
(2010) 12 JH CK 0039
In the Jharkhand High Court
Case No : Criminal M.P. No. 668 of 2008

R.P. Kejriwal @ Rabi Prakash Kejriwal

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 07-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451, 482
Penal Code, 1860 (IPC) — Section 414

Citation : (2011) CriLJ 1868 : (2011) 1 JCR 514 : (2011) 7 RCR(Criminal) 642 : (2011) 1 JLJR 222

Hon'ble Judges : D.K.Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K.Sinha, J.—The Petitioner has invoked the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quashment of the order impugned dated 25.04.2008 passed by Shri P.C. Agrawal, Additional Sessions Judge, VIII, Dhanbad in Criminal Revision No. 59 of 2007 by which the order passed by the C.J.M., Dhanbad dated 27.02.2007 was upheld wherein the prayer for release of 18.110 M.T. coal in favour of the Petitioner was rejected and accordingly Cr. Revision No. 59 of 2007 was also dismissed.

2. The prosecution story in short was that on 16.01.2007 the Inspector of Police, Govindpur Police Station raided the depot of one Ram Dular Singh situated at G.T. Road, Kandra, Industrial Area on the tip off that stolen coal were being unloaded from a truck illegally to be sold in the Black Market. The police already found a truck No. BR 23H/5583 standing there from which coal was being unloaded and the persons attending the truck and engaged in unloading coal escaped at the sight of the police party. The informant Police Officer, however, in presence of independent witnesses seized the truck with the coal and prepared seizure list. On the basis of the self statement of the Informant Police Officer, Govindpur P.S. Case No. 12 of 2007 was lodged for the alleged offence u/s 414 of

the Indian Penal Code against the owner of coal depot Ram Dular Singh, the owner of the truck as well as the driver of the truck No. BR 23H 5583.

3. It is stated that the Petitioner had moved the petition before the C.J.M. on 22.01.2007 for release of coal in his favour on the ground that he was authorized agent/contractor of Mejia Thermal Power Station (M.T.P.S. for shot) D.V.C. for the purpose of lifting coal on its behalf and transporting the same from West Modidih, Katrash Area, M.T.P.S., D.A.V. In support thereof the authorization letter issued by the D.V.C. dated 27.10.2006 was annexed. It is further stated that coal in question which was seized, purchased from West Modidih Colliery, B.C.C.L. on behalf of Mejia Thermal Power Station through a valid challan dated 15.01.2007 (Annexure-3). Similarly a transportation challan was also issued in favour of the Petitioner to carry the aforementioned coal to M.T.P.S. through truck No. BR 23H 5583 (Annexure-4). Admittedly, the Petitioner was not figured as an accused in the instant case. He neither claims to be the owner of the truck nor was the driver of the truck in question. During the pendency of the petition filed on behalf of the Petitioner for the release of coal in the Court of C.J.M., Dhanbad a report was called for from the Police Station concerned regarding the nature of coal and the genuineness of the claim of the Petitioner. The Investigating Officer by his report (Annexure-5) stated that on demand the Petitioner R.P. Kejriwal @ Rabi Prakash Kejriwal had produced the relevant documents regarding the purchase of coal as well as its transportation challan through Truck No. BR 23H 5583 which was being sent to Mejia Thermal Power Station (M.T.P.S. in short) but the loaded truck was taken to the coal depot of Ram Dular Singh with the collusion of the owner and the driver of the truck for unloading of coal to be sold in the Black Market and therefore the case was instituted only against the owner of the depot and the driver as well as the owner of the truck in question.

4. Learned Counsel Mr. Shailesh submitted that in spite of the receipt of the report of the Investigating Officer, learned C.J.M. refused to release the coal without cogent reason, however, only by observing that the investigation of the case was at the initial stage and the accused persons had not surrendered by the time, the order was recorded.

5. Against that order the Petitioner preferred a Criminal Revision No. 59 of 2007 which was also dismissed observing that there was no irregularity or illegality in the impugned order without entering into the domain of the facts of the case and also appreciating the provisions of law with regard to the release of the seized goods contained in Section 451 of the Code of Criminal Procedure.

6. It has been held by the Apex Court in *Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat*, ,

the powers u/s 451 Code of Criminal Procedure should be exercised expeditiously and judiciously for the reason that the owner of the article would not suffer because of its remaining unused or by its misappropriation. The Court or the Police would not be required to keep the article in safe custody and that if the

proper Panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during trial.

7. With reference to the counter-affidavit filed on behalf of the State-Opposite Party, the seizure of the truck with coal was admitted and it was also admitted that a seizure list was prepared during the course of investigation. The investigation was supervised by the Senior Police Officer and it was prima facie found that coal was being unloaded from the truck in question in furtherance of common intention of the depot owner Ram Dular Singh as well as the owner and driver of the truck and accordingly charge-sheet was submitted against them only. It is further contended in paragraph No. 7 of the counter-affidavit that the Investigating Officer after verification found that coal belonged to M/s Banwari Lal Agrawal Pvt. Limited Company and the same was loaded for M.T.P.S. and finally it was stated that the Petitioner was not made accused in the instant case.

8. Having regard to the facts and circumstances of the case, argument advanced on behalf of the parties, I find that the truck in question was seized with 11.5 tonnes of coal loaded thereon to which seizure list was prepared and no separate seizure list of such coal could be prepared which was removed from the truck. I further find from the petition that the prayer was made for the release of 18.110 M.T. of coal whereas the written report indicated seizure of only 11.5 tonnes of coal.

9. In the circumstances, considering the submissions advanced on behalf of the parties and the contention made in the counter-affidavit on behalf of the State-Opposite Party that the Petitioner was not found involved in the alleged offence and he had shown bona fide by presenting the documents before the Investigating Officer, I find his prayer reasonably requires consideration. However, it is observed that as the seizure of only 11.5 M.T.S. of coal could be made and accordingly seizure list was prepared, let 11.5 M.T.S. of coal be released in favour of the Petitioner on executing indemnity bond of Rs. 1.5 lakhs with two sureties of like amount each to the satisfaction of the C.J.M., Dhanbad in Govindpur P.S. Case No. 12 of 2007, corresponding to G.R. No. 181 of 2007 on the production of the relevant papers before the C.J.M. subject to his satisfaction.

10. With this observation, this petition is allowed.