
(2008) 08 JH CK 0136
In the Jharkhand High Court

Pawan Kumar Laharuka @ P.K. Lahruka and Another APPELLANT
Vs
State of Jharkhand RESPONDENT

Date of Decision : 04-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 482
Penal Code, 1860 (IPC) — Section 120B, 406, 414, 420, 467

Citation : (2008) 3 JCR 728

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The petitioners have invoked the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quashment of the entire criminal proceeding including the order impugned dated 12.9.2003 whereby and whereunder cognizance of the offence was taken by the CJM, Dhanbad for the offence under Sections 406, 420, 467, 468, 471, 120-B and 414 of the Indian Penal Code against all the 4 accused persons including the petitioners herein.

2. The earlier WP (Cr) No. 71 of 2002 preferred by the petitioners for the quashment of their criminal proceeding in Katras (Rajganj) P.S. Case No. 32 of 2002 was dismissed on the ground that the writ was premature.

3. The prosecution story in short was that three trucks load of coal were intercepted by the police giving rise to the institution of FIR being Katras (Rajganj) P.S. Case No. 32 of 2002 for the alleged offence for carrying steam coke without valid documents. The drivers of the said trucks could not give satisfactory answer though, certain documents were recovered from the dash boards of the trucks. In course of investigation, the employees of the Coke Company Raj Kumar Singh and Gurudas Chatterjee admitted having prepared the challans and bills of the steam coke to be carried on the said trucks on the instance of the owner petitioners. They further admitted that though the coal were of good quality but the same were disposed of as unusable coal and the

petitioners were the owners of the said company.

4. Mr. Indrajit Sinha, the learned Counsel submitted that the petitioners used to run a Private Limited Company engaged in the production of de-regulated NLM coal and for the said purpose they entered into a linkage agreement with M/s. BCCL, a subsidiary company of the Coal India Limited. The petitioners used to receive coal as per the linkage on deposit of entire value of the coal in advance. At times, surplus supply of coal were to be disposed of or sold by the petitioners as there was no provision in the linkage agreement for return of surplus/undersigned coal to M/s. BCCL. The position being so, if they could not be allowed to dispose of the unusable coal, it would lead to stoppage of fund and also occupation of a considerable area in the premises, causing great hindrance in the production/manufacturing process. Mr. Sinha further submitted that there was no provision in law to prevent from disposing of the unusable/surplus coal and as such, the petitioners moved before the Hon'ble Calcutta High Court in WP No. 1247 of 2000 wherein by the order dated 18.5.2000 the writ petition was disposed of, directing the concerned respondents not to disturb the petitioners' function or business if the same was carried but in accordance with law. Mr. Sinha further attracted towards the minutes of 4th SPC meeting, held at Coal India Limited on 15.11.1996, wherein it was decided that the units were not required to take any permission for disposal of undersigned/surplus coal after deregulation of coal to the extent of 10% of the total receipt of the coal (Annexure-4).

5. The main thrust and allegation levelled against the petitioners was that they were disposing of good quality of coal by showing the same as unusable yet, on examination of coal, collected from the trucks it were found to be of "F" Grade (low grade coal).

6. The learned Counsel attracted the attention by submitting that the manufacturing process in the factory of the petitioners was carried out under the guidelines of the Central Fuel Research Institute and accordingly, only Grade "C"/Grade "D"/WILL/W IV etc. coal were found to be suitable for the production of soft coke. Admittedly, the petitioners were granted linkage for ROM Coal which included "F" Grade coal and in course of investigation it was verified to be true that the trucks were carrying only "F" Grade coal from the factory premises of the petitioners which were of the inferior quality, nevertheless, the Chief Judicial Magistrate, Dhanbad without application of judicial mind took cognizance of the offence in various sections of Indian Penal Code, though all the documents produced on behalf of the petitioners were found to be genuine, yet, the charge-sheet was submitted against the petitioners for the alleged offence by the Investigating Officer without materials in the case diary. Though the learned Chief Judicial Magistrate, Dhanbad observed in his order dated 19.7.2002 that the quantity of coal in question alleged to be found on the trucks were within the permissible limit of 10% out of the total purchase but did not prefer to discharge the petitioners in spite of the fact that there was no material to proceed against

them which led to their harassment and miscarriage of justice.

