

(2007) 10 CAL CK 0050
In the Calcutta High Court
Case No : C.R.R. No. 1382 of 2007

Malay Kumar Banerjee and Another

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 15-10-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 190
Mines and Minerals (Development and Regulation) Act, 1957 — Section 21(2), 22
Penal Code, 1860 (IPC) — Section 290, 379, 447

Citation : (2008) 1 CHN 1058

Hon'ble Judges : Ashim Kumar Roy, J

Bench : Single Bench

Advocate : Shiladitya Banerjee, for the Appellant; Debabrata Roy, for the Respondent

Final Decision : Allowed

Judgement

Ashim Kumar Roy, J.—This criminal revision arises out of an order of taking cognizance of offences u/s 21(2) of Mines and Minerals (Development and Regulation) Act, 1957, and u/s 290/379/447 of the Indian Penal Code on a chargesheet submitted by the police u/s 173 of the Code of Criminal Procedure.

2. The learned Advocate of the petitioner contended before this Court that in view of clear restriction contained in Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957, for the sake of brevity hereinafter referred to as the "said Act", taking cognizance of any offence punishable under the said Act on a complaint made by a person not authorized either by the Central Government or State Government in that behalf is wholly without jurisdiction. In this connection he relied on a decision of this Hon'ble High Court in the case of Sima Sarkar v. State reported in 1995(1) CHN 1.

3. Against such contention it has been submitted by Mr. Debabrata Roy, the learned Advocate of the State that since the chargesheet on which the cognizance was taken relates to the cognizable offences punishable under Indian

Penal Code as well as the offence punishable under Mines and Minerals (Development and Regulation) Act, 1957, the said bar has no manner of application. He further submitted in any event this is at best an irregularity and does not vitiate the proceedings, thus no interference by this Hon''ble Court is called for. Lastly, Mr, Roy submitted that even if taking cognizance in respect of an offence punishable under the said Act is illegal the question of taking cognizance in respect of the offences punishable under the Indian Penal Code ought to be sustained.

4. I have given my anxious consideration to the respective submissions of the learned Advocates of the parties. Perused the materials on record.

The only point that requires consideration in the instant criminal revision whether in view of the bar contained in Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 taking cognizance in the instant case is liable to be quashed.

5. The provisions of Section 22 of the said Act run as follows:

Section 22. No Court shall take cognizance of any offence under this Act and rules made thereunder except upon a complaint in writing made by a person authorized in this behalf by the Central Government or the State Government.

The aforesaid provisions is a short of exception to the general provisions contained in Section 190 of the Code of Criminal Procedure as regards to the taking of cognizance by a Court and creates an embargo upon such power of Court to take cognizance in respect of an offence punishable under the said Act. According to the said provisions, taking cognizance in respect of an offence committed under the said Act is strictly prohibits except upon a complaint made by the person authorized in this behalf by the Central Government or the State Government.

The provisions of Section 22 of the said Act being mandatory no Court has jurisdiction to take cognizance of any offence punishable under the said Act except in terms thereof.

6. I have gone through two Gazette Notifications one issued by the Central Government vide GSR 1201, dated May 24, 1969 and another issued by the State Government by Notification No. 89-C17/Gr.D/4M-30/88, dated January 24, 1991, in exercise of power conferred u/s 22 of the said Act and found that a police officer has never been authorized to file any complaint in the Court in respect of any offence punishable under the said Act thereunder.

7. I am of the opinion in view of clear embargo contained in Section 22 of the Mines and Minerals (Development & Regulation) Act, 1957, taking cognizance by a Court in respect of an offence punishable under the said Act except on a complaint in writing made by a person authorised on that behalf by the Central Government or by the State Government is illegal and without jurisdiction. This is not a question whether the offences are cognizable or non-cognizable. By

making an offence cognizable the legislature only intended to authorise the police to investigate the same, whereas in case of a non-cognizable offence the power of the police to investigate into the same is subject to a prior order of a competent Court of Law. However, it is no way restrict the power of the Court to take cognizance of commission of any offence irrespective of the fact whether the same is cognizable or non-cognizable. But the point involved in this case is altogether different. It is a prohibition on the power of Court to take cognizance. Since in terms of the aforesaid provisions of the Act taking cognizance of such offence by a Court is not permissible except on the complaint of authorized officer the impugned order of taking cognizance is illegal and without jurisdiction and the same is thus set aside. This criminal revision stands allowed.

8. I do not find any reason to take a different view from that of the view taken the said decision of our High Court that splitting of a chargesheet for the purpose of taking cognizance is not at all legally permissible. As such the submission of Mr. Roy the Court may very well proceed with the trial of the case for an offence u/s 379 of the Indian Penal Code is not tenable.

9. However, I make it clear this order will not preclude the learned Court below to take cognizance in respect of any offence punishable under the said Act as regards to the self-same occurrence if such a complaint is filed by a person duly authorized in that behalf by the respective Governments.

10. Urgent xerox certified copy of this judgment, if applied for, be given to the parties as expeditiously as possible.