
(2015) 05 JH CK 0046
In the Jharkhand High Court
Case No : Writ Petition (Cr.) No. 226 of 2008

Manish Khemka

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 4
Mines and Minerals (Development and Regulation) Act, 1957 — Section 21, 21(1),
21(6), 22, 23(2)(C)
Penal Code, 1860 (IPC) — Section 379, 420

Citation : (2015) 3 JLJR 627

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Ananda Sen, for the Appellant

Final Decision : Dismissed

Judgement

Rakesh Ranjan Prasad, J.

1. This application had been filed under Article 226 of the Constitution of India for quashing the first information report of Jagarnathpur P.S. Case No. 36 of 2008 (G.R. No. 202 of 2008), instituted under Sections 379, 420 of the Indian Penal Code and also under Section 8/9 of the Jharkhand Mineral Dealer's Rules, 2007 read with The Mines and Minerals (Development And Regulation) Act, 1957.

2. The case of the prosecution is that one Raghav Nandan Prasad, District Mining Officer, Chaibasa on receiving information relating to illegal storage of iron ores came alongwith other Mining Officials at Mauza-Karanjia and found iron ore fines/blue dust stored at several places over Hatgamharia-Jaitgarh Road. On inquiry, it could be known that iron ores taken from the mines situated in the State of Orissa was meant to be transported to Haldia Port still it was stored at Mauza Karanjia which under the Challans was not permissible and, thereby, transporters including the petitioner at whose instance iron ores had been stored have been

alleged to have committed offence under sections 8 and 9 of the Jharkhand Mineral Dealer's Rules, 2007 read with Mines and Minerals (Development and Regulation) Act and that apart, they have also been alleged to have committed offence under Sections 379 and 420 of the Indian Penal Code.

On the basis of the information given to the Jagarnathpur police, a case was registered as Jagarnathpur P.S. Case No. 36 of 2008 under Sections 379 and 420 of the Indian Penal Code and also under Rules 8 and 9 of the Jharkhand Mineral Dealer's Rules read with Mines and Minerals (Development and Regulation) Act.

3. Institution of the said case was challenged on the ground that Jharkhand Mineral Dealer's Rules, 2007 was framed by the State of Jharkhand in exercise of power conferred by Section 23(C)(1) of the Mines and Minerals (Development and Regulation) Act, 1957, in order to regulate mining, transportation and storage of minerals and minerals products and further Rules 3 and 6 prohibit any person from engaging himself in any transaction of buying and selling any minerals without being registered and from transporting any minerals without obtaining transport Challans, contravention of which is punishable under Rule 8 and, thereby, the allegations upon which the case was lodged, do fall within the purview of special legislation namely Jharkhand Mineral Dealer's Rules, 2007 and the Mines and Minerals (Development and Regulation) Act, 1957, the cognizance of which offence can be taken by the Court under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 only upon a complaint in writing made by a person authorized in this behalf by the Central Government or the State Government and, therefore, any prosecution initiated on the basis of the first information report would be quite illegal and, thereby, the first information report is fit to be quashed.

4. The Court, having regard to the provisions of Rule 8 of Jharkhand Mineral Dealer's Rules 2007, prescribing penalties for contravention of the provisions relating to the sell, purchase and storage, did come to the conclusion that the allegations do constitute offence under the said Rules as well as the Mines and Minerals (Development and Regulation) Act, 1957, the special legislation and, thereby, any investigation, inquiry or trial shall be governed, in view of Section 4 of the Code of Criminal Procedure, by the special law and not under the general law. In that event, it was held that any prosecution launched by the informant not by way of complaint but by way of information to the police is quite illegal and, thereby, the first information report of Jagarnathpur P.S. Case No. 36 of 2008, was set aside vide order dated 16/04/2009.

