
(2009) 01 CAL CK 0035
In the Calcutta High Court
Case No : C.R.R. No. 694 of 2000

Narayan Chandra Saha

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 27-01-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Mines and Minerals (Development and Regulation) Act, 1957 — Section 21(1), 21(2), 22
Penal Code, 1860 (IPC) — Section 290, 379, 447, 78
West Bengal Land Reforms Act, 1955 — Section 4C, 4D

Citation : (2009) 01 CAL CK 0035

Hon'ble Judges : P.S. Datta, J

Bench : Single Bench

Advocate : Ashok Kumar Chakraborty and P.R. Chakraborty, for the Appellant; Barin Roy, for the Respondent

Final Decision : Allowed

Judgement

P.S. Datta, J.

The Judgment of the Court was as follows:

1. FIR dated 6th January, 2001 was lodged with the O.C. Karimpur PS in the District of Nadia by the BL & LRO, an officer authorised u/s 22 of the Mines and Minerals (Regulations and Development) Act, 1957 and an officer authorised by the Collector u/s 4D of the West Bengal Land Reforms Act, 1955 against the petitioner alleging offences u/s 4D of the West Bengal Land Reforms Act and Rule 30 of the West Bengal Minor Mineral Rules, 1973 and u/s 290/379/447 IPC for alleged unauthorised extraction and removal of mines and minerals is sought to be quashed by the petitioner - accused in this application dated 16th March, 2000 u/s 482 of the Cr. PC.

2. In sum, the allegation against the present petitioner is that the petitioner allegedly extracted unauthorisedly mines and minerals thus making himself liable

for prosecution under the aforesaid sections of law.

3. Mr. Chakraborty, learned Senior Advocate for the petitioner draws my attention to certain orders of this Court passed in more than one writ applications which were tiled by Nadia District Brick Manufacturers Association of which the present petitioner is a member. As far back as 7th April, 1992 His Lordship Hon''ble Justice N.K. Mitra (as His Lordship then was) on the prayer of the Nadia District Brick Manufacturers Association directed the respondents state to act strictly in terms of this Court''s order passed in the writ petition and also in terms of prayer(g) of the said writ petition. Further my attention has been drawn to an order dated 23rd November, 1990 passed by His Lordship Hon''ble Justice Kalyanmoy Ganguly (as his Lordship then was) in C.O. No. 12407(W) of 1990 wherein an interim order was passed directing the respondents to allow the petitioners to extract earth on payment of usual assessed royalty. It is submitted that pursuant to the order of the Writ Court as said above, the petitioner deposited Rs. 20,000/- and it was accepted by the Land Reforms Directorate of Nadia on 24th December, 1999. My attention has further been drawn to an order dated 21.2.92 passed in C.O. No. 240(W) of 1992 by His Lordship Hon''ble Justice Altamas Kabir (as His Lordship then was) directing the association to deposit Rs. 10,000/- by way of advance royalty with the concerned authorities and upon deposit of such advanced royalty, the respondent''s were directed to consider the question of grant of quarry permit to the applicants. It is further submitted by Mr. Chakraborty that the vires of section 4C of the West Bengal Land Reforms Act was challenged in a writ petition being C.O. No. 240(W) of 1992 and His Lordship Hon''ble Justice Maharaj Sinha declared the provision of section 4C of the West Bengal Land Reforms Act ultra vires. Provision of section 4C is a penal provision for violation of the provisions of section 4C. It is submitted that when the act of the petitioner is protected right from the year of 1991 by the judicial order of this Court, the petitioner cannot be prosecuted under the aforesaid sections of the law in view of section 78 of the IPC which is reproduced below:

"Act done pursuant to the judgment or order of Court. Nothing which is done in pursuance of, or which is warranted by the judgment or order of a Court of Justice; if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction."

