

(2022) 02 JH CK 0007

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 91 Of 2020

Maresh Kumar Agarwal And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 04-02-2022

Acts Referred:

Indian Penal Code, 1860 — Section 201

Air (Prevention And Control Of Pollution) Act, 1981 — Section 37

Code Of Criminal Procedure, 1973 — Section 482

Citation : (2022) 02 JH CK 0007

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Rajendra Prasad Gupta, Ashok Kumar, Prabhas Kumar

Final Decision : Allowed

Judgement

Anubha Rawat Choudhary, J

1. Heard Mr. Rajendra Prasad Gupta, learned counsel appearing on behalf of the petitioner.

2. Heard Mr. Prabhas Kumar, learned counsel appearing on behalf of the opposite party No. 2.

3. Learned counsel for the opposite party-State Mr. Ashok Kumar is also present.

4. This petition has been filed for quashing of the entire criminal proceeding including order taking cognizance dated 12.03.2007 in connection with Gua

P.S. Case No. 63 of 2006 (G.R. No. 511 of 2006) for offence under Section 201 of the Indian Penal Code and Section 37 of the Air (Prevention of

Control of Pollution) Act said to be pending before the court of Chief Judicial Magistrate, Chaibasa, Singhbhum West.

5. The learned counsel for the petitioners submits that the allegation against the

petitioners is that the petitioners in order to run their unit namely M/s.

Sri Bihari Ji Minerals, had not obtained No Objection Certificate (NOC- consent to establish) from Jharkhand State Pollution Control Board and that

the unit was found running without obtaining such NOC under the pollution control law.

6. Learned counsel submits that inspection was conducted on 29.08.2006 and the petitioners were already having the No Objection Certificate (NOC-

consent to establish) which was issued on 04.05.2006 which was valid for the period of six months from the date of issue. He also submits that a

counter affidavit has been by the opposite party No. 2 confirming this fact. He submits that No Objection Certificate dated 04.05.2006 is an

unimpeachable document on record and duly confirmed by the none less than the Pollution Control Board. The entire case filed against the petitioners

is an abuse of the process of law and therefore the entire criminal proceeding as well as the order taking cognizance be set aside.

7. Learned counsel appearing on behalf of the opposite party No. 2 has referred to the counter affidavit and has also referred to the letter dated

09.09.2006 issued by the Member Secretary of the Pollution Control Board clearly indicating that vide letter No. 87 dated 04.05.2006 the NOC was

issued to the unit of the petitioners and thus the fact stated by the petitioners that on the date of inspection i.e. on 29.08.2006 the petitioners were

having No Objection Certificate dated 04.05.2006 valid for a period of six months is not in dispute. However, the learned counsel for the opposite

party No. 2 has also submitted that there is considerable delay in moving this court. There is delay of about 14 years from the date of the F.I.R.

8. Learned counsel appearing on behalf of the State also does not dispute the aforesaid submissions made by the learned counsel for the opposite

party No. 2. He further submits that at the time of inspection the NOC was not produced.

9. After hearing the learned counsel for the parties this court finds that it is not in dispute that the genesis of the case against the petitioners is

inspection conducted in the unit of the petitioners on 29.08.2006 and the allegation is that the petitioners have operated their unit without having NOC

from the Pollution Control Board.

10. It further appears from the FIR as well as the counter affidavit filed on behalf

of the Jharkhand State Pollution Control Board that only allegation against the petitioners, who are said to be the partners of the M/s. Bihari Ji Minerals, is that on the date of inspection they had not obtained consent to establish from the Jharkhand State Pollution Control Board and in the counter affidavit a specific stand has been taken by the none less than the Jharkhand State Pollution Control Board itself that consent to establish was issued in favour of the Ms. Bihari Ji Minerals vide No N-87 dated

04.05.2006. Accordingly, the regional office Jharkhand State Pollution Control Board has been informed and warned not to take action against any unit without proper verification vide Letter No. G-292 dated 09.09.2006.

11. It is not in dispute in the present case that the petitioners had obtained the required NOC dated 04.05.2006 from the Pollution Control Board which was valid on the date of inspection. It is further not in dispute that vide letter dated 9.09.2006 issued by the Pollution Control Board, this fact has been confirmed and the said authority has also observed that before lodging any case, appropriate care should be taken at the end of the Pollution Control Board itself. Considering the aforesaid fact and unimpeachable document i.e. NOC dated 04.05.2006 and confirmed by none less than the Pollution

Control Board, this court is of the considered view that continuation of the criminal case against the petitioners for operating their unit without NOC

would be an abuse of the process of law. So far as argument of the opposite party No. 2 on the point of delay in approaching the court is concerned, a

status report has been received from the learned court below and as per the status report, the case is still pending for appearance of the present

petitioners and accordingly delay, if any, in moving this court under Section 482 of Cr.P.C. is not fatal to the present case of the petitioners.

Accordingly, in exercise of powers conferred under Section 482 of the Cr. P.C. the entire criminal proceeding as against the petitioners in connection

with Gua P.S. Case No. 63 of 2006 (G.R. No. 511 of 2006) including order taking cognizance dated 12.03.2007 is hereby set aside.

12. Accordingly, present petition is hereby allowed.

13. Let this order be communicated to the court concerned through FAX/e-mail.