
(2013) 05 JH CK 0027

In the Jharkhand High Court

Case No : Criminal M.P. No. 246 of 2012

Iftikar Ahmad and Others

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 07-05-2013

Acts Referred:

Citation : (2013) 4 JLJR 98

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : T.K. Mishra, for the Appellant;

Judgement

Rakesh Ranjan Prasad, J.—Heard learned counsel appearing for the petitioners and learned counsel appearing for the State. Initially this application was filed for quashing of the FIR of Pakur (Malpahari) O.P. P.S. Case No. 27 of 2011 instituted under Sections 413, 414, 120B of the Indian Penal Code and also u/s 40 of the Mines Act as well as under Rule 54(7) of the Jharkhand Mines and Mineral Concession Rules, 2004.

2. It is the case of the prosecution that during patrolling when one S.I, posted at Malpahari outpost saw certain trucks coming, he signaled the drivers to stop truck. On stopping the truck, the truck drivers of truck bearing registration No. WB-65-0715, WB-59A-1002 and WB-59A-4445 fled away. On search being made, no document with respect to transportation of stone chip was found.

3. Thus, it was suspected that the truck owner in connivance with crusher owners have been taking away stone chip to West Bengal for selling it at higher price.

4. On the said allegation, FIR was lodged which was registered as Pakur (Malpahari) O.P. P.S. case No. 27 of 2011 instituted under Sections 413, 414, 120B of the Indian Penal Code and also u/s 40 of the Mines Act as well as under Rule 54(7) of the Jharkhand Mines and Mineral Concession Rules, 2004.

5. After investigation, charge-sheet was submitted, upon which cognizance of the offence punishable under Sections 413, 414, 120B of the Indian Penal Code and also u/s 40 of the Mines Act as well as under Rule 54(7) of the Jharkhand Mines and Mineral Concession Rules, 2004 has been taken, vide order dated 5.9.2012 which is under challenge.

6. Learned counsel appearing for the petitioners submitted that the allegation of illegal extraction of stone from a mine and its transportation constitute an offence under Rule 54 of the Jharkhand Minor Mineral Concessions 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 under Rule 54 of the Jharkhand Minor Mineral Concessions 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 Rules, 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. But in this case cognizance of the offence under Jharkhand Minor Mineral Concessions Rules as well as under the offence of Indian Penal Code and on submission of the charge-sheet in a case lodged by Sub-Inspector of Police through the Sub-Inspector has never authorized to lodge the case punishable under the Jharkhand Minor Mineral Concession Rules and as such, the order taking cognizance 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 a case of Bhotna Mahto vs. State of Jharkhand [2009 (2) JLJR 258].

8. As against this, learned counsel appearing for the State by referring to the statement made in the counter affidavit submitted that since cognizance has already been taken, it is now for the trial court to consider as to whether the offence under the Indian Penal Code is made out or not and since the petitioners have been alleged to have committed offence under the Indian Penal Code, Sub-Inspector is competent enough to lodge the case.

9. I do not find any substance in the submission advanced on behalf of the State.

10. In this regard, I may refer to a 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 Indian Penal Code, 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 whereas it has never been the case of the State that the SI of any Police Station is competent to lodge the case. Therefore, lodgment of the instant case

at the instance of the Sub-Inspector of Police is quite illegal. Consequently, order taking cognizance upon the charge-sheet submitted in a case lodged by a person not authorized to lodge the case becomes quite bad.

12. Accordingly, the entire criminal proceeding of Pakur (Malpahari) O.P. P.S. Case No. 27 of 2011 including the order taking cognizance is hereby set aside. In the result, this application stands allowed.