
(2014) 08 JH CK 0083
In the Jharkhand High Court
Case No : Cr. M.P. No. 21 of 2002

Hare Kant Jha

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 14-08-2014

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 21, 22, 23, 25, 4
Penal Code, 1860 (IPC) — Section 120-B, 379

Citation : (2015) 1 JLJR 717

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Arpit Kumar, Advocates for the Appellant; Vikash Kishore, Advocates for the Respondent

Judgement

Harish Chandra Mishra, J.—Heard learned counsel for the petitioner and learned counsel for the State. The petitioner has challenged the entire criminal proceeding against him in the FIR registered as Boarijore (Lalmatia) PS. Case No. 94 of 2001, which was instituted for the offence under Sections 379 and 120-B of the Indian Penal Code and Sections 9, 21 and 23 of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as the "MMDR Act").

2. Though, the FIR was lodged after an accident in the mines, in which 12 persons, who had unauthorisedly entered the coal mines for committing the theft of coal by illegal mining, lost their lives, but the present FIR has been lodged for loss caused to the State Government due to loss of royalty and theft of coal. It is stated in the FIR that on 26.9.2001, the informant, who was posted as an Assistant Mining Officer, Godda, got the information about the accident, and he reached the place of occurrence, where he learnt that illegal mining was going on in the mines by the outsiders. Alleging that due to the said illegal mining, the Government had suffered the loss of Rs. 14.55 lacs to Rs. 19.40 lacs by way of royalty and theft of coal, the present FIR was lodged for the offence under

Sections 379 and 120-B of the Indian Penal Code and Sections 9, 21 and 23 of the MMDR Act. In the FIR, the petitioner being the Chief General Manager of Rahmahal Open Caste Project of Eastern Coalfields Limited, and the other security officials of the said Project have been made accused, alleging that the theft of the coal by unauthorised persons was going on in mines for the last about two months, but the same was not prevented by the concerned authorities, showing their connivance in the matter.

3. This application was admitted for hearing by order dated 30.9.2002 and further proceedings against the petitioner was stayed.

4. Learned counsel for the petitioner has submitted that the prosecution of the petitioner is absolutely illegal, inasmuch as, the alleged offence is squarely covered by the special provisions of MMDR Act, and no offence can be said to be made out against the petitioner under the general provisions of the Indian Penal Code. It is submitted that there being specific provisions for loss of royalty, and unauthorised mining under the MMDR Act, making out the offence under Section 21 of the said Act, the case could not be instituted for the general offence under Section 379 of the Indian Penal Code against the petitioner. It is further submitted that under Section 22 of the MMDR Act, there is complete prohibition for taking cognizance except on complaint made in writing by the authorised person, and as such the lodging of the FIR is against the scheme of law, which cannot be sustained in the eyes of law.

5. Learned A.P.P. for the State has opposed the prayer and has submitted that on the basis of the allegations made in the FIR, the offence is clearly made out against the petitioner, and as such, no case is made out for quashing the FIR at this stage.

6. Having heard counsels for both the sides and upon going through the FIR, it is apparent that the present FIR has been lodged mainly for the loss of royalty and the loss of coal by theft, to the State Government, due to the alleged illegal mining carried out by the unauthorised persons. There are specific provisions relating to the unauthorised mining and royalty, under Sections 4 and 9 of the MMDR Act, any violation of which makes out the offence under Section 21 of MMDR Act. There are specific provisions under Section 25 of the said Act for recovery of royalty and any other sum due to the Government. Accordingly, in my considered view, no offence can be made out under the general provisions of Section 379 of the Indian Penal Code against the petitioner.

7. So far as the offence under the MMDR Act is concerned, Section 22 of the MMDR Act 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."

From a bare perusal of Section 22 of the MMDR Act, it is apparent that there is complete bar by the statute upon prosecution for the offence under this Act on the basis of a police case. The Courts are prohibited from taking cognizance of any offence punishable under this Act or any rules made there under, except on a complaint made in writing by the person, authorized in this behalf by the Central Government or by the State Government. The present case has been instituted as a police case and not on the basis of the complaint, and accordingly, as per Section 22 of the MMDR Act, no cognizance can be taken on the basis thereof. As such, the prosecution, if any, on the basis of the FIR is clearly prohibited under the law, and the same cannot be allowed to be continued. Accordingly, the FIR in Boarijore (Lalmatia) P.S. Case No. 94 of 2001, as also the entire criminal proceeding against this petitioner in the said case, are hereby, quashed. This application is accordingly, allowed.