
(2008) 07 SHI CK 0015
In the High Court Of Himachal Pradesh

Shiv Ram

APPELLANT

Vs

Vijay Ram and Another, Lalman and Another and Sher Singh
and Another

RESPONDENT

Date of Decision : 10-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Mines and Minerals (Development and Regulation) Act, 1957 — Section 21(2)

Citation : (2008) 2 ShimLC 472

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Judgement

Surinder Singh, J.—In the instant petitions, preferred u/s 482 of the Code of Criminal Procedure, the petitioner has raised a common question of law and facts hence taken up together for its decision.

2. In brief the facts are; the petitioner herein, made a complaint to the Mining Department that the respondents were indulged in illegal mining by extracting the stones from his land and also from the Government land. On enquiry the Mining Officer found substance in the complaint, thus he being the authorized officer, filed three separate complaints against each of the accused-respondent, in the Court of Chief Judicial Magistrate, Mandi, u/s 21(2) of the Mines & Mineral (Regulation & Development) Act, 1957. The trial Court issued the summons, which were not served but the bailable warrants were served for their presence on 21.12.2002. The accused-respondents did not put in appearance on 21.12.2002. However, the trial Court passed the following order in all the complaints:

21.12.2002 Present: Shri Bhumi Chand, Mining Inspector for the complainant.

Let this case be tried summarily in the afternoon.

Sd/- C.J.M. Mandi (HP)

It appears that thereafter one Hans Raj s/o Shiv Ram one of the accused-

respondent, pleaded guilty for his father and also on behalf of other accused. The record does not show whether the substance of accusation was put in terms of Section 251 Cr.P.C. However, the plea of guilt, conviction and sentence passed are filled in, in the columns of a rubber stamp on the zimni order and it reads:

...plead guilty of the offence u/s 21(2) of the Mines & Mineral (Regulation & Development) Act, 1957 voluntarily.

Sd/- Hans Raj Sd/- RO&AC C.J.M. Mandi 21.12.2002 Accused pleaded guilty of the offence u/s 21(2) of the Mines & Mineral (Regulation & Development) Act, 1957 and sentenced to pay Rs. Admonished and S.I...for and in default S.I. for 7 days (seven days)

Sd/ Sd/ Hans Raj CJM Mandi RO&AC 21.12.2002.

On the perusal of the above order, it is quite clear:

- (a) the accused were not present;
- (b) Hans Raj whose plea of guilt was recorded, was not an accused nor he held special vakalat for any of the accused;
- (c) The substance of accusation was not put in accordance with law;
- (d) If the accused was admonished and no fine was imposed, then why 7 days imprisonment was awarded in default.

3. Chapter XXI of the Code of Criminal Procedure deals with the summary trials. Section 262 of the Code of Criminal Procedure, prescribes the procedure for summary trials. According to this section, in the summary trial, summons case procedure of the trials shall be followed. Accordingly, every step in the process of summons's case trial has to be observed but the procedure is to be shortened as provided for in exceptions in Sections 263 to 265 of the Code in the following manner:

- (i) There shall be a record of summary trial with particulars as mentioned in Section 263 in a form. Hence record of the particulars of the offence and the plea of the accused and his examination, if any, should be recorded in this form. Section 281 regarding examination of the accused does not apply.
- (ii) There shall be separate record of the substance of the evidence of the witnesses of both sides and not full evidence and of judgment containing only a brief statement of the reasons for the finding and not an elaborate one as provided for in Section 353 (see Section 264). It may, however, be mentioned here that in a summons case, procedure for recording of memorandum of the substance of evidence is also the general manner of recording evidence (see Section 274).
- (iii) If the Magistrate is so authorized by the High Court he may also get the record and judgment prepared by an officer appointed in this behalf by the Chief Judicial Magistrate but the said record and judgment shall have to be signed by

the Magistrate.

4. The maximum period of imprisonment in a case tried summarily is three months.

5. It shall be relevant to mention here that Chapter XX of the Code which deals with the trial of summons cases by Magistrates.

6. Section 251 of the Code, requires that particulars of the substance of the accusation must be stated to the accused, when the accused appears or is brought before the Magistrate. In fact the particulars of the offence charged must be stated in such details as to give the accused full information regarding the case to which he has to meet. Mere mentioning of the offence or the Section is not enough. The record of the Magistrate should also speak out all these details Please see: Court on its own motion v. Shankru 1983 Cr.L.J. 63.

7. On the accused pleading guilty the Magistrate shall record the plea as nearly as possible in the words used by the accused and may, in his discretion, convict him thereon (Section 252 Cr.P.C), but where the conviction is on the plea of guilty in absence of accused in petty cases, then the Magistrate is required to issue summons, as per the provisions of Section 206 of the Code, and if accused intend to plead guilty to the charge without appearing before the Magistrate, he shall transmit to the Magistrate, by post or by messenger, a letter containing his plea and also the amount of fine specified in the summons and thereafter the Magistrate in his discretion may convict the accused in his absence, on his plea of guilt and sentence him to pay the fine specified in the summons and the amount transmitted by the accused shall be adjusted towards that fine, or where a pleader authorized by the accused in this behalf pleads guilty on behalf of the accused, the Magistrate shall record the plea as nearly as possible in the words vised by the pleader and may, in his discretion, convict the accused on such plea and sentence him as aforesaid.

8. From the perusal of the record of the above cases, it appears that in the instant case, the Magistrate has decided the matter in a slip shod manner making the summary trial too summary. He did not at all adhere to the procedure prescribed for the disposal of cases in a summary way. Further the trial Magistrate has committed gross illegality by recording the plea of guilt of Hans Raj knowing fully well that he was not the accused and he had no authority to appear for and on behalf of the accused persons nor any summons in terms of Section 206 of the Code were issued by the learned trial Court.

9. Thus, in my considered opinion the learned trial Court fell in error in convicting the accused respondent on the plea of guilt and of Sh. Hans Raj and the illegality got further compounded, when the learned trial Court admonished him and in default (for what? When fine is not imposed) sentenced him to undergo S.I. for 7 days without mentioning any reason. The novel method, adopted by the learned Chief Judicial Magistrate to dispose of the cases, is not interceded in law and lacks the application of mind to the facts and circumstance of each case, which

has caused a miscarriage of justice.

10. Therefore, for the foregoing reasons, the conviction and sentence passed on 2.12.2002 by the learned Chief Judicial Magistrate, in Complaint No. 150 of 2002 titled; Mining Inspector v. Vijaxj Ram, Complaint No. 151 of 2002 titled Mining Officer v. Sher Singh and Complaint No. 152 of 2002 titled as Mining Inspector v. Lal Man, are hereby set aside.

11. All the three cases are remanded back to the learned Chief Judicial Magistrate, Mandi, for its disposal in accordance with law, as hereinabove stated.

12. The Registry is directed to return the records to the concerned Court of all these cases forthwith. The Mining Officer and the accused-respondents are hereby directed to be present before the learned Chief Judicial Magistrate, Mandi on 20th August, 2008.