4. It is further submitted by Mr. Chakraborty that an identical case was also dealt with by this Court in Chotelal Chowdhury & Ors. vs. State of West Bengal, as reported in 2008(3) CHN 1061. In this decision as many as four points were dealt with and decided. Firstly, it was held by this Court that the prosecution of the petitioner u/s 290/379/447 of the IPC was not maintainable factually even because it was not a case of commission of theft of mines and no individual lodged any complaint before the authority. It was further held in that decision

that if according to the prosecution extraction of earth of mines is an offence under sections 21(1) and 21(2) of the Mines and Minerals (H&D) Act, 1957 then obviously prosecution of the petitioner u/s 447 of the IPC is totally misnomer. Secondly, it was held in consistent with the decision in Hiratal Bacha & Ors., vs. P.S. Bose & Ors., reported in 1993(2) CHN 15, that when the offences falls under the specific provisions of any special Act then invocation of the provision of the IPC is not legally maintainable. Thirdly, it was held that taking cognizance is one and indivisible act which cannot be split. Fourthly, it was held that consequent upon the orders of the Writ Court, the petitioners were directed to carry on the business of extraction of earth subject to payment of assessed royalty and in that view of the matter, the FIR seeking for prosecution of the petitioner is not maintainable.

5. I find that in the decision in Chotelal Chowdhury & Ors., the facts are exactly identical as is handled now and all the points as have been taken out in this revisional application were also decided in favour of the petitioners of that case by this Court.

6. Mr. Roy, learned Advocate for the State submits that he has instruction to submit that the petitioner had been authorisedly extracting earth since the early part of 2000 for which the prosecution was launched. This point has been answered by Mr. Chakraborty with reference to a circular being No. 2739 (18)-L.Ref. dated 29th September, 2000 (after the FIR was lodged in this case) issued by the Joint Secretary, Land and Land Reforms Department, Government of West Bengal wherein it has been stated as follows:

"The undersigned is therefore directed to request him to take necessary steps for regularization of unauthorised brick fields in his district in accordance with the above guidelines. Action against the rest which will remain unauthorised, should be taken under the relevant provisions of the Mines and Minerals (Regulation and Development) Act, 1957 and the West Bengal Minor Minerals Rules, 1973 as amended upto date, unless there is any order from any Court of Law which allows the brick fields to continue to operate. In the latter cases, all details of the Court cases and the orders in this behalf are to be reported to the Land and Land Reforms Department separately."

7. Mr. Barin Hay, the learned Advocate for the State of West Bengal submits that Nadia Brick Fields Association case cannot be taken aid of by the petitioner in his own because the said association is a society under the Societies Registration Act and the petitioner does not stand on the same footing. I fail to persuade myself with the reasoning. It appears from Annexure-1 that the petitioner is also a member of Nadia Brick Fields Association which also filed earlier writ petition and the case of the present petitioner is clearly guided and governed by the different orders which the Writ Court passed from time to time and the alleged unauthorised act of the petitioner appears to have been covered by the judicial order and it is not understandable how there could be a prosecution of the present petitioner in view of section 78 of the IPC.

8. The four-fold points which were exhaustively dealt with and decided in favour of the petitioner in Chotelal Chowdhury case are squarely applicable here also and I find no reason to distinguish this case from the case as decided earlier.

9. In the circumstances, I am clearly of the opinion that the prosecution of the petitioner under the aforesaid sections of the law is not maintainable.

10. Accordingly, I allow this application and quash the proceeding being Hogolberia P.S. Case No. 8/2000 dated 20.1.2000 u/s 4D of the W.B.L.R. Act, 1955 section 21(2) of the Mines and Minerals (Regulation and Development) Act, 1957 read with section 290/379/447 of the LPC and the proceeding initiated thereunder being G.R. Case No. 124/2000 pending before the Id. Sub-divisional Judicial Magistrate, Krishnanagar, District- Nadia. The petitioner shall stand discharged from bail bonds.

11. Urgent xerox certified copy of the order shall be given to the petitioner, if applied for, as expeditiously as possible.