
(2012) 04 JH CK 0179

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 4407 of 2001

Radha Krishna Jalan and Vineet Kumar Khem

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 26-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 4
Penal Code, 1860 (IPC) — Section 120B, 414

Citation : (2012) 2 EFLT 925 : (2012) 4 JCR 250

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Rajeev Sharma, for the Appellant; Shashank Shekhar Prasad, APP.,
for the Respondent

Final Decision : Allowed

Judgement

R.R. Prasad

1. Heard learned counsel appearing for the petitioners and learned counsel appearing for the State. This application has been filed for quashing of the order dated 16.08.2000 passed by the learned Sub Divisional Judicial Magistrate, Rajmahal in Barharwa P.S. Case NO. 58 of 1999, G.R. NO. 287 of 1999 (T.R. NO. 959 of 2000), whereby and whereunder, the cognizance of the offences punishable under Sections 414 & 120B of the Indian Penal Code and also u/s 40 of the Mining Act, which seems to have been wrongly mentioned in stead of Bihar Minor Mineral Concession Rules, 1972, has been taken against the petitioners.

2. It is the case of the prosecution that when stone chips were being carried; by as many as 27 Trucks, including two trucks bearing Registration Nos. W.B-65-1612 and A.S.-01E-6965, belonging to the petitioner Nos. 1 and 2 respectively were seized and a case was registered under the aforesaid Sections, at the instance of the Executive Magistrate.

3. The police after investing the case, submitted charge sheet. Upon which

cognizance of the offences punishable under Sections 414 & 120B of the Indian Penal Code and Rule 40 of the Bihar Minor Mineral Concession Rules, 1972, was taken against the petitioners, which is under challenge.

4. Mr. Rajeev Sharma, learned Senior Counsel appearing for the petitioners submits that the allegation upon which the case has been registered under the Indian Penal Code is covered under Rule 40 of the Bihar Minor Mineral Concession Rules, 1972, which prescribes penalty for unauthorized extraction and removal of Minor and Mineral and, thereby, any prosecution under the general law, in view of Section 4 of the Criminal Procedure Code would be bad.

5. It was further submitted that so far prosecution under Rule 40 of the Bihar Minor Mineral Concession Rules, 1972 is concerned, that is also bad on account of the fact that the Executive Magistrate, in terms of the provision as contained in Rule 41 of the Bihar Minor Mineral Concession Rules, 1972, has never been authorized to lodge the case under the said Rules and as sued, any cognizance taken under Rule 40 of the Bihar Minor Mineral Concession Rules, 1972 would be bad and hence, the order taking cognizance is fit to be quashed.

6. Having heard learned counsel appearing for the petitioners and learned counsel appearing for the State, it does appear that when several trucks were found carrying stone chips/bolder including the trucks of the petitioners, it were intercepted and a case was registered as Barharwa P.S. Case NO. 58 of 1999, G.R. NO. 287 of 1999 (T.R. NO. 959 of 2000) under Sections 414 & 120B of the Indian Penal Code and also under Rule 40 of the Bihar Minor Mineral Concession Rules, 1972.

7. On submission of the charge sheet, the cognizance, of the offences was taken u/s 414 & 120B of the Indian Penal Code and Rule 40 of the Bihar Minor Mineral Concession Rules, 1972. Though the allegation upon which a case was registered u/s 414 is covered under Rule 40 of the Special Legislation, namely, Bihar Minor Mineral Concession Rules, 1972. The said Rule 40 reads as follows:-

40. Penalty for unauthorised extraction and removal of minor minerals.-

(1) 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.

(2) Whenever any person is found extracting or removing or transporting minor minerals in contravention of the provisions of these rules, the Competent Officer or Deputy Director (Mines) or Additional Director (Mines) or Director of Mines may seize the minor minerals together with all tools and equipments used in committing such offence.

(3) The Competent Officer or Deputy Director (mines or Additional Director (Mines) or Director of Mines who has seized the minor minerals or the tools and equipments under sub-rule (2), may release the same on the execution by the claimant thereof of a bond for the production of the property so release, if and when so required before the Court having jurisdiction to try the offence on account of which the seizure has been made.

(4). The Competent Officer or Deputy Director (Mines) or Additional Director (mines) or Director of Mines may, without orders from a Magistrate, and without a warrant, arrest any person who is found extracting or removing or transporting minor minerals in contravention of these rules.

(5) The Competent Officer or Deputy Director (Mines) or Additional Director (mines) or Director of Mines making an arrest under sub-rule (4) of these rules shall within 24 hours of the arrest, take or send the person arrested before the Magistrate having jurisdiction in the case along with a complaint in writing regarding the offence committed by the person.

(6) The Competent Officer or Deputy Director (Mines) or Additional Director (mines) or Director of Mines may release the person arrested on his executing a bond to appear before the Magistrate having jurisdiction in the case if and when so required.

(7).....

(8).....

(9).....

(10).....

8. From the perusal of the aforesaid provisions, it does appear that the aforesaid provision does prescribe the manner in which the investigation, inquiry or trial is to be dealt with.

9. In such situation, the procedure laid down under the special Legislation, in view of Section 4 of the Criminal Procedure Code would prevail over the procedure laid down under the general law. Section 4 of the Cr.P.C. reads as follows:-

4. Trial of offences under the Indian Penal Code and other laws.-

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

10. Therefore, where a special legislation is there for taking care of the offences, one cannot be permitted to be prosecuted for the offence under general law. Here in the instant case, as has been noticed that illegal extortion of mineral fall within the provision of Concession Rules and, therefore, prosecution on that allegation under general law is not permissible.

11. Further, it be noted that the offences falling within the special law, shall be investigated, inquired into or tried as per the provision, which are there in the Special Legislation, but in the instant case, F.I.R. has been lodged at the instance of the Executive Magistrate upon which cognizance has been taken u/s 414 and 120B of the I.P.C. and also under Rule 40 of Bihar Minor Mineral Concession Rules which prescribes that the cognizance of the offence under Concession Rules can be taken only upon complaint lodged by the Competent Officer or by the officer mentioned therein.

12. Said Rule 41 of Bihar Minor Mineral Concession Rules, 1972 reads as follows :-

41: Offence cognizable upon written complaints.- No Court, inferior to that of a Magistrate of the First Class shall try any offence punishable under these rules and no Court shall take cognizance of any offence under these rules, except upon a complaint made in writing by the Competent Officer or Deputy Director of Mines or Additional Director of Mines or Director of Mines or any other Officer empowered by the Government".

13. Under the aforesaid provision, the Executive Magistrate has never been empowered to lodge the case.

14. In this regard, it be stated that when the other day this plea was taken, an order to this aspect was recorded on 15.03.2012 and the case was adjourned so as to State may take instruction but nothing was placed before this Court as to whether the Executive Magistrate has been empowered to lodge a complaint or not.

15. In such situation, one is constrained to proceed with the case taking that the Executive Magistrate has no power, in terms of Rule 41 of the Bihar Minor Mineral Concession Rules, 197, to lodge a case.

16. Thus, on account of the fact that the cognizance of the offence under the Concession Rule has never been taken on a complaint lodged by the competent officer, the entire prosecution gets vitiated.

17. Under the circumstances, the entire criminal proceedings of Barharwa P.S. Case NO. 58 of 1999, G.R. NO. 287 of 1999 (T.R. NO. 959 of 2000) including the order dated 16.08.2000, under which the cognizance of the offence has been taken against the petitioners is, hereby, set aside. In the result, this application is allowed.