
(2010) 05 JH CK 0051
In the Jharkhand High Court

Kaushal Kumar Srivastava @ Kushal Kumar Srivastava

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 457
Penal Code, 1860 (IPC) — Section 34, 414

Citation : (2010) 4 JLJR 620

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Judgement

D.K. Sinha, J.—The instant Criminal Revision is directed against the order impugned dated 3.8.2009 passed by Sri. A.K. Srivastava, Judicial Magistrate, 1st Class Dhanbad by which the prayer of the petitioner for the release of the seized coal was rejected in G.R. No. 996 of 2009 arising out of Topchanchi P.S. Case No. 34 of 2009.

2. The prosecution story in short was that the informant, Sub-inspector of Police of Topchachi police station on the instruction of the Superintendent of Police, Dhanbad arranged a police party to search the premises of certain coal depot. When the police party arrived at the Mahulidih coal depot, some occupants started running away at the sight of the police party. However, six of them could be apprehend and the rest made their good escape taking advantage of darkness. All the apprehended persons disclosed their identity and from the possession of some them cell phones were recovered. On search of the premises of Mahulidh coal depot, one truck loaded with 14 tones of coal, two empty trucks and two motor cycles were recovered. Total 75 tones of coal were found stored in the said depot. The informant gathered that the coal depot belonged to Mr. Singh of Dhanbad and one Santosh Singh of Fulwar. On demand no valid papers could be produced with respect to the coal loaded on the truck or stored in the premises. As such coal along with the trucks were seized to which a case for the offence under Sections 414/34 of the Indian Penal Code was instituted on 2.4.2009 against seven named accused persons as also against the drivers of

two trucks. The petitioner was not named in the FIR. The Investigating Officer submitted charge sheet under the aforesaid sections against all the accused persons except the petitioner showing investigation pending against one Santosh Singh.

3. The learned Counsel submitted that the petitioner was the owner of the M/s Jai Maa Coal Trading situated at Mahulidih, Dhanbad and used to carry on business of trading of coal from the premises of whom seizure was made, as such, he was the owner of the seized coal. The learned Counsel contended that the petitioner possessed valid papers in support of the coal and that the unit of the petitioner was registered under the Sales Tax Department. The learned Counsel added that the petitioner was a bonafide purchaser of coal from different registered agency. He purchased 19.280 M.T. coal on payment of Rs. 59,151.04 from M/s Bindra Enterprises against receipts, similarly he purchased 16.120 M.T. coal from M/s Mahadeo Associates on payment of Rs. 51,132.65, 15.300 M.T. coal from M/s Vasundra Enterprises on payment of Rs. 50,122.80, 14.710 M.T. coal from M/s Bandra Fuels on payment of Rs. 48,189.96, 12.860 M.T. coal from M/s Shivam Coal Enterprises on payment of Rs. 42,129.36 and 14.780 M.T. coal from M/s Saladar Enterprises on payment of Rs. 47,650.72 and also from various other registered coal dealers against valid receipts annexed with this Criminal Revision as annexures 4 series .The learned Counsel further contended that the petitioner used to dispatch coal through transporters to the different coal traders through trucks and in this connection he used to maintain the purchase register as well as sales register, in support thereof the petitioner has annexed Xerox copies of the said registers, annexure 5 series .Finally the learned Counsel contended that the alleged place of occurrence was lease hold property of the petitioner which he had obtained from one Sri. Dinesh Singh for a period of 11 months for running his coal business and he was the proprietor of M/s Jai Maa Coal Trading. The petitioner preferred a petition before the Judicial Magistrate, Dhanbad for release of the seized coal which was rejected on the ground that no valid papers could be produced by the concerned or any other person till the filing of charge sheet. It was further observed in the impugned order that there was no material in the case diary in support of the claim of the petitioner that he was the actual owner of the said depot from where coal was seized and that the petitioner failed to pin point the quantity of coal to be released in his favour out of seizure. The learned Counsel finally submitted that since the petitioner was owner of lease hold property so he requested for the release of the entire coal that were seized from his premises under name and style M/S Jai Maa Coal Trading to which he was ready to execute surety bonds of sufficient amount and there was no other claimant before the Trial Magistrate except the petitioner and he had produced all the relevant documents of purchase of the coal. As a matter of fact, the learned Counsel explained that the petitioner was not there at the relevant time of raid and that he was in possession of the relevant documents which have been filed with this Cr. Rev. The coal that were seized were under the process of decay coming in contact with dusts and rains as dumped in the open

sky by the police after seizure and the petitioner would suffer substantial monetary loss if the seized coals were not directed to be released in his favour. Being called upon Mr. Rajan Raj submitted that the price of the coal was @ Rs. 2000/- per M.T. None appeared on call on behalf of the State-O.P.

4. Having regard to the facts and circumstances of the case, I find from the order impugned that there was none except the petitioner who claimed for the release of the seized coal. The learned Magistrate refused the prayer of the petitioner for release of the seized coal only on the ground that no valid document could be produced when raid was conducted in the premises of M/s Jai Maa Coal Trading which belonged to the petitioner as claimed and the coal were seized to which the petitioner explained that neither he was present nor his representative at the relevant time of the alleged raid conducted in the said premises to satisfy the raiding party by producing all the relevant documents.

5. Having regard to the facts and circumstances of the case, I find that the petitioner has placed prima facie grounds in this Cr. Rev. which needs consideration however with certain conditions. A provision u/s 457 of the Code of Criminal Procedure has been laid down for the release of the seized articles.

6. In the result the. coal in question, seized from the premises of M/s Jai Maa Coal Trading situated at Mahulidih Dhanbad is directed to be released in favour of the petitioner Kaushal Kumar Srivastava @ Kushal Kumar Srivastava on executing indemnity bond of Rs. five lakhs with two sureties of the like amount each to the satisfaction of the Judicial Magistrate, 1st Class Dhanbad in Topchanchi P.S. Case No. 34 of 2009. The learned Judicial Magistrate is directed to expedite the trial so as to conclude it preferably within six months next. Accordingly, this Cr. Revision is allowed.