

(2020) 08 OHC CK 0004

In the Orissa High Court

Case No : CRLREV No. 534, 615, 616, 699, 700, 701 Of 2019

Jitendra Nath Patnaik

APPELLANT

Vs

State Of Odisha (Vigilance)

RESPONDENT

Date of Decision : 06-08-2020

Acts Referred:

Prevention Of Corruption Act, 1968 — Section 5(i)(c), 5(i)(d), 5(2), 13(2), 13(1)(d)
Indian Penal Code, 1860 — Section 109, 120B, 378, 379, 406, 420, 465, 466, 467, 468, 471, 477
Mines And Minerals (Development And Regulations) Act, 1957 — Section 4, 21, 22, 23B, 58
Code Of Criminal Procedure, 1973 — Section 2(s), 173, 190(1)(d)
Mineral Concession Rules, 1960 — Rule 24A
Orissa Minerals (Prevention Of Theft, Smuggling And Illegal Mining And Regulation Of Possession, Storage, Trading And Transportation) Rules, 2007 — Rule 2(1)(b), 7, 15
Orissa Civil Services (Pension) Rules, 1992 — Rule 7(2)(c)
Maharashtra Civil Services (Pension) Rules, 1982 — Rule 26, 27, 27(1), 27(3)
Constitution Of India, 1950 — Article 254

Citation : (2020) 08 OHC CK 0004

Hon'ble Judges : B.P. Routray, J

Bench : Single Bench

Advocate : U.C.Pattnaik, Sangram Das, G.Mukherji, S.Panda

Final Decision : Dismissed

Judgement

B.P. Routray, J

1. All the petitioners in these Criminal Revisions have challenged the order dated 19.07.2019 passed by the learned Special Judge (Vigilance),

Keonjhar in VGR Case No. 19 of 2011 and have further prayed to discharge them from the offences under Sections 13(2) read with Section 13(1)(d)

of the Prevention of Corruption Act, 1968, Sections 379/120-B of the Indian Penal Code, Sections 21 of the Mines and Minerals (Development and

Regulations) Act, 1957 (hereinafter in short called "MMDR Act"), Section 3-A

of the Forest Conservation Act, 1980 and Section 58 of the Mineral Conservation and Development Rules, 1988.

2. Since all these Revision Petitions are arising out of the very same impugned order dated 19.07.2019 passed in VGR Case No. 19 of 2011 by the learned Special Judge (Vigilance), Keonjhar, they are heard together analogously and disposed of by this common order.

3. The case in nutshell is that a mining lease was granted in favour of Late Banshidhar Patnaik, the father of the accused-petitioner in CRLREV

No.534/2019 Jitendranath Patnaik over an area of Ac.260.00 dec. for Manganese and Iron Ore. Mining lease so granted for Manganese was for 20

years and for Iron Ore was for 30 years. The lease period started on 31.07.1959. However, in the year 1967 said Banshidhar Patnaik surrendered the

mining lease in respect of Manganese but continued in respect of Iron Ore. Before expiry of the said lease period, he applied for renewal of the lease

on 30.07.1988 for the break up area, but without the de-reservation proposal though there were forest areas within the applied area. However, no

renewal of fresh lease was granted in his favour after 31.07.1989, but the period was further extended for one year more i.e., till 31.07.1990 in view

of Rule 24-A of the Mineral Concession Rules, 1960 as it then was.

4. Allegedly accused Jitendranath Patnaik (petitioner in CRLREV No. 534/2019), on 7.11.1991 applied on behalf of his father Bansidhar Patnaik to

the Government in the Department of Steel and Mines through the Deputy Director of Mines, Joda for grant of working permission pending renewal

of mining lease. The working permission was granted for 6 months and extended from time to time till 26.12.1994 without any approval by the Ministry

of Environment and Forest. Said Banshidhar Patnaik (father of the petitioner) died on 5. 11.1995. The Ministry of Environment and Forest in its letter

dated 3. 9.1998 communicated the permission for DRP (De-reservation Proposal) over an area of Hc.18.02 for 10 years which was coterminous with

the permission granted under the MMDR Act.

