

(2006) 08 JH CK 0085

In the Jharkhand High Court

Case No : Writ Petition (Cr.) No. 109 of 2005

Narayan Mahto @ Narayan Chandra Mahto

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 01-08-2006

Acts Referred:

Bihar Minor Mineral Concession Rules, 1972 — Rule 40, 40(1)

Jharkhand Minor Mineral Concession Rules, 2004 — Rule 57

Penal Code, 1860 (IPC) — Section 379, 411

Citation : (2006) 4 JCR 218

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : K.P. Deo, for the Appellant; Sheela Prasad, GP-IV and S.K. Verms, SC (Mines), for the Respondent

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—Heard the parties.

2. In the instant writ application, the petitioner has prayed for quashing of the entire -criminal proceedings including the FIR of Nala (Binda Pathar) P.S. Case No. 16/2005 registered under Sections 379 and 411, IPC against the petitioner and two others as contained in Annexure-4 to this writ application. The said FIR was instituted on the basis of the fardbeyan of Aiyeen Mahto.

In the FIR it is alleged that in course of patrolling duty to prevent the illegal theft of stones, the informant reached the village Simalbari, Tola Hassi Pahari on 14.3.2005 and then he saw that towards the northern side of the land of Sita Ram Mahto there was Government parti land on which large number of stones and boulders were stacked and some persons were lodging the same on a tractor. Thereafter, he gave information to the police at this the police party reached at the place of occurrence and then those persons, who were loading the stones and boulders on the tractor, started fleeing away. The police party chased them and, thereafter, one person was caught, who disclosed his name to be

Babudhan Soren. The informant further alleged that the other man who succeeded in fleeing away was Hele Gorai to whom he could recognize. On being asked, the apprehended person disclosed that he was the driver of the said tractor bearing registration No. BR 12-9116 and the said tractor belonged to Narayan Mahto (the petitioner) who used to illegally transport the stones and boulders to his Crusher Machine. The apprehended person could not show any valid documents with regard to those stones and boulders and, thereafter, the tractor as well as the stones and boulders were seized and the FIR was lodged. It is stated that the petitioner, his driver etc. were caught red handed along with the stones and boulders, which is the subject-matter of theft.

3. The case of the petitioner is that the petitioner and two others namely Bijay Kumar Mahto and Gunadhar Mahto are the partners of "Nilkanth Stones Works" and they entered into a lease agreement on 27.7.2004 with the Government of Jharkhand with regard to plot No. 92/P, area 1.72 acres in Mouza Binda Pathar, P.S. Binda Pathar, District Jamtara for extracting minor minerals from the said plot for a period of 10 years. A photocopy of the lease deed has been made Annexure-1 to the writ application.

4. The main contention of the petitioner for quashing of the FIR is that the said FIR was instituted in contravention of the Government circular issued under the signature of the Director, Mines, Government of Jharkhand contained in letter No. Mines Directorate (Miscellaneous)-161/04 1445 M. Ranchi dated 8.11.2004 wherein it was mentioned that no police officer is authorized to institute an FIR with regard to mines and minerals under the Bihar Minor Mineral Concession Rules, 1972 and, therefore, the institution of the FIR was wholly illegal and without jurisdiction. The said letter dated 8.11.2004 has been annexed as Annexure 3 to this writ application.

5. A counter-affidavit has been filed on behalf of respondent No. 5, i.e. the Investigating Officer of the case. He has stated in the counter-affidavit that the petitioner is a habitual offender and earlier he was also arrested in connection with Nala (Binda Pathar) P.S. Case No. 76/1999, which was registered u/s 379, IPC in which charge-sheet has already been submitted. It is further stated that the petitioner was involved in committing theft of stones and boulders and his driver along with his tractor was caught red handed while committing the said offence. A copy of the supervision note has also been annexed with the counter-affidavit and it has been submitted that sufficient materials have been collected against the petitioner for his involvement in the offence alleged. It is further stated that during investigation it has come that the P/O land was situated in Village Simalbari and the plot number was 48 where the accused persons were lifting stones at the instance of the petitioner. As a matter of fact the said offence was committed beyond the lease hold area of the petitioner therefore, according to the respondents the lodging of the FIR was absolutely valid and the police had the jurisdiction to institute the same since a cognizable offence was being committed by the accused persons.

