

(2014) 09 JH CK 0075
In the Jharkhand High Court
Case No : W.P. (Cr.) No. 104 of 2014

Krishna Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

General Clauses Act, 1897 — Section 26
Penal Code, 1860 (IPC) — Section 414

Citation : (2014) 4 Crimes 171

Hon'ble Judges : Dhruv Narayan Upadhyay, J

Bench : Single Bench

Advocate : Mahesh Tewari, Advocate for the Appellant; Vijayant Verma, J.C. to G.P. II C.D, Advocate for the Respondent

Judgement

Dhruv Narayan Upadhyay, J.—This Writ Petition (Cr.) has been filed for quashing of the F.I.R. and entire criminal proceedings arising out of Tatisilwai P.S. Case No. 05 of 2014 corresponding to G.R. Case No. 468 of 2014 registered under Section 414 of the Indian Penal Code and Sections 4, 12 & 54 of the Jharkhand Minor Mineral Concession Rules, 2004 (for short hereinafter referred to as the "Rules, 2004"). The facts, in brief, is that on 24.01.2014 after receiving a secret information that illegal mining and transportation of sand is going on, the police party led by informant put a vigil on the road at Bank More within P.S. Tatisilwai. In course of checking the vehicles, truck bearing registration No. BR 140092 and JHOIU3374 loaded with sand were apprehended. The drivers of aforesaid trucks were directed to produce documents against transportation of sand but they failed to do so and admitted that sand is being transported on those trucks at the instruction of owner of the trucks. The writ petitioner happens to be owner of truck bearing No. BR 140092. Both the drivers failed to produce even their driving licence and said that driving licence have been deposited with the owner of the truck. Since no document against transportation of sand was produced the informant, who happens to be Officer in Charge of Tatisilwai Police Station, recorded his self statement and registered Ranchi Sadar, Tatisilwai P.S. Case No.

05 dated 24.01.2014 under Section 414 of the Indian Penal Code and Sections 4, 12 & 54 of the Rules, 2004 and investigation was handed over to Sub-Inspector Baleshwar Prasad.

2. It is contended that Officer in Charge of a police station has no authority to institute a case punishable under the provision of the Rules, 2004. Only an authorised person as indicated under the Rules 57 of said Rules, 2004 is empowered to lodge information either with the police or to file a complaint in writing before a Court having jurisdiction to take cognizance. Where special law is applicable general provision of Indian Penal Code shall not apply. Furthermore, the petitioner happens to be owner of truck bearing registration No. BR 140092 and he was not accompanying with the truck at the time of its seizure. Only because he is the owner of said truck, he has been made accused. Learned counsel has relied upon the judgment reported in 2013 JCR (2) 275 (Jhr.) , 2009 (1) JCR 702 (Jhr.), 2009 (4) JCR 303 (Jhr.), 2013 (1) JCR 535 (Jhr.).

3. On the other hand the respondent/state by filing counter affidavit has contended that in course of investigation and in the supervision note the occurrence has been found true. The truck belonging to the petitioner is being used for illegal mining and transportation of sand. It was submitted that the writ petitioner, instead of appearing before the police to cooperate with the investigation, has been absconding. The learned counsel for the State has relied upon the judgment reported in 2012 (2) JCR 425 (Jhr.) and submitted that the police has every right to prevent commission of cognizable offence. If it is found that cognizable offence has been committed, the police has every right to institute a case and investigate into the matter.

4. I have gone through the material placed before me and the relevant provisions of law. Certainly Rule 57 of Rules, 2004 does not empowers a police officer to institute a case punishable under Rule 54 of Rules, 2004. So far Rules 4 and 12 are concerned, no punishment is provided rather the police has inserted these sections with a purpose to indicate that Rule 4 and 12 has been violated and violation of those rules constitute offence punishable under Rule 54 of Rules, 2004. Now coming to the facts of the case at hand. It is apparent and admitted situation that sand was transported on those trucks without valid permit or document. The petitioner is not related with the mining operation and he is neither a licence nor a transporter under the rules. The drivers who were apprehended with the vehicle loaded with sand have admitted that they used to transport sand without document at the instruction of owner of the trucks. I do admit that the petitioner or the person arrayed as accused in the present case are not liable to be prosecuted for both the offences i.e. offence punishable under Rule 54 of Rules, 2004 and Section 414 of the Indian Penal Code. In this context Section 26 of the General Clauses Act, 1897 is very clear which reads as under:

"26. Provision as to offences punishable under two or more enactments. Where an act or omission constitutes an offence under two or more enactments, then

the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

Here, in the instant case the facts and evidence collected constitute offence under Section 414 of the Indian Penal Code which is cognizable offence and therefore, the police cannot be debarred from registering a case and investigating into the matter. The situation available in the case at hand the arguments advanced by the counsel for the writ petitioner have well been discussed in the judgment reported in 2012 (2) JCR 425 (Jhr.) (Manoj Agrawal Vrs. State of Jharkhand) and in the judgment passed by this Court in W.P. (Cr.) No. 184 of 2010 dated 25.08.2014 (Yogendra Baraik Vrs. The State of Jharkhand). Elaborate discussions have been made in the case of Yogendra Baraik (supra) and the finding have been relied upon judgment reported in the case of The Institute of Chartered Accountants of India Vs. Vimal Kumar Surana and Another, . Since the issue raised by the writ petitioner appears fully covered by the judgments given in the case of Manoj Agrawal (supra) and Yogendra Baraik (supra), I do not find any merit in this petition and the same stands dismissed. However, if chargesheet is submitted against the writ petitioner, the Court taking cognizance shall consider the view taken by this Court in the judgments of anoj Agrawal (supra) and Yogendra Baraik (supra).