5. In the meantime accused Jitendranath Patnaik in his letter dated 6.9.1996 requested the Government in Steel and Mines Department for 20 years

renewal of the mining lease, however, without submitting the application in proper form. Further, another proposal for renewal was submitted by the

said accused Jitendranath Patnaik on 25.07.2008 for 20 years enclosing a WILL,

allegedly executed by his father Late Banshidhar Patnaik, which was already declared forged by the learned District Judge, Keonjhar vide its order dated 26.3.2001 passed in Misc. Case No. 5 of 1996.

6. It is the case of the prosecution that, the said accused Jitendranath Patnaik in conspiracy with other accused persons continued the illegal mining activities from 1999 to 2009 causing heavy pecuniary loss to the Government to the tune of Rs.130.39 crores, and to their personal gain.

7. The FIR was lodged on 18.11.2009 by the D.S.P.,Vigilance and charge sheet was submitted on 26.03.2013. The learned Judge took cognizance of the aforesaid offences on 11.06.2013. There were 15 numbers of accused persons and due to death of one accused, namely, S. Sahoo, presently 14 accused persons are there.

8. Except the petitioner-accused Jitendranath Patnaik, all other petitioners-accused persons are Government Officials. The common submission on behalf of all the petitioners in challenging the impugned order of the learned Vigilance Judge, with prayer for discharge, is that the court below has

failed to appreciate the provision of law that, in absence of the complaint being presented by the competent authority, the order of cognizance is not

sustainable in the eye of law. As per Section 22 of the MMDR Act, since there is a bar for taking cognizance of any offence under the said Act

unless the complaint in writing is made by a person authorized in this behalf by the Government, the cognizance taken on the report of Vigilance Police

is bad in the eye of law. It is further submitted that in the Orissa Minerals (Prevention of Theft, Smuggling & Illegal Mining and Regulation of

Possession, Storage, Trading and Transportation) Rules, 2007 (hereinafter referred as OMPTS Rules), the "competent authority" as defined under

Rule 2(1)(b) is any officer mentioned in Schedule-I appended to the said Rules. Bringing attention of this Court to said Schedule -I, it is pointed out

that the name of any such Vigilance Official is not appearing as such in the schedule. Therefore, the complaint at the instance of the Vigilance Police

and initiation of the proceeding thereof by taking cognizance of the offences by the court below is vitiated. It is also submitted that, whatever may be

the contravention is, of the provisions of the MMDR Act or MCD Rules, the same never mean to constitute the offence of theft. The learned court

below has not appreciated the law properly, and held that, since the petitioner

did not challenge the order taking cognizance of the offences, their prayer for discharge at this stage cannot be entertained. In addition to this submission, it is also submitted on behalf of the petitioners Akshya Kumar Das (petitioner in CRLREV No.615/2019) and Nityananda Mohanty (petitioner in CRLREV No.616/2019) that, they have retired from service on 30.04.1994 and in the year 1996 respectively and therefore, initiation of any judicial proceeding against them after four years of their retirement is not permissible in view of the provision contained in Rule 7(2)(c) of the OCS (Pension) Rules, 1992.

9. In support of their contention that, the cognizance of the offences under the MMDR Act and MCD Rules without the complaint being lodged by any competent authority as per the mandate in Section 22 of the MMDR Act and Schedule-I of the OMPTS Rules is unsustainable and the proceeding against the petitioners is also vitiated, they rely on the decision in the case of State of NCT of Delhi Vs. Sanjay, reported in (2014) 9 SCC 772 and a judgment of this Court dated 9.7.2019 passed in CRLMC No. 2440 of 2010 (Ramesh Kumar Agrawal Vs. State of Odisha & Ors.), reported in 2019 SCC Online Ori.226.

