

(2011) 07 KAR CK 0280
In the Karnataka High Court
Case No : Criminal Petition No. 10610 of 2011

Mr. N. Manzoor Ahmed and Another

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 27-07-2011

Acts Referred:

Citation : (2013) 1 KCCR 401

Hon'ble Judges : B.V. Pinto, J

Bench : Single Bench

Advocate : L.M. Chidanandayya, for the Appellant; Mahesh Wodeyar, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Pinto, J.—This petition is filed seeking to quash the proceedings in C.C. No. 1547/10 pending on the file of the Prl. Civil Judge and JMFC, Hospet. It is the case of the petitioners that despite they having mining licence and stock yard permission, the case has been filed against them by the complainant for offences under Sec. 4(1), 4(1)(a) and 21(1) to (6) of the Mines and Minerals (Development and Regulation) Act, 1957 for short MMDR Act and Sec. 379 IPC. A complaint came to be filed before the JMFC, Hospet on 4.9.2010 against the petitioners under Sec. 200 Cr. P.C. alleging that the petitioners had taken stock yard licence for storing iron ore and are processing the same from the mining area and the said process could be done only after paying royalty as per Sec. 9 of the MMDR Act and for further transportation of the same, permission is required from the Department. It is the case of the complainant that the accused have not taken licence nor the permission for transportation of iron ore. It is further submitted that on 05.6.2010 when an inspection was undertaken in Sy. Nos. 63/A and 64 of Voddarahalli village of Hospet taluk, it was found that there was no iron ore stocked in the said area and thereafter when an inspection was again done on 5.9.10, it was found that the iron ore has been stocked unauthorizedly and accordingly, through a panchanama, iron ore was seized. It is

submitted before the Court that the said iron ore was stocked without taking any permission under MMDR Act, 1957 and therefore, an offence under Sec. 4(1), 4(1)(a) and 21(1) to (6) has been committed and that the iron ore weighing about 55,660 metric tons has been unauthorisedly stored in the said premises. It is further stated in the complaint that it is compulsory for taking permission from the Mines and Geology Department for transportation of iron ore. It is also stated that the iron ore weighing about 55,600 metric tons has been brought and stocked at that place from, some other place without permission and therefore, a panchanama was drawn on 3.9.10 and the iron ore was confiscated to the State. It is further stated in the complaint that A-1 and A-2 have not obtained licence for stockyard and for having not paid the royalty as per the provision of the MMDR Act, they are alleged to have committed an offence under Sec. 4(1), 4(1)(a) r/w 21(1) to (6) of the MMDR Act and therefore, it is prayed that the cognizance may be taken of the said offence.

2. The learned Magistrate on a perusal of the complaint, has ordered thus:

Sri S.P. Raju, Deputy Director of Mines and Geology, Hospet is present. Perused the complaint, cognizance is taken, since the complainant is State, sworn statement of complainant is dispensed with.

Office to register as CC and issue SS to A-1 and A-2 returnable by 15.11.10.

3. The learned Counsel for the petitioners submits that the said order of the learned Magistrate dated 06.9.10 taking cognizance of the offence is a sheer abuse of law and therefore, he submits that the same may be set aside and the proceedings in CC. 1547/10 may be quashed. He submitted that the father of petitioner No. 1 had a licence prior to 24.11.05 and on an application filed by the petitioners, the said licence for mining lease has been renewed for a period of 20 years and that on the date of the seizure, the said mining lease was in operation. He has produced a copy of the mining lease as per Annexure-E. He has further submitted that the stock yard licence has been granted to him by the Director of Mines in respect of Sy. Nos. 63/A and 64 in all 5 acres 58 cents as per Annexure-F. The said stock yard permission is also valid as on the date of filing of the complaint. It is further submitted by him that the application has been filed to issue permit for despatching the ore and mines, the copy of which has been produced along with the petition. He also submits that a sum of Rs. 29,82,000/- has been paid as royalty charges to the Deputy Director of Mines and Geology and copy of the said demand draft has been produced along with the petition. It is the submission of the petitioner that in spite of royalty being paid and an application being filed for establishing a stock yard in the mining area, the complainant has raided the premises and has filed the charge sheet which is a sheer abuse of process of law. Hence, he submits that the proceedings are liable to be quashed. It is further submitted by him that the learned Magistrate without looking into the facts of this case has mechanically ordered for issue of process and therefore, he submits that the said order issuing summons to the petitioner is without application of mind and therefore, the same is liable to be set aside

and the proceedings are liable to be quashed.

