

(2024) 08 JH CK 0012

In the Jharkhand High Court

Case No : Criminal Revision No. 1522, 1537, 1572 Of 2023

Kamaluddin @ Sekh Kamaluddin

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 12-08-2024

Acts Referred:

Indian Penal Code, 1860 — Section 175, 188, 379, 414
Mines and Minerals (Development and Regulation) Act, 1957 — Section 21(1), 21(6)
Jharkhand Minerals (Prevention of illegal Mining, Transportation and Storage) Rules,
2017 — Rule 11(v)

Citation : (2024) 08 JH CK 0012

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Gautam Kumar, P.D. Agarwal, Rukmini Kumari, Sweta Singh

Final Decision : Disposed Of

Judgement

Anubha Rawat Choudhary, J

1. Learned counsel for the parties are present.

2. Cr. Revision No. 1522 of 2023 has been filed for the following reliefs: -

"That, through the instant Criminal Revision Application, the petitioner challenges the Order dated 02.11.2023 as passed in Taljhari P.S. Case No. 39 of 2023 under Sections 175,379,414,188 of the Indian Penal Code and Section 4/54 of JMMC Rule, 2004 and Section 07/09 of the Jharkhand Mineral Transportation and Storage Rule, 2017 and 21(1), 21(6) of MMDR Act, 1957 by the court of Sri P. Ranjan, the learned Judicial Magistrate-1st Class, Rajmahal, whereby and where under the petition filed by the petitioner, for release his Truck bearing Registration No. WB-61A/2413 is rejected and now the case is pending in the court of Sri P. Ranjan, the learned Judicial Magistrate-1st Class, Rajmahal."

3. Cr. Revision No. 1537 of 2023 has been filed for the following reliefs:-

"That, through the instant Criminal Revision Application, the petitioner challenges the Order dated 02.11.2023 as passed by the court of Sri P. Ranjan, the learned Judicial Magistrate-1st Class, Rajmahal, whereby and where under the petition filed by the petitioner, for release his Truck bearing Registration No. WB-65B/0700 which was seized by the police on 27.05.2023 in connection with Taljhari P.S. Case No. 37 of 2023 under Section 175,379,411,188 of the Indian Penal Code and Section 4/54 of JMMC Rule, 2004 and Section 07/09 of the Jharkhand Mineral Transportation and Storage Rule, 2017 and 21(1), 21(6) of MMDR Act, 1957 is rejected and now the case is pending in the court of Sri P. Ranjan, the learned Judicial Magistrate-1st Class, Rajmahal."

4. Cr. Revision No. 1572 of 2023 has been filed for the following reliefs:-

"That, through the instant Criminal Revision Application, the petitioner challenges the Order dated 02.11.2023 as passed by the court of Sri P. Ranjan, the learned Judicial Magistrate-1st Class, Rajmahal, whereby and where under the petition filed by the petitioner, for release his Truck bearing Registration No. JH-16A/2194 which was seized by the police on 27.05.2023 in connection with Taljhari P.S. Case No. 37 of 2023 under Section 175,379,414 of the Indian Penal Code and Section 04/54 of JMMC Rule, 2004 and Section 07/09 of the Jharkhand Mineral Transportation and Storage Rule, 2017 and 21(1), 21(6) of MMDR Act, 1957 is rejected and now the case is pending in the court of Sri P. Ranjan, the learned Judicial Magistrate-1st Class, Rajmahal."

5. Cr. Revision No. 1539 of 2023 has been filed for the following reliefs:-

"That, through the instant Criminal Revision Application, the petitioners pray before this Court for setting aside the order dated 30.10.2023 in Taljhari P.S. Case No. 35 of 2022 as passed by the court of Sri P. Ranjan, the learned Judicial Magistrate-1st Class, Rajmahal, whereby and where under the petition filed by the petitioner no. 1 for release of his Haywa bearing Registration No. JH-18G/3448 and by the petitioner no. 2 for release of his Hawya bearing Registration No. JH-18D/5526 is rejected and now the case is pending in the court of Sri P. Ranjan, the learned Judicial Magistrate-1st Class, Rajmahal."

6. Learned counsel for the petitioners submits that in all these cases, the prayer for release of vehicles has been rejected primarily on the ground that a confiscation proceeding has been initiated by the Deputy Commissioner, Sahibganj. He submits that in the judgment passed by this Court in W.P. (C) No. 6788 of 2023 and other analogous cases decided on 22.07.2024, Rule 11(v) of Jharkhand Minerals (Prevention of illegal Mining, Transportation and Storage) Rules, 2017 has been declared ultra vires by holding that any confiscation proceeding by the Deputy Commissioner of any district within the State of Jharkhand under the Rules is illegal, without any authority of law and beyond jurisdiction. Learned counsel has also submitted that the judgment has attained finality. He submits that in view of the aforesaid circumstances, the impugned orders be set aside and the matter be remitted back to the court for fresh

consideration with regard to the release of vehicle.

7. Counsel appearing on behalf of the State does not dispute the aforesaid submission. However, he submits that it should be left open to the concerned court to pass fresh order in accordance with law after considering the materials on record.

8. After hearing the learned counsel for the parties and after going through the impugned orders this court finds that the learned court has primarily rejected the claim for release of vehicle on the ground that a confiscation proceeding has been initiated by the Deputy Commissioner. The power of the Deputy Commissioner to initiate the confiscation proceeding in terms of Rule 11(v) of the aforesaid rule has already been declared ultra vires. Consequently, the impugned orders of rejection cannot be sustained in the eyes of law on this technical point and the matters are required to be decided afresh by the concerned court.

9. It is made clear that the impugned orders have been set aside only on the aforesaid technical ground.

10. Accordingly, the impugned orders passed in Cr. Revision No. 1522 of 2023, Cr. Revision No. 1537 of 2023, Cr. Revision No. 1572 of 2023 and Cr. Revision No. 1539 of 2023 are hereby set aside. Parties are directed to appear before the concerned court on 03.09.2024 at 11.00 am.

11. Upon their appearance, the concerned court is directed to pass a fresh order taking into consideration the applicable law and the material collected in connection with the seizure of the vehicle. The learned court is directed to pass an order within a period of one month from the date of the appearance of the parties.

12. These revisions applications are disposed of in the aforesaid terms.

13. Pending I.A., if any, is closed.

14. Let this order be communicated to the court concerned through FAX.