10. On the other hand it is submitted on behalf of Vigilance Department that, the Vigilance Officials have been duly empowered and authorized to conduct enquiry and investigation in respect of all such offences by the Notification of Government dated 14.01.2010. Therefore, the contention of the petitioners that the Vigilance D.S.P. is not authorized to lodge the complaint in respect of those offences is not at all correct and liable to be rejected.

11. To examine this submission, it is first required to see Sec.22 of the MMDR Act and the relevant provisions of the OMPTS Rules. Section 22 speaks as follows:

â??22. Cognizance of offences.â?"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 authorised in this behalf by the Central Government or the State Government.â??

12. Rule 15 of the OMPTS Rules prescribes that, no court shall take cognizance of any offence punishable under the act except upon any complaint in writing is made by the competent authority or person authorized in this behalf by the Government. The term â??competent authorityâ? has been

defined in Rule 2(1)(b) as "Officers mentioned in Schedule-I" of the said Rules. In Schedule-I, 15 Mining Officers including the Director and Dy.

Director of Mines for different areas of jurisdiction have been named. Further the Government in the Department of Steel and Mines, in exercise of

power conferred under Sections 22 and 23B of the MMDR Act, in its Notification dated 19.12.2009 has named the Director of Mines and two Joint

Directors authorizing them to exercise the powers of detection/seizure and confiscation etc. in connection with illegal mining activities for all type of

minerals covering the entire State of Odisha. For better appreciation, the said Notification is reproduced below:

DEPARTMENT OF STEEL & MINES

NOTIFICATION

The 19th December 2009

No.8096"IV(A)-SM-101/2009-SM."Whereas, the Government of Orissa have been considering delegation of original powers of detection,

seizure, investigation, prosecution, etc. under the provisions of M. & M. (D. & R.) Act, 1957 and O.M.P.T.S. Rules, 2007 to the Joint Director/Deputy

Director/Mining Officer deputed to State Level Enforcement Squad (S.L.E.S.) for checking illegal mining to exercise such powers all over the State;

Now, therefore, in exercise of the powers conferred under Sections 22 & 23B of M. & M. (D. & R.) Act, 1957, the State Government have been

pleased to authorize the following Officers to exercise the powers of detection, seizure and confiscation, etc. in connection with illegal mining activities

covering the entire State of Orissa under the relevant provisions of the aforementioned Act & Rules in respect of the area mentioned against each.

Further they are declared as competent authority as defined in rule 2(1)(b) of Orissa Minerals (Prevention of Theft, Smuggling & Illegal Mining and

Regulation of Possession, Storage, Trading and Transportation) Rules, 2007 from the date of issue of this notification.

Sl.No. Name of the Officers Jurisdiction Minerals

1. Director of Mines, Orissa Entire State All Minerals
2. Joint Director of Mines/Deputy Director of Mines/Mining Officer working in the o/o Director of Mines Entire State All Minerals
3. Joint Director of Mines/Deputy Director of Mines/Mining Officer deputed to State Level Enforcement Squad (S.L.E.S.) Entire State All Minerals

By order of the Governor

S.DASH

Commissioner-cum-Secretary to Government??

13. Again the Government of Odisha in the Home Department in their Notification dated 14.01.2010 have specified the Officers of and above the rank of Inspector of Police under the Director of Vigilance, Odisha to conduct investigation/enquiry and to take legal action under the provisions of the IPC, other relevant Acts and Rules pertaining to illegal mining in the State and to file charge sheet/final report accordingly after obtaining approval/sanction of the competent authority as and when required in the corresponding Act /Rules. The list of offences includes offences under the MMDR Act, the Forest Conservation Act, OMPTS Rules etc. For better appreciation, the said Notification is reproduced below:

??HOME (SPECIAL SECTION) DEPARTMENT

NOTIFICATION

The 14th January, 2010

S.R.O.No.49/2010---In exercise of the power conferred by Clause (S) of Section 2 of the Code of Criminal Procedure, 1973, the Government in

Home Department has issued the Notification vide Order No.31045-D.& A, dated the 7th August, 2004 specifying the offences which can be

investigated by the Vigilance Organization.