6. Rule 40 of Bihar Minor Mineral Concession Rules, 1972 provides penalty for unauthorized extraction and removal of minor minerals. Sub-rule (1) of Rule 40 envisages that whoever is found to be extracting or removing minor minerals or on whose behalf such extraction or removal is being made, he be an agent, a manager, an employee or a contractor or a sub-lessee, otherwise than in accordance with these rules, shall be presumed to be party to the illegal removal of the minor mineral and every such person shall be punishable with simple imprisonment which may extend to six months or with fine, which may extend to rupees five thousand or with both.

7. In the present case the FIR in question was lodged on 14.3.2005 and by that time after reorganization of the State of Bihar, Jharkhand Minor Minerals Concession Rules, 2004 has already come into force with effect from 26th July, 2004. Therefore, in this case Jharkhand Minor Minerals Concession Rules, 2004 shall be applicable and not Bihar Minor Minerals Concession Rules, 1972.

8. Rule 57 of Jharkhand Minor Minerals Concession Rules, 2004 envisages that for convicting a person under these rules the case can be tried by a Judicial Magistrate, 1st Class and not below that, rank, on the basis of the complaint or the First Information Report lodged by a competent officer, Dy. Director of Mines, Additional Director of Mines, Director of Mines or any other officer authorized by the Government on this behalf and no Court shall take cognizance without such a report made by the aforesaid competent authorities. The Minor Minerals Concession Rules provides a detail and complete procedure with regard to mining of minor minerals. It envisages that a person is prohibited from mining any minor minerals except under the provisions of these rules and a punishment is also provided if anyone contravenes the rules made under the aforesaid Minor Minerals Concession Rules. Therefore, it is a complete enactment in itself and is a special law so far as the mining of minor minerals are concerned.

Rule 57 of Jharkhand Minor Minerals Concession Rules, 2004 specifically provides that no Court can take cognizance of the offence under these rules except on a complaint in writing or a First Information Report lodged by a competent authority mentioned in the said rule namely, competent officer, Dy. Director of Mines, Additional Director of Mines, Director of Mines or any other officer authorized by the Government on this behalf.

9. From the facts alleged in the FIR in the present case it is apparent that the allegations are that the accused persons including the petitioner was involved in extracting or removing or transporting minor minerals in contravention of Jharkhand Minor Mineral Concession Rules, 2004. Therefore, in my view, the offence alleged comes within the purview of Rule 57 of Jharkhand Minor Minerals Concession Rules, 2004, which is a special law.

10. It is a settled principle of law as decided by the Apex Court that where a special statute is operative, the general statute is to give way. Reference in this regard may be made to the case of Raj Kapoor Vs. Laxman, . Relying on the said

decision of the Supreme Court, I hold that Jharkhand Minor Minerals Concession Rules, 2004 is a special law whereas the Indian Penal Code under which the FIR has been lodged is a general statute. Jharkhand Minor Minerals Concession Rules, 2004 provides a special machinery and proconsul justice and restrictions have been made therein in Jharkhand Minor Minerals Concession Rules, 2004 for prevention of the offence committed under the aforesaid Rules, 2004.

Secondly, I hold that since under the Jharkhand Minor Minerals Concession Rules, 2004 it has been specially provided under Rule 57 that unless a complaint or FIR in writing is submitted or lodged by a competent officer, Dy. Director of Mines, Additional Director of Mines, Director of Mines or any other officer authorized by the Government on this behalf, no Court shall take cognizance of the offence under these rules and, therefore, since in the present case the FIR was lodged on the basis of fardbeyan of a chowkidar and, therefore, it was in contravention of Rule 57 of Jharkhand Minor Minerals Concession Rules, 2004. The chowkidar had no jurisdiction or authority to lodge FIR for the offence, which fall under the Jharkhand Minor Mineral Concession Rules, 2004.

11. In view of the above discussions and findings, I hold that lodging of the FIR under Sections 379 and 411, IPC for the offence which comes within the purview of Jharkhand Minor Minerals Concession Rules, 2004 was wrong and it was without an authority also, since it was lodged by a person not competent to institute the same because for the offence coming within the purview of Jharkhand Minor Minerals Concession Rules, 2004 the FIR has been registered under the Indian Penal Code, i.e. the general law.

12. Accordingly, this writ application is allowed and the FIR being Nala (Binda Pathar) P.S. Case No. 16/2005 registered under Sections 379 and 411, IPC against the petitioner and two others is hereby quashed.