
(2015) 02 RAJ CK 0273

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 1689 of 2013

Laxman Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Mines and Minerals (Development and Regulation) Act, 1957 — Section 21(1), 22, 4(1) (1A), 4(1)(2A)

Penal Code, 1860 (IPC) — Section 379

Citation : (2015) 3 WLN 129

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : B.R. Choudhary, for the Appellant; R.K. Bohra, Public Prosecutor, Advocates for the Respondent

Final Decision : Allowed

Judgement

Vijay Bishnoi, J—This criminal misc. petition under Sec. 482 Cr.P.C. has been filed by the petitioners while challenging the order dt. 12.07.2012 passed by the Metropolitan Judicial Magistrate No. 3, Jodhpur Metropolitan (hereinafter referred to as "the trial Court"), whereby the cognizance has been taken against the petitioners for the offence punishable under Sec. 4(1)(2A) read with Section 21(1) Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "the Act of 1957"). Brief facts of the case are that the respondent No. 2-Assistant Mines Engineer, Mines and Geological Department, Jodhpur had filed a written report at Police Station, Mathania, District Jodhpur on 23.04.2012 while alleging that on 23.04.2012, a joint squad of the Mining Department inspected the Government land situated in village Mandiyai Kalla and found the petitioners indulged in illegal mining of the sand-stone. It is also alleged that the petitioners along with several other persons are illegally excavated the sand-stone from the mountains situated in the Government land and committed offences under the Mining Laws.

2. On receiving the said report, the Police Station, Mathania, District Jodhpur has registered the FIR No. 52/2012 for the offence punishable under Sec. 379 IPC and Rule 48 of Rajasthan Mines & Minerals Concession Rules, 1986. After investigation, the police has filed charge-sheet against the petitioners for the offence punishable under Sec. 4(1)(1A) read with Section 21(1) of the Act of 1957. The trial Court vide order dt. 21.07.2012 has taken cognizance against the petitioners for the offence punishable under Sec. 4(1)(2A) read with Section 21(1) of the Act of 1957.

3. Being aggrieved with this, the petitioners have filed this criminal misc. petition on the ground that the order passed by the trial Court of taking cognizance against the petitioner for the offence punishable under Sec. 4(1)(2A) read with Section 21(1) of the Act of 1957 is illegal as the same is in contravention of the provision of Section 22 of the Act of 1957.

4. It is argued that no Court can take cognizance of any offence punishable under the Act of 1957 or any Rules made there-under except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government. It is submitted that the person authorised by the Central Government or the State Government has never made any complaint before the trial Court and, therefore, the trial court was not competent to take cognizance against the petitioners for the offence punishable under Sec. 4(1)(2A) read with Section 21(1) of the Act of 1957. Hence, the order passed by the trial Court is liable to be quashed.

5. Per contra, learned Public Prosecutor has argued that as the petitioners were indulged in illegal mining of the sand-stone and committed the offence punishable under Sec. 4(1)(2A) read with Section 21(1) of the Act of 1957, the trial Court has not committed any illegality in taking cognizance against the petitioners and, therefore, no interference is called for.

6. Heard learned counsel for the petitioners and perused the record.

7. It is not in dispute that the person authorised by the Central Government or the State Government has not filed any complaint in writing in the trial Court. Section 22 of the Act of 1957 specifically lays down that no Court shall take cognizance against any person for any offence punishable under this Act or any Rules made thereunder except upon the complaint made in writing by a person authorised on behalf of the Central Government or the State Government.

8. In the present case, the trial Court has taken cognizance and issued process against the petitioners only on the basis of charge-sheet filed by the police and not acting upon any complaint in writing made by a person authorised in this behalf by the Central Government or the State Government.

9. This Court has no hesitation in holding that in the absence of any written complaint made by the person authorised by the Central Government or the State Government, the action of the trial Court of taking cognizance against the

petitioners is not in consonance with the provision of Section 22 of the Act of 1957. Accordingly, this criminal misc. petition is allowed. The order dt. 12.07.2012 passed by the Metropolitan Judicial Magistrate No. 3, Jodhpur Metropolitan in Criminal Case No. 82/2012 (State of Rajasthan v. Laxman Ram & Ors.) is set aside. However, it is open for the State Government to initiate the fresh action against the petitioners in accordance with law if law permits to do so.