As per the Clause 1, Schedule II of the Notification, dated the 7th August, 2004 of Home Department, any other particular offence or class of

offences that may be specified by the State Government from time to time can be enquired and investigated into by Vigilance Organization. During

enquiry/investigation of the allegations on illegal mining, it is felt imperative that other sections of I.P.C. in addition to sections mentioned in Schedule II

of the above Notification, dated the 7th August, 2004 and the provisions of the Acts/Rules mentioned below may be applicable for the purpose of

investigation of the cases.

1. The Orissa Forest Act, 1972
2. The Wildlife (Protection) Act, 1972
3. The Indian Forest Act, 1927

4. The Forest (Conservation) Act, 1980
5. The Forest (Conservation) Rules, 2003
6. The Environment (Protection and Control of Pollution) Act
7. The Environment (Protection) Rules, 1986
8. The Air (Prevention and Control of Pollution) Act, 1981
9. The Air (Prevention and Control of Pollution) Rules, 1982
10. The Water (Prevention and Control of Pollution) Act, 1974
11. The Water (Prevention and Control of Pollution) Rules, 1975
12. The Water (Prevention and Control of Pollution) Cess Act, 1977
13. Orissa Minor Mineral Concession Rules, 2004
14. The Mines Act, 1952
15. The Mines and Minerals (Development and Regulation) Act, 1957
16. The Mineral Concession Rules, 1960
17. Orissa Minerals (Prevention of Theft, Smuggling and other Unlawful Activities) Act, 1988
18. Orissa Minor Minerals Concession Rules, 2004
19. Orissa Minerals (Prevention of Theft, Smuggling and Illegal Mining and Regulation of Possession, Storage, Trading and Transportation) Rules, 2007.

The State Government do hereby empower the officers of and above the rank of Inspector of Police posted under the Director, Vigilance, Orissa to conduct investigation/enquiry, take legal actions under the provisions of I.P.C. other relevant Acts and Rules pertaining to the illegal mining in the State and file Charge Sheet/Final Report as it is applicable after obtaining approval/sanction of the Competent Authority as and when required in the corresponding Acts/Rules.

The devolution of the above power shall be limited to the purpose of taking up enquiry/investigation into the alleged mining activities referred to by the State Government or till the latter withdraws the same.

[No.128-C.]

By order of the Governor

A.P. PADHI

Principal Secretary to Government??

14. In the case of State of NCT (supra), the Honable Supreme Court has held at paragraphs 69 and 70 as follows:

69. 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 riverbed. 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 ecosystem of the rivers and safety of bridges. It also weakens riverbeds, 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 groundwater levels.

70. 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 authorised

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 authorised officer. In case of breach and violation

of Section 4 and other provisions of the Act, the police officer cannot insist the 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 is sought to be prosecuted for contravention of

Section 4 of the Act and not for any act or omission which constitutes an offence under the Penal Code.??

Similarly this Court in the case of Ramesh Kumar Agrawal (supra), relying on the aforesaid decision of the Supreme Court has quashed the order of

cognizance taken for the offence under Section 21 of the MMDR Act.

15. It is true that in the aforesaid two cases relied upon by the petitioners, the

Police had instituted the complaint and submitted the final report. The Police had no authorization for doing enquiry or investigation or to take any legal action in respect of any offence under the MMDR Act. But here is a case, which clearly shows that the Vigilance Police of and above the rank of Inspector, have been specifically authorized to conduct the investigation/enquiry and to take all legal action pertaining to illegal mining activities in the State including the offences under the MMDR Act, Forest Conservation Act and OMPTS Rules. It is true that none of the petitioners have challenged or are questioning the power of Government to issue the Notification dated 14.01.2010 authorising Vigilance Police in that respect. Undisputedly the validity of notification dated 14.1.2010 is not questioned. The averments and submissions made on behalf of the petitioners are completely silent about the said Notification made in favour of the Vigilance Police. On the other hand, as seen from the Notification dated 14.01.2020 issued by the Government in Home Department and the Notification dated 19.12.2009 issued by the Steel and Mines Department, Government of Odisha, they are neither overlapping to each other nor the Notification dated 14.01.2010 is found in conflict with the provisions of the MMDR Act or the OMPTS Rules. A bare perusal of the notification dated 14.01.2010 clearly shows that it has given power to the Vigilance Police to investigate or lodge complaint for such offences under the MMDR Act and other relevant Acts / Rules. Therefore, in view of the specific authorization made in favour of the Vigilance Officials in that respect, the contentions of the petitioners cannot be accepted that the Dy. Superintendent of Police (Vigilance) is not authorized to file the complaint for the offences against the requirement of Section 22 of the MMDR Act. Therefore, in my considered opinion the complaint at the instance of Vigilance Police and investigation conducted by them against the petitioners is maintainable.

