips had been brought after extracting the same from a mine illegally and was being carried for the purpose of sale.

4. On such allegation, a case was registered under Sections 413/414 read with Section 120B of the Indian Penal Code and also u/s 54 of the Jharkhand Minor Mineral Concession Rules.

5. Mr. Rajeev Sharma, learned Sr. Counsel appearing for the petitioners submits that the allegation of illegal extraction of stone from a mine does constitute an offence u/s 54 of the Jharkhand Minor Mineral Concession Rules, a Special Legislation, which speaks that if anyone, in contravention of the provisions of the said Rules, extracts or transports the minerals, it would be punishable u/s 54 of the Jharkhand Minor Mineral Concession Rules and under this situation, offence under Sections 413/414 of the Indian Penal Code does not get attracted and, therefore, if the offence is there under the provisions of Jharkhand Minor Mineral Concession Rule, it can be instituted in terms of Rule 57 of the said Rules, only at the instance of the competent Officer i.e. the Deputy Director, Mines, Additional Director, Mines or the Director, Mines or the Mines Collector or by an officer, duly authorized by the Government and only then, on the basis of the FIR, cognizance of the offence can be taken.

6. Here nothing has been placed on record to show that the ASI has been authorized to lodge the case punishable under the Jharkhand Minor Mineral Concession Rules and, as such, the instant FIR is fit to be quashed.

7. Learned counsel appearing for the petitioners, in support of the aforesaid submission, has referred to a decision, rendered in the case of Bhotna Mahto vs. State of Jharkhand reported in 2009 2 JLJR 258.

8. Learned counsel appearing for the State submits that since the case was registered not only under the Jharkhand Minor Mineral Concession Rules but also u/s 413/414 read with Section 120B of the Indian Penal Code, an ASI can be said to be competent enough to lodge the case.

9. In the facts and circumstances, as stated above, I do not find any merit in the submission advanced on the behalf of the State.

10. In this regard, I may refer to the provision as contained in Section 4 of the Code of Criminal Procedure, which does stipulate that if any offence is committed under any of the law, other than IPC, it shall be investigated, inquired into or tried, according to the provisions, as contained in that enactment, in force.

11. Here in the instant case, as noted above, Rule 57 of the aforesaid Rules, does prescribe that, FIR can be lodged at the instance of the persons mentioned above wherein it has never been mentioned that the ASI of any Police Station is competent to lodge the case.

12. Therefore, lodgment of the instant case, at the instance of the ASI, is quite illegal. That apart, offences under the aforesaid Rules, seems to be non-cognizable, as maximum sentence prescribed is six months or with fine.

13. In that situation, the police does not have any power to investigate the case,

without there being any order of the Magistrate.

14. Under the circumstances, FIR of Pakur (Malpahari) P.S. Case No. 47 of 2011 (G.R. No. 126 of 2011) registered under Sections 413/414/ read with Section 120B of the Indian Penal Code and also under Sections 54 of the Jharkhand Minor Mineral Concession Rules, 2004, is hereby quashed so far petitioners are concerned.

15. In the result, both the applications are allowed.