

(1982) 03 CAL CK 0006
In the Calcutta High Court

Case No : Criminal Rev. No's. 900 902, 916 and 917 of 1918

Rambadan Chowbey and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 10-03-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 379, 78

Citation : 86 CWN 984

Hon'ble Judges : Jyotirmoyee Nag, J

Bench : Single Bench

Advocate : Pradip Kumar Ghose and Partha Pratim Mukherjee, for the Appellant;
Mukti Moitra and Anilananda Mukherjee, for the Respondent

Judgement

J. Nag, J.—All these Rules are heard analogously. This judgment will govern all the cases. The prayer is for quashing the initial proceedings pending before the learned Chief Judicial Magistrate. Asansol. The relevant cases are :

1. G R. No. 979 of 1980 (Barabani Police Station Case No II dated 20.4.80).
- 2 Barabani Police Station Case No. 8 dated 23.4.81
3. G. R. 1217 of 1980 (Barabani P.S. Case No 15 of 30.6.80).
4. G. R. 305 of 1981 (Barbani P.S. Case 10 of 24.6.81).
- 5 G.R. 374 of 1981 (Barbani P. S. Case No. 12 dt. 29 4.81).

The Chief Mining Officer, Government of West Bengal lodged a First Information Report in each of the cases alleging that upon receipt of certain information he visited Joedanga Colliery and found accused persons cutting coal at different places, he found coal so extracted Kept in a heap by the labourers under orders of the employees i.e. the accused. in view of the Supreme Court decisions reported in Dejjapada Das and Another Vs. Union of India (UOI) and Others, and 1308 which have finally disposed of the question regarding the validity of the

Coal Mines (Nationalisation) Amendment Act, 1976 namely that any extraction of coal from a mine of working a mine in violation of the Coal Mines (Nationalisation) Amendment Act. will entail prosecution under the provisions of the said Act 89 the Act makes It Illegal to work or extract any coal from the coal mines which have been nationalised by virtue of the Act. in view of the decisions cited above, the petitioners in each of these cases and their employees have been proceeded against by the Police u/s 379 of the Indian Penal Code

2. The petitioner, Ram Badan Choubey (accused/petitioner) was appointed Receiver in respect of the collieries in question. In the Title Suit No. 436 of 1979 As Receiver, he moved an application under Article 226 of the Constitution of India challenging the validity of the Coal Mines (Nationalisation) Amendment Act, 1976. On 29.2.80 the petitioners obtained the Impugned order restraining the respondent from interfering with the working of the said colliery. He also moved an application before the Hon'ble Mr. Justice D.K Sen, on 23.5.80 and His Lordship appointed the petitioner and another as Special Officers and directed them to sell the coal which had already been raised by them lying at the pithead of the colliery. Another application was moved before M. Justice B C. Basak and His Lordship directed the respondent in the above noted cases to obey the orders passed by the Hon'ble Court on 29.2.80 and 23.5.80 and these orders are still in force. It is the further case of the petitioners that whatever they did, they did so by order of court being appointed Receiver and hence sanction for their prosecution is necessary.

3. On behalf of the State, Opp. Party /Respondent it is submitted that such submission on the part of the petitioners are untenable in law in view of the decisions of the Supreme Court referred to above.

4. The question that requires consideration is whether in view of the decisions of the Supreme Court without further directions from the Court concerned in the Individual cases in which receivers have been appointed by the Court the prosecution of these receivers without the sanction of the Court concerned is according to law. In my opinion, the receivers will be governed by section 78 of the Indian Penal Code in as much as they have been carrying out the order of the Court appointing the Receivers and, therefore, it is necessary first to draw the attention of the Court concerned which have appointed them that their appointments are of no legal effect after the decisions of the Supreme Court cases referred to above and get a discharge of the receivers and not straightway, prosecute the petitioners as (heirs) have been done in the different cases without obtaining consent of the Court concerned as ordinarily necessary in such cases. In the circumstances all these cases are quashed and the Rules are made absolute. The State is however at liberty to prosecute the petitioners if so advised, after taking necessary sanction from the courts concerned.