16. It would not be out of place to mention here that the "competent authority" as prescribed in Rule 15 of the OMPTS Rules is in addition to the "person authorized" as mentioned in Section 22 of the MMDR Act. Therefore, it is immaterial to discuss who would be the competent authority for the purpose, because the term "competent authority" is in addition to the "person authorized in this behalf" as per Rule 15 of the OMPTS Rules, against the prescription of Section 22 of the MMDR Act.

17. It is argued on behalf of the petitioners that the action in lifting the mineral even by violating the provisions as per the allegations would never

amount to theft under the Indian Penal Code. But, in my considered view, this argument does not appear convincing in view of the observation of the

Honâ?ble Supreme Court made in the case relied upon by the petitioners in the case of State of NCT (supra). It is further observed in the said

decision that where a person without any lease or license or authority extract minerals and remove and transport them with an intent to remove

dishonestly, is liable to be punished of committing such offence under Sections 378 and 379 of the IPC. In paragraphs 71, 72 and 73 of the judgment

the Honâ??ble Supreme Court held as follows:

â??71. However, there may be a situation where a person without any lease or licence or any authority enters into river and extracts sand, gravel 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 Penal Code.

72. From a close reading of the provisions of the MMDR Act and the offence defined under Section 378 IPC, 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, gravel and other minerals from the river, which

is the property of the State, out of the State's possession without the consent, constitute an offence of theft. 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 persons. In other words, in a case where there is a theft of sand and

gravel from the government land, the police can register a case, investigate the same and submit a final report under Section 173 CrPC before a

Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(d) of the Code of Criminal Procedure.

73. After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the Act vis-à-vis the Code of Criminal Procedure and the Penal Code, we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the riverbeds without consent, which is the property of the State, is a distinct offence under IPC. Hence, for the commission of offence under Section 378 IPC, 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 authorised 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 Magistrates concerned to proceed accordingly.â??

18. The additional argument, what is urged on behalf of the petitioners in CRLREV Nos.615 and 616 of 2019 that they retired from service since 1994

and 1996 respectively and cognizance being taken on 11.06.2013, the same is barred under Section 7(2)(c) of the OCS (Pension) Rules, 1992, is not

found acceptable. It is because Rule 7 has a limited field of application and cannot be extended to put an absolute bar against criminal prosecution. In

the case of State of Maharashtra Vs. Keshav Ramchandra Pangare & Another, reported in (1999) 9 SCC 47,9 the respondent Keshav Ramchandra

Pangare retired as Dy.Engineer, P.W.D. in the State of Maharaashtra. Prosecution launched against him under Sections 120-B, 406, 420, 465, 466,

467, 468, 471, 477 and 109 IPC and Sections 5(i)(c),(d) read with Section 5 (2) of the Prevention of Corruption Act, 1947. His challenge before the

Bombay High Court was that the complaint being filed beyond the period of four years from the date of commission of the offence, it is barred by

Rule 27(3) of the Maharashtra Civil Services (Pension) Rules, 1982. The Bombay High Court accepted the plea and held that Rule 27 of the Pension

Rules was directly applicable and it is mandatory that prosecution should be launched within four years from the date of commission of offence and

consequently quashed the criminal proceeding against the respondent. The said judgment was challenged by the State of Maharashtra before the