7. The Investigating Officer did not find any chit of paper alleged to be forged and fabricated by the petitioners so as to attract the offence under Sections 467, 468 and 471 of the Indian Penal Code against them. Even there was no element of entrustment of property, whatsoever, to the petitioners and that the Investigating Officer further failed to point out any kind of inducement on the part of the petitioners for the delivery of any property to them by any means of fraud for their gains so as to attract the offence under Sections 406 and/or 420 of the Indian Penal Code. Finally, Mr. Sinha submitted that for attracting the offence u/s 414 of the Indian Penal Code it was incumbent to show prima facie that the property alleged to be recovered from the conscious possession of the petitioners were the stolen property and the investigating agency failed to collect any material to show that the coal loaded on the trucks in question were stolen property. The prosecution alleged that the petitioners were indulged in illegal mining but without disclosure of any such place whatsoever in the case diary and to name the persons engaged therein in such mining on the instance of the petitioners. In the event of alleged situation, provisions of the Indian Penal Code could not be attracted on the face of the maxim, "Generalia Specialibus Non Derogant" i.e. to say that when there was specific provision, general provisions would not apply. In other words, in view of the provision of Mines and Minerals (Regulation and Development) Act, 1957, carrying out mining operation illegally without mining lease granted by the competent authority, the provisions of the Indian Penal Code would not be attracted. For the aforesaid reasons, cognizance of the offence against the petitioners under the provisions of the Indian Penal Code or under any provisions of law would be unsustainable.

8. Heard Mr. I.N. Gupta, the learned APP for the State.

9. I find substance in the arguments that the charge-sheet as submitted u/s 173 of the Code of Criminal Procedure against the petitioners herein for the offence under Sections 406, 420, 467, 468, 471, 120-B and 414 of the Indian Penal Code cannot sustain on the facts that the connecting documents of the coal were found genuine in course of investigation and the petitioners did not disown the said coal being carried on the truck. The main thrust of the prosecution was that though good quality of coal used to be supplied through agreement of linkage with M/s. BCCL but the petitioners used to dispose it of as unusable coal. The allegation could not be substantiated when it was detected on verification that the intercepted trucks were carrying "F" Grade Coal, not being used in manufacturing of soft coke etc. i.e. coal of much inferior quality. I further find substance that there was no provision in law to prevent from disposing of unusable/surplus from 10% of total supply of coal and the learned APP failed to controvert it. As such, the petitioners were disposing of within permissible limit as also observed by the CJM, Dhanbad.

10. With reference to the decision of the Calcutta High Court passed in WP No. 1247 of 2000 on 18.5.2000 it was directed to the concerned respondents not to

disturb the petitioners' function or business if the same was carried out in accordance with law. The defence of the petitioners is further buttressed by the minutes of the meeting of 4th SPC held at Coal India Limited on 15.1.1996 that the units were not required to take any permission for disposal of undersigned/surplus coal after de-regulation of coal to the extent of 10% of the total receipt (Annexure-4).

11. As regards cognizance of the offence taken in various sections of the Indian Penal Code. I find substance in the arguments that none of the aforesaid offence is attracted against the petitioners prima facie in the facts and circumstances of the case. In so far as the allegation that the petitioners were indulged in illegal mining, admittedly, there was a special law for the criminal prosecution under the Mines and Minerals (Regulation and Development) Act, 1957 and on the face of special law the application of general law viz. IPC was not maintainable and under that situation, the cognizance of the offence could not have been taken under the provisions of the Indian Penal Code.

12. Having regard to the facts and circumstances, arguments advanced on behalf of the parties, I have no hesitation except to observe that the criminal proceeding of the petitioners as well as the order impugned dated 12.9.2003 passed in Katras (Rajganj) P.S. Case No 32 of 2002 wherein cognizance of the offence was taken against the petitioners cannot sustain under law hence both are quashed. This Criminal Miscellaneous petition is allowed.