5. That order was challenged by the State of Jharkhand before the Hon'ble Supreme Court in SLP (Cr.) No. 2647 of 2010/Cr. Appeal No. 560 of 2011, which was heard along with other Criminal Appeals bearing Nos. 561/2011 and 562/2011. Their Lordships set aside the order passed by this Court and remanded the matter back for taking a decision afresh in accordance with law in terms of the observations made in para-5 of the order, which reads as follows:-

"5. We have scanned the impugned judgments. We find that the effect of Section 21(6) of the Act has not been considered at all by the High Court. Under these circumstances, in our view, the High Court should re-consider the whole matter on all the questions including the effect of Section 21(6) of the Act. We, accordingly, set-aside the impugned judgments and remit the matters to the High Court for a decision afresh in accordance with law. Needless to mention here, all the parties shall be at liberty to agitate all the questions before the High Court."

6. That is how the matter has again come up before this Court for reconsideration of the whole issue involved in this case.

7. Mr. Sen, learned counsel appearing for the petitioner submits that Jharkhand Minerals Dealers Rules, 2007, has been framed by the State of Jharkhand in exercise of power conferred by Section 23(C)(1) and 23(2)(C) of the Mines and Minerals (Development and Regulation) Act, 1957, in order to regulate mining, transportation and storage of minerals and minerals products, whereby Rules 3 and 6 prohibit any person from engaging himself in any transaction of buying, selling and transporting any minerals without being registered and without obtaining transport Challans and, thereby, it was made penal in terms of Rule 8 of the aforesaid Jharkhand Mineral Dealer's Rules, 2007.

At the same time, Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957, does prescribe that whosoever contravenes the provisions of Sub-section (1) or Sub-Section (1-A) of Section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty five thousand rupees, or with both. The said penal provisions further does stipulate that any rule made under any provisions of the Act [the Mines and Minerals (Development and Regulation) Act, 1957] may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both and in the case of a continuing contravention, with an additional fine which may extend to five hundred rupees for every day during which such contravention continues. Further, Sub-section (6) of Section 21 of the Act, does stipulate that an offence under Sub-section (1) notwithstanding anything contained in the Code of Criminal Procedure, shall be cognizable.

Learned counsel by putting emphasis on the clauses "offence under Sub-section (1) appearing in Sub-section 6 of Section 21, submits that only those offences falling within Sub-section (1) of Section 21, shall be cognizable and in terms of the provision of 21(6) of the Mines and Minerals (Development and Regulation) Act, 1957 and not the offences, which are there in Sub-section (2) of Section 21. In other words, the submission, which was advanced in that allegations, which have been made against the petitioner relate to the contravention of the provisions of the Jharkhand Mineral Dealer's Rules, 2007, which is punishable under Rule 8 of the said Rule prescribing punishment which may extend to one year and fine of rupees five thousand, or with both and, thereby, it will not be

covered by Sub-section (1) of Section 21 and, hence, the offence alleged, cannot be said to be cognizable and under the circumstances, the police will not have power to register an F.I.R. and to proceed with its investigation without there being order of the Magistrate.

8. As against this, learned counsel appearing for the State submits that any contravention of the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 as well as contravention of any Rule made under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957, would be punishable either under Section 4(1) or 4(1)(A) of the the Mines and Minerals (Development and Regulation) Act, 1957 and, thereby, all the offences in terms of Sub-section (6) of Section 21 would be cognizable where the police is competent to register a FIR and to proceed with the investigation.

9. Having heard counsel appearing for the parties, I do find that a FIR was registered when it was found that iron ores taken from the mines situated in the State of Orissa meant to be transported to Haldia Port was stored at Mauza Karanjia which, under the Challans, was not permissible and, thereby, transporters and the petitioner, who had stored the iron ores at Karanjia, have been alleged to have committed offence punishable under sections 8 and 9 of the Jharkhand Mineral Dealer's Rules, 2007 read with Mines and Mineral (Development and Regulation) Act. At the same time, offence under Sections 379 and 420 of the Indian Penal Code, has also been alleged to have committed. The said prosecution seems to have been launched in view of Sub-section (1-A) of Section (4) of the Mines and Minerals (Development and Regulation) Act, 1957, which reads as follows:-

"4. Prospecting or mining operations to be under licence or lease.-(1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder.

... ..

(1A). No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder."