Supreme Court. Rule 27 of the Maharashtra Civil Services (Pension) Rules 1982 is a pari materia provision with Rule 7 of the OCS (Pension) Rules,

1992. On interpretation, it is held by the Supreme Court that, those provisions of the Pension Rules is only meant for the purpose of granting,

withholding or withdrawing the pension and its operation would be in the limited field and cannot supersede the period of limitation prescribed under

the Cr.P.C. The relevant observation of the Supreme Court is reproduced below:

“9. Similarly, in the present case, Rule 27(1) provides the right of Government to withhold or withdraw a pension and in that context the said rule is

to be interpreted. Under the said rule, the Government may, inter alia, order withholding or withdrawing a pension or any part thereof, if, in any

departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. It also empowers

the Government to order the recovery from such pension of the whole or part of any pecuniary loss caused to the Government if, in any departmental

or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service. In the context of the second

part of sub rule (1), sub rule (3) is to be read and interpreted. If something is to be recovered from the pension payable to the employee then the

judicial proceeding or departmental inquiry is required to be started within the period prescribed under the sub-rule (2) or sub-rule (3) but that would

not debar the prosecuting agency from launching the prosecution for the offence of grave misconduct. This rule is to be read with the previous Rule

26 which provides that future good conduct shall be an implied condition of every grant of pension and Government may withhold or withdraw a

pension or part thereof, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct. But the Pension Rules 26 and 27 do not

lay down any period of limitation for prosecution or could not supersede the period of limitation prescribed under the Cr.P.C. Rule 27 is only meant for

the purpose of granting, withholding or withdrawing the pension and hence its operation would be in the limited field of granting or withholding pension

to the Government employees.

10. Relying upon the decision in *State of Punjab Vs. Kailash Nath*, (1989) 1 SCC 321, the learned Single Judge of the Bombay High Court in *P. Rabhakar*

Govind Sawant v. State of Maharashtra and others, (1991) Maharashtra Law Journal 1051, rejected the contention that the prosecution was barred

under Rule 27 of the Pension Rules as it was launched after the period of four

years. In that case, the learned Judge also referred to Article 254 of the Constitution and held that the provisions of the Criminal Procedure Code shall have an overriding effect and shall prevail notwithstanding any provision in the Pension Rules framed by the State Government. It is unfortunate that the attention of the learned Single Judge was not drawn to the said decisions which are of a binding nature at least as far as the High Court is concerned. That apart, learned Single Judge, instead of jumping to a conclusion solely based on Rule 27 of the Pension Rules should have examined the relevant provisions of the Code before axing down the criminal prosecution in respect of serious offences.â??

This Court also by relying the said decision of the Supreme Court, in the case of Fani Bhusan Das & Anr. Vs. State of Odisha (CRLMC Nos. 258 & 686 of 2004, and 2626 of 2007), reported in 2018 SCC Online 310, has observed that the provision of the Cr.P.C. shall have an overriding effect and shall prevail notwithstanding any provision in the Pension Rules, and therefore, the provisions of OCS (Pension) Rules, 1992 would not give any relief to the petitioners.

So the contention of these two petitioners to give them immune from criminal prosecution by virtue of Rule-7 of the OCS (Pension) Rules is found without substance and accordingly rejected.

19. A further contention is made on behalf of the petitioner Jitendranath Patnaik that in absence of all legal heirs of the lessee Late Bansidhar Patnaik, the prosecution against him alone is not maintainable. This contention has no leg to stand because as per the allegation he is the only legal heir of late Bansidhar Patnaik, who applied for renewal by producing the forged WILL and is also the beneficiary of the ill-got minerals. When other legal heirs have not played any role in such illegal mining, they need not be brought into the sphere of prosecution because onl--y being the legal heirs under the law will not attract any offence itself, without actus reus and mens rea.

20. In view of the discussions made above, the CRLREVs are found devoid of any merit and accordingly all these Criminal Revisions stand dismissed.

No order as to costs.