
(2023) 08 JH CK 0055

In the Jharkhand High Court

Case No : Writ Petition (Criminal) No. 265 Of 2022

Shivaji Kumar Singh And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 23-08-2023

Acts Referred:

Indian Forest Act, 1927 — Section 41, 42, 52

Indian Penal Code, 1860 — Section 379, 411, 413, 414

Citation : (2023) 08 JH CK 0055

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Rishav Kumar, Ashok Kumar Yadav, Ranjan Kumar

Final Decision : Dismissed

Judgement

Sanjay Kumar Dwivedi , J

1. Heard Mr. Rishav Kumar, learned counsel for the petitioners and Mr. Ashok Kumar Yadav, learned counsel for the respondent-State.

2. This petition has been filed for quashing the Complaint (O.C.R.) Cae No.1055 of 2022 arising out of Offence Report No.17p dated 27.05.2022 (Annexure-1), pending in the court of the learned Chief Judicial Magistrate at Dumka. The further prayer is made for releasing the vehicles of the petitioners bearing registration Nos. JH 04X-3144 and JH02AZ-6851 with regard to the said case.

3. The prosecution has been initiated on the basis of Offence Report No. 17p dated 27.05.2022 for the offence under Section 41, 42 and 52 of the Indian Forest (Bihar Amendment, 1989) Act, 1927 alleging therein that on 26.05.2022 at about 04:00, eighteen trucks loaded with stone chips and metal were seized upon suspicion of commission of offence under Section 41 of the Indian Forest (Bihar Amendment, 1989) Act, 1927 from Rampur More situated at Dumka-Rampurhat Road. The vehicles have been seized in accordance with Section 52 of the Indian Forest (Bihar Amendment, 1989) Act, 1927. The report further states

about suspicion of commission of offence under Sections 379, 411, 413 and 414 of the Indian Penal Code. Based on these allegations, Complaint (O.C.R.) Case No.1055 of 2022 has been registered.

4. Mr. Kumar, learned counsel appearing for the petitioners submits that petitioner no.1 is the registered owner of a commercial vehicle bearing registration no. JH04X-3144 and petitioner no.2 is the registered owner of the commercial vehicle bearing registration no. JH02AZ-6851. He submits that no offence under Section 41, 42 and 52 of the Indian Forest (Bihar Amendment, 1989) Act, 1927 is made out against the petitioners. He submits that the said vehicles were carrying black stone under a valid transit challan. He further submits that the vehicles of the petitioners were seized on mere suspicion of commission of an offence under the Forest Act. He submits that the ingredients of Sections of the Forest Act are not made out. He also submits that the vehicles have been seized on the basis of surmises and conjectures as on the same day i.e. on 26.05.2022 and on the same route, 16 vehicles carrying stone chips were seized by the authority concerned. He further submits that even the procedure made under Rule 10.16 of the Bihar Reserved and Protected Forest (Fire Protection) Rules, has not been followed. On these grounds, he submits that the entire proceeding may kindly be quashed.

5. On the other hand, Mr. Yadav, learned counsel appearing for the respondent-State submits that the said case was registered on 27.05.2022 lodged by the Forester, Shikaripara Beat, Hizla East Range. He submits that upon receiving information regarding the illegal mining of stones/boulders in the protected forest area of Shikaripara at Kukkulidangal, Runaipahara and Gosaipahari and the illegal transit of stone metal/chips from multiple illegal crushers in Sarasdangal, Jamropani, Chirudih, Pinargaria, Makarapahari and Hiranpur, the Forester Shikaripara intercepted the illegally loaded vehicles in question. He submits on instruction that the confiscation case has already been completed and