

(1982) 09 CAL CK 0013
In the Calcutta High Court

In re: Ram Badan Choubey and Another

Date of Decision : 01-09-1982

Acts Referred:

Coal Mines (Nationalisation) Act, 1973 — Section 2, 30
Constitution of India, 1950 — Article 14, 141, 226
Criminal Procedure Code, 1973 (CrPC) — Section 157, 482
Evidence Act, 1872 — Section 105
Penal Code, 1860 (IPC) — Section 379, 78

Citation : (1982) CriLJ 1960

Hon'ble Judges : Amitabha Dutta, J

Bench : Single Bench

Judgement

Amitabha Dutta, J.—These three revisional applications u/s 482 of the Criminal P.C. 1973 are for quashing the proceedings of investigation by the police in connection with Barabani P.S. Case No. 8 dated 27-5-1982, Barabani P.S. Case No. 3 dated 16-6-1982 and Barabani P.S. Case No. 8 dated 17-7-1982 each u/s 30(2) of the Coal Mines (Nationalisation) Amendment Act 1976 and Section 379 of the I.P.C. arising out of as many F.I.Rs. lodged by Sri J. S. Gill, Deputy C.M.E./ Agent of Bhanora Golliery in the first case and by Sri S. K. Mukherji, Mining Adviser and Chief Mining Officer, Asansol in the other two cases alleging illegal extraction as of coal from Joyramdanga Colliery on different dates mentioned therein.

2. It is not disputed that the petitioner Ram Badan Choubey was appointed Receiver in respect of Joyramdanga Colliery by the City Civil Court. Calcutta in Title Suit No. 436 of 1979; that as Receiver the petitioner moved an application under Article 226 of the Constitution challenging the validity of the Coal: Mines (Nationalisation) Amendment Act 1976 on 29-2-1980 and obtained an interim order restraining the respondents from interfering with the work of the said colliery in any manner whatsoever including raising, sale, despatch and movement of coal and fireclay, made by this Court in C. R. No. 1444 (W) of 1980, that the petitioner also moved an application before this Court on 23-5-1980 and the learned single Judge appointed the petitioner as Special Officer directing sale of coal which had already been raised and were lying at the

pithead of the colliery in C. R. No. 5366 (W) of 1980; that the petitioner further moved another application before this Court and the learned single Judge was pleased to direct the respondents on 1-10-1980 to return the seized coal and strictly obey the orders passed by this Court on 29-2-1980 and 23-5-1980; and that all the abovementioned orders are continuing. It is also not disputed that the aforesaid orders were made in presence of the learned advocate appearing for the State of West Bengal and that no appeal was preferred against them.

3. Three points common to all the three cases have been raised on behalf of the petitioner. It is submitted that no prosecution can lie against the petitioner for his acts as Receiver appointed by the Court without leave of the Court appointing him, which has not been taken. Secondly the petitioner by extracting coal from the coal mine in question did acts which were warranted by the orders of this Court passed in the aforesaid writ petitions which were in force on the material dates and are still in force and so the petitioner has not committed any offence as his case comes within the general exception to criminal liability mentioned in Section 78 of the I.P.C. The third contention is that as the petitioner was in lawful possession of Joyramdanga Colliery extraction of coal therefrom by his men does not constitute an offence of theft punishable u/s 379, I.P.C. as alleged in the F. I. Rs.

4. On the other hand it is submitted on behalf of the respondents State of West Bengal and others that this Court exercising criminal revisional jurisdiction is not competent to quash and/or stay the police investigation. In this connection reference has been made to the decision in the case of AIR 1945 18 (Privy Council) and Jehan Singh Vs. Delhi Administration, . The next submission is that in view of the decisions of the Supreme Court reported in Mahindra Nath Shukla and Others Vs. State of Bihar and Others, Tara Prasad Singh and Others Vs. Union of India (UOI) and Others, and Dejjapada Das and Another Vs. Union of India (UOI) and Others, , no Court could give any sanction to any person to go on extracting coal in violation of the provisions of the Coal Mines (Nationalisation) Amendment Act 1973 as amended in 1976 and contrary to the aforesaid judgments of the Supreme Court. It is further submitting that no sanction from the court appointing any person as Receiver is necessary to prosecute the said Receiver for illegal extraction of coal.

5. It is not disputed that there is a composite lease for mining fireclay and coal from Joyriding Colliery. In Tara Prasad Singh and Others Vs. Union of India (UOI) and Others, the Supreme Court has held that although the composite lease is outside the scope of the definition of coal mine in Section 2(b) of the Coal Mines (Nationalisation) Act 1973, in view of the express prohibition against carrying on coal mining operation by private operators in any form in Section 3(3)(a) of the Amendment Act 1976 with effect from 29th April, 1976, it terminates the rights of composite lessees to do so and violation of Section 3(3)(a) of the Act attracts the penal provision of S. SO (2) of the Act. According to the Supreme Court the Parliament has deprived the composite lessees of the right to win fireclay

because they cannot do so without winning coal (vide paras 52 to 55). The interim orders passed in the writ petitions on 29-2-1980, 23-5-1980 and 1-10-1980 by this Court permitting the petitioner to extract coal from Joyramdanga Colliery cannot, in my view, stand with the decision of the Supreme Court in Tara Prasad Singh's case.