4. The learned Counsel for the petitioners has relied on the following decisions:

- i) B.L. Diwakar Vs. State of Karnataka And Another,
- ii) Mr. Behram Bomanji Dubash and Others Vs. The State of Karnataka,
- iii) M.N. Ojha and Others Vs. Alok Kumar Srivastav and Another,

Based on the rulings cited above, he submits that the complaint filed by the complainant deserves to be quashed and prays for the an order accordingly.

5. The learned AGA, on the other hand, submits that as per Section 4(1) of the MMDR Act, 1957, 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. He submits that Section 4(1)(a) further stipulates that no person shall transport or store or cause to be transported any mineral otherwise than in accordance with this Act and the Rules made thereunder. He submits that on the inspection of the mining area, the complainant has found that the iron ore weighing 55,660 metric tons was stocked in the area by the petitioners and that the petitioners have not obtained any transportation licence for carrying iron ore and therefore, the petitioners have violated the provisions of Sec. 4(1) and 4(1)(a) of the said Act. He further submits that the petitioners have made themselves liable for punishment under Sec. 21(1) to (6) of the aforesaid Act. Therefore, he submits that the petition is not maintainable at this stage. He also submits that the complaint is also filed for an offence under Sec. 379 IPC on the allegation that the petitioners having not only taken the iron ore from Sy. Nos. 63A and 64 of the said village but have also collected iron ore from other places, the possession of which has not been explained by the petitioners and therefore, it is submitted that the petitioners have committed an offence under Sec. 379 IPC. It is further submitted by him that the learned Magistrate need not explain in so many words when he takes cognizance of an offence. It is enough if it is noted that he has perused the complaint. The fact that the learned Magistrate has registered the Case itself implies that he has applied his mind and in this case, the Magistrate has clearly stated in the order sheet that he has perused the complaint and that he has taken cognizance of the offence. He submits that the offences are mentioned in the same page where the learned Magistrate has taken cognizance and therefore, at this stage, there is no ground to interfere with the order of taking cognizance by the learned Magistrate and therefore, he submits that the petition may be dismissed.

6. The learned Additional Government Advocate has relied upon the following rulings:-

- i) State of Orissa and Another Vs. Saroj Kumar Sahoo,

- ii) State of Maharashtra Vs. Salman Salim Khan and Another,
- iii) Central Bureau of Investigation Vs. K.M. Sharan,
- iv) State of Karnataka Vs. M. Devendrappa and Another,

7. It is seen from the complaint filed by the complainant namely the Director of Mines and Geology Department, Hospet that on visit to the area where mining was being carried out by the petitioners, it was found that on 05.06.2010 iron ore weighing about 55,600 metric tones was stocked in the area by the petitioners and that the iron ore necessarily ought to have been carried from some other place. Therefore, on the basis of the said inspection, the case has been registered. It is the allegation of the complainant that the accused might have committed theft of the said iron ore and since they have not obtained a transport licence, an offence has been committed by the petitioners. The petitioners have approached this Court immediately after the registration of the complaint and I am of the opinion that the said approach of the petitioners is premature. The documents, which have been produced by the petitioners along with the petition, have to be scrutinized by the Court at the time of evidence. The High Court cannot look into the documents, which are to be received at the time of trial and an offence u/s 379 of the Indian Penal Code, a warrant case. Therefore, the petitioners have got an opportunity to show to the Trial Court that there is no material for framing charge and they can seek for discharge. Under the circumstances, I am of the opinion that there is no merit in this petition and the same is liable to be dismissed. So far as the order taking cognizance of the offence is concerned, it is seen that the learned Magistrate has clearly stated that he has perused the complaint. Thereafter, he has taken cognizance of the offence, since the complainant is a Government Servant sworn statement of the complainant is not necessary. Even according to Section 200 of the Code of Criminal Procedure, it is not necessary for the Court to have passed a detailed order regarding taking of cognizance. It is sufficient if the Magistrate notes the section of law under which the complaint is filed. In the order taking cognizance of the offence, the sections of law, which are violated, have been mentioned, so also after perusal of the materials, he has ordered for registration of the case. I do not find any illegality in the order taking cognizance of the offence and accordingly this petition is dismissed.

The petitioners are at liberty to urge all the grounds presented by them in this petition while seeking discharge before the Trial Court.