10. Contravention of the provisions as contained in Section 4(1) and 4(1-A) is punishable in terms of Section 21 of the Act, which reads as follows:-

"21. Penalties- (1) whosoever contravenes the provisions of Sub-section (1) or Sub-Section (1-A) of Section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty five thousand rupees, or with both.

(2). Any rule made under any provisions of the Act [the Mines and Minerals (Development and Regulation) Act, 1957] may provide that any contravention

thereof shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both and in the case of a continuing contravention, with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention."

11. At the same time, Rule 8 of the Jharkhand Mineral Dealer's Rules, 2007, also does stipulate penalties for contravention of the provisions of the Rules of Jharkhand Mineral Dealer's Rules, 2007, which reads as under:-

"8. Penalties.-(1) Any person, who contravenes any of the provisions of these rules, or buys or sells or stores minerals except under and in accordance with the dealer's registration or who transports the minerals except as mentioned in the transport challan shall be punishable with :

(a) A fine of Rs. 5000/- or imprisonment for a term which may extend to one year or with both.

(b) In the case of a continuing contravention, with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(2) Any person, who buys or sells minerals except under and in accordance with registration, shall be punishable with a fine which may extend to Rs. 5000/- or imprisonment for a term which may extend to one year or with both.

(3) Any person, who transports minerals except to the destination specified in transport challan, shall be punishable with an imprisonment upto a term of one year or fine which may extend to Rs. 5000/- or with both.

(4) Whoever, intentionally obstructs the competent officer or any other officer in performing his duties (in imposing penalties etc.) under these rules, shall be punishable with an imprisonment for a term which may extend to 6 months or fine which may extend to Rs. 5000/- or with both."

12. Thus, it is evident that the punishment which can be inflicted for contravention of the provisions of the Act and the the Rules made therein in terms of the Section 21 which may extend to two years or with fine, which may extend to rupees twenty five thousand, whereas the punishment which can be inflicted in terms of Rule 8 of the said Dealer's Rules can extend to one year and fine of rupees five thousand. In spite of that the offence, on account of contravention of the Act and the Rules has been made cognizable in terms of the provisions as contained in sub-section (6) of Section 21.

13. I have already noted that any contravention of the Act and the Rules relating to transportation and storage of the Minerals is an offence under Section 4(1-A), which is punishable under Section 21(1) of the MMRD Act. If that is so, the said offence would be cognizable in terms of Sub-section (6) of Section 21.

14. However, according to the learned counsel appearing for the petitioner,

admittedly, the allegations, which have been made against the petitioner is of contravention of the provisions of Jharkhand Mineral Dealer's Rules, 2007, which is punishable under Section 8 prescribing sentence which may go up to one year and fine to the extent of Rs. 5000/- and, thereby, it will not be governed by Section 21 of the Act.

15. The submissions appeared to be misconceived as Section 4(1-A) does stipulate quite clearly that no person shall transport or store or cause to be transported or stored any minerals otherwise than in accordance with the provisions of this Act and the rules made thereunder. Admittedly, the Jharkhand Mineral Dealer's Rules, 2007, has been framed in exercise of the power conferred by Section 23(C)(1) and (2) of the Mines and Minerals (Development and Regulation) Act, 1957 and, hence, contravention of any of the provisions of the said rules would be punishable in terms of Section 4(1-A) of the Act and, thereby, the offences alleged, would be cognizable.

16. So far Sub-section (2) of Section 21 is concerned, that seems to have been laid down for a guidance as to in what terms punishment can be inflicted for contravention of the rules.

17. Thus, I am of the considered view that offence being cognizable can be inquired into and investigated upon by the police.

However, submission was also advanced to the effect that in terms of the provisions of the MMRD Act, cognizance can be taken only upon filing of the complaint by a competent officer but the case is being investigated upon by the police, submission of the charge sheet by him would not amount it to be a complaint and, thereby, cognizance cannot be taken upon such final form.

18. That stage has still not come up. Therefore, that issue never requires to be addressed with at this stage. However, since I did find that FIR can be maintained for contravention of the provisions of the Act and the rules as aforesaid, I do not find any merit in this application and, hence, it is dismissed.