

(2014) 12 JH CK 0071
In the Jharkhand High Court
Case No : Cr. M.P. No. 2749 of 2013

Harjeet Singh and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 190(1)(d), 378, 4, 5
Delhi Rent Control Act, 1958 — Section 21
Penal Code, 1860 (IPC) — Section 34, 378, 379, 411

Citation : (2015) 2 AJR 62

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : Somitra Baroi and R.P. Mukherjee, Advocates for the Appellant

Judgement

Rongon Mukhopadhyay, J.—Heard learned counsel for the petitioner and learned counsel for the State.

2. In the present criminal miscellaneous petition, the petitioners have prayed for quashing the entire criminal proceeding including the order dated 23.7.2010 passed by learned Additional Chief Judicial Magistrate, Ghatshila in Musabani P.S. Case No. 25 of 2008 corresponding to G.R. No. 214 of 2008 by which cognizance for the offence u/s. 379/411/34 of the Indian Penal Code (I.P.C.), Rule 4/54 of the Jharkhand Minor Mineral Concession Rules 2004 and Section 4(i)(ii) of Illegal Mining, Act has been taken.

3. It appears that a First Information Report was instituted by the Inspector of Police in which it has been alleged that on secret information the police reached near Swarna Rekha River and found a truck bearing registration No. BRS-8711 which was being loaded with white stones. It is alleged that the driver of the truck was apprehended and he had named all the accused persons as being involved in the illegal extraction and trading of white stones extracted from Swarna Rekha River. The said stones were thereafter sent to Gajanand Factory, Gamharia, Adityapur.

4. After institution of the case, investigation was taken up and on conclusion of the investigation, the case having been found to be true against the accused persons, charge-sheet was submitted for the offence u/s. 379/411/34 of the Indian Penal Code (I.P.C.), Rule 4/54 of the Jharkhand Minor Mineral Concession Rules 2004 and Section 4(i)(ii) of Illegal Mining Act and the learned court below vide order dated 23.7.2010 was pleased to take cognizance against the aforesaid offences.

5. Learned counsel for the petitioner has assailed the impugned order and submitted that the entire criminal proceeding instituted against the petitioner is bad in law in view of the fact that the Police Inspector does not have authority to lodge a case either under the provisions of Indian Penal Code or under the provisions of Jharkhand Minor Mineral Concession Rules. He has further submitted by referring to Section 4 and 5 of the Code of Criminal Procedure that the Jharkhand Minor Mineral Concession Rules is a special legislation and in such circumstances the general law cannot be made applicable. He has further submitted that the non-application of mind by the Judicial Magistrate while taking cognizance vide order dated 23.7.2010 would be evident from the fact that cognizance has been taken under Section 4(i)(ii) of Illegal Mining Act which is not in existence.

6. Learned counsel for the State on the other hand has submitted that the police has power to institute a case under the provision of Indian Penal Code and even if the subject matter is for the offences under the Jharkhand Minor Mineral Concession Rules, the same does not preclude the Police Inspector to investigate the case under the provisions of Indian Penal Code.

7. After hearing learned counsel for the petitioner as well as for the State, I find that a First Information Report was instituted both under the provisions of Indian Penal Code as well as under the provisions of Jharkhand Minor Mineral Concession Rules for the allegation of illegal extraction of white stones from Swarna Rekha River.

8. Rule 54 of the Jharkhand Minor Mineral Concession Rules reads as under:-

9. A perusal of the aforesaid rule reveals that no criminal proceeding can be instituted save and except by a person authorized or by such class of persons as has been mentioned in the said rules. In the present case the First Information Report has been instituted by the Sub Inspector of Police and nothing has been brought on record by the State to controvert the fact that the Sub Inspector of Police is not authorized to institute the First Information Report under the provisions of the Jharkhand Minor Mineral Concession Rules.

10. In this context, it would be apt to refer to the judgment in the case of Jaysukh Bavanji Shingalia Vs. State of Gujarat, in which the Supreme Court while considering the conflict of the special law vis-a-vis general law has held a follows:-

"66. Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the river bed.

67. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the eco-system of the rivers and safety of bridges. It also weakens river beds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the ground water levels.

68. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorized under the Act shall exercise all the powers including making a complaint before the jurisdictional magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorized officer. In case of breach and violation of Section 4 and other provisions of the Act, the police Officer cannot insist Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitute an offence under Indian Penal Code.

69. However, there may be situation where a person without any lease or license or any authority enters into river and extracts sands, gravels and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is liable to be punished for committing such offence under Sections 378 and 379 of the Indian Penal Code.

70. From a close reading of the provisions of MMDR Act and the offence defined under Section 378, I.P.C., it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravels and other minerals from the river, which is the property of the State, out of State's possession without the consent, constitute an offence of theft.

71. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the

police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such person. In other words, in a case where there is a theft of sand and gravels from the Government land, the police can register a case, investigate the same and submit a final report under section 173, Cr.P.C., before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(d) of the Code of Criminal Procedure.

72. After giving our thoughtful consideration in the matter, in the light of relevant provisions of the Act vis-a-vis the Code of Criminal Procedure and the Indian Penal Code, we are of the definite opinion that the ingredients constituting the offence under the MMRD Act and the ingredients of dishonestly removing sand and gravel from the river beds without consent, which is the property of the State, is a distinct offence under the I.P.C. Hence, for the commission of offence under Section 378 Cr.P.C., on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorized officer for taking cognizance in respect of violation of various provisions of the MMDR Act. Consequently the contrary view taken by the different High Courts cannot be sustained in law and, therefore, overruled. Consequently, these criminal appeals are disposed of with a direction to the concerned Magistrate to proceed accordingly."

11. Considering the law laid down by the Hon"ble Supreme Court in the case of NCT of Delhi (Supra) as well as in view of the provision of the Jharkhand Minor Mineral Concession Rules, the continuity of the criminal proceeding so far as it relates to Rule 4 and 54 of the Jharkhand Minor Mineral Concession Rules would be an abuse of the process of law. However, with respect to the institution of the case u/s. 379/411/34 of the Indian Penal Code, the police has power to institute and investigate such type of cases. The police has no power to institute and investigate any case under Rule 57 of the Jharkhand Minor Mineral Concession Rules in absence of any authorization under the aforesaid rules to lodge an F.I.R.

12. In such circumstances, this court is not inclined to interfere with the criminal proceeding so far as it relates to the offences u/s. 379/411/34 of the Indian Penal Code. However, with respect to Rule 4 and 54 of the Jharkhand Minor Mineral Concession Rules when the Sub-Inspector of Police is not competent enough to institute an F.I.R., continuity of the criminal proceeding for the offences under the provisions of the Jharkhand Minor Mineral Concession Rules, 2004 will be an abuse of process of court and in such view of the matter that part of the order taking cognizance so far as it relates to Rule 4 and 54 of the Jharkhand Minor Mineral Concession Rules, 2004 is quashed and set aside. As regards the cognizance which had been taken for the offence u/s. 379/411/34 of the Indian Penal Code is concerned, in the facts and circumstances discussed above, the same does not warrant any interference by this Court and the trial Court with respect to the said offences may proceed accordingly.

13. This criminal miscellaneous petition is allowed to the extent indicated above.