6. In connection with the first point raised on behalf of the petitioner that the proceedings against him for the alleged offence in connection with his duties as Receiver of Joyramdanga Colliery should not be allowed to continue as such proceedings were started without leave of the Court appointing him as Receiver, reference has been made to the Bench decision of this Court in *Corporation of Calcutta Vs. Sudhamoy Bose*, . In the reported case the Receiver was prosecuted for exercising the calling of a private owner market without a license u/s 222 read with Schedule .VII of the Calcutta Municipal Act 1951 without the leave of the Court by which the accused was appointed as the Receiver. The Division Bench after a wide survey of the case law on the subject and following the decision in *Bhanwarilal Agarwala v. Sudhamoy Bose* (1955) CWN 481 held that unless exemptions are made expressly or impliedly by the statute in question conferring the right of action, criminal proceedings cannot be properly commenced against the Receiver for alleged offence in connection with the duties of a Receiver as such without previous leave of the Court appointing him and that this rule has become a part of the law of the land and crystallised into a rule of law. In my view, the law laid down in the aforesaid Bench decision of this Court should prevail.

7. The learned Advocate for the respondents has referred to the following observations of His Lordship Krishna Iyer, J. in *Mahindra Nath Shukla and Others Vs. State of Bihar and Others*, : "The Court cannot sanction the commission of a crime. We make it perfectly plain that there will be no more authorisation for any Receiver or other Officer of Court to extract coal or coking coal from any mine in India. Section 3(3) of the 1976 Act being all inclusive and having been constitutionally upheld by this Court, it is no longer permissible for any Court in India to appoint a Receiver for or otherwise permit extraction of coal or coking coal, (vide paragraph 9)." These observations have been made in disposing of a batch of writ petitions claiming right to extract coking coal on the ground that the prohibition contained in the Act of 1976 does not affect or operate on coking coal mines. Reference has also been made to similar observations of the same learned Judge in *Dejapada Das and Another Vs. Union of India (UOI) and Others*, in which certain workmen challenged the said Act as violative of Article 14 of the Constitution. But it appears that the court has made the said observations as a sort of epilogue, after dismissing the writ petitions in each of those two cases. It has been submitted by the learned advocate for the petitioner that the said observations are obiter dicta and do not constitute law declared by the Supreme Court within the meaning of Article 141 of the Constitution of India, It has been submitted that in Writ Petn. No. 3270 (W) of 1981 with Civil Misc. Petn. No. 13225 (W) of 1981, *Nand Lal Bhagat v. Commr. of North Chhotanagpur*,

Hazaribagh, Bihar the Supreme Court passed interim order on 9th July, 1981 directing issue of Rule Nisi to the respondents and restraining them from interfering with the possession and working of certain collieries mentioned in the order. A xerox copy of the said order has been filed. In my view, there is substance in the submissions made on behalf of the respondents in these cases, although I hold at the same time that the obiter dicta of the Supreme Court should be treated with great respect. They do not, however, warrant, prosecution of the Receiver for acts done in that capacity without prior leave of the Court appointing the Receiver, in view of the Bench decision in *Corporation of Calcutta Vs. Sudhamoy Bose*, .

8. The second point raised on behalf of the petitioner is that as the alleged acts were warranted by the orders passed by this Court in C. R. No. 1444 (W) of 1980 and C. R. No. 5366 (W) of 1989 on 29-2-1980 and 23-5-1980 respectively and 1-10-1980 which were in force on the material dates and which according to the averments made in the transfer petitions filed before the Supreme Court by the State and moved on 8-7-1982 are still continuing, the petitioner has not committed any offence in view of Section 78 of the I.P.C. which reads as follows:

78. Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

9. It is submitted that although u/s 105 of the Evidence Act the burden of proving that the case of the accused comes within any of the General Exceptions in the Indian Penal Code is upon him, this Court can at this stage look into and rely upon materials which are translatable into admissible and relevant evidence without appreciating such evidence for supporting or dislodging the accusation, as it has been held so by a learned Judge of this Court in *N. C. Nagpal v. The State* (1979) 2 Cal. H.N. 198 : 1979 Cri LJ 998. In this connection reliance has been placed also on the decision of the Supreme Court in *Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and Another*, . Reference has also been made to the decision of the learned single Judge of this Court in *Ram Badan Choubey v. State* 1982 (1) CHN 470 in some criminal revision cases similar to the instant cases. In the said reported case the learned, single Judge has observed as follows:

In my opinion the Receiver will be governed u/s 78 of the Indian Penal Code inasmuch as he carries out the order of the Court appointing him Receiver and therefore, it is necessary first to draw the attention of the courts concerned which have appointed as such that their appointment is of no legal effect after decision of the Supreme Court cases referred to above and get a discharge of the Receivers and not straightway to prosecute the petitioners as have been done in the different cases without obtaining consent of the courts as is necessary in such cases", On the other hand it has been contended on behalf of the

respondents that the court can consider the defence of general exceptions in the I.P.C. only at the stage of trial and not at this stage when the investigation has been started by the police in view of Section 105 of the Evidence Act. In my view as Section 105 of the Evidence Act provides not only that the burden of proving existence of circumstances bringing the case within any of the general exceptions in Indian Penal Code is upon the accused but also that the Court shall presume the absence of such circumstances, this Court cannot at this stage hold that such circumstances exist. The decision in N. C, Nagpal's case was made in a different context and no question of application of general exception in the Indian Penal Code was involved in that case. In Vadilal Panchal's case the Supreme Court dealt with the scope of enquiry u/s 202 of the Code 1898. In Chandra Deo Singh Vs. Prokash Chandra Bose and Another, the Supreme Court dealing with the scope of enquiry under the said Section held that whatever defence the accused may have can only be enquired into at the trial. In Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, the Supreme Court held that the question whether there is prima facie case for issue of process is to be decided without at all advert to the defence that the accused may have. In the decision reported in 1982 (1) CHN 470 the learned single Judge did not consider the provision of Section 105 of the Evidence Act and made the aforesaid observations in support of her finding that leave of the court appointing the Receiver was necessary. Considering the legal position. I hold that the plea of the petitioner that his case comes within Section 78 of the I.P.C. cannot be entertained at this stage.

10. Regarding the third point raised on behalf of the petitioner that as he was in lawful possession of Joyraindanga Colliery on the material dates extraction of coal by his men does not constitute an offence u/s 379. I.P.C., I find that it should succeed as the mine in question is a composite mine and it has been held by the Supreme Court in Tara Prasad Singh and Others Vs. Union of India (UOI) and Others, that such mine does not fall within the scope of definition of "coal mine" in Section 2(b) of the Coal Mines (Nationalisation) Act of 1973. But the extraction of coal even from such mine comes within the penal provision of Section 30(2) of the said Act.

11. I have now to deal with the contention raised on behalf of the respondents that this Court in exercise of criminal revisional jurisdiction is not competent to quash or stay police investigation into a cognizable offence. In my view, the law of the point has been settled by the Supreme Court in State of West Bengal and Others Vs. Swapan Kumar Guha and Others, in which the decisions relied on by the learned advocate for the respondents have been considered along with other previous cases of the Supreme Court on the point. His Lordship Y. V. Chandrachud, C.J. has held that the condition precedent to the commencement of investigation u/s 157 of the Code is that the F.I.R. must disclose prima facie that a cognizable offence has been committed and that if the F.I.R. does not disclose the commission of a cognizable offence the Court would be justified in quashing the investigation on the basis of the information as laid or received Both in R.P. Kapur Vs. The State of Punjab, and Jehan Singh Vs. Delhi

Administration, there were applications u/s 561A of the old Code and the applications were dismissed not because of want of jurisdiction of the High Court but because no prima facie case for quashing the proceeding was made out.

12. Coming to the special feature in the case arising out of the F.I.R. lodged on 17-7-1982 (Barabani P.S. Case No. 8 dated 17-7-1982) I find that it is against the petitioner No. 1 Rambadan Choubey and another. The second petitioner is said to be an agent of the petitioner No. 1 for assisting him in the administration of the colliery. In connection with this case it has been alleged by the respondents in their affidavit-in-opposition that the Supreme Court while dealing with Transfer Petition Nos. 90-94/82 passed an interim order ex parte on 8-7-1982 restraining the present petitioners from extracting, selling or despatching coal from Joyramdanga Colliery and several other collieries. A xerox copy of the order has been filed at the time of hearing. It has been submitted on behalf of the respondents that the alleged offences were committed by the petitioners in spite of such interim order. But the petitioners in their affidavit-in-reply have stated that the aforesaid order of the Supreme Court was never served on him and as the State of West Bengal did not deposit the process fee neither the notice nor the order was sent to the petitioners. It is also stated that the petitioners, however, on the advice of their learned advocate immediately closed all operations and activities with effect from 14-7-1982 pending receipt of communications from the Supreme Court which never came and that on 4-8-1982 their Lordships of the Supreme Court rejected the prayer for transfer made by the State of West Bengal. It is further stated that nothing was done by the petitioners or at their instance on 17-7-1982 and the allegations in the F.I.R. are false and manifestly absurd. Considering the affidavits, I find that there is no prima facie case of extraction of coal by the petitioners in violation of the interim order of the Supreme Court made on 8-7-1982 as the said order does not appear to have been served on them.

13. In the result, I find that the impugned proceedings have been commenced against the petitioner who has been the Receiver of Joyramdanga Colliery without taking leave of the Court which appointed him as such Receiver and on this ground alone they are liable to be quashed. The applications, therefore, succeed to this extent. The impugned proceedings are quashed. The two Rules and the contested application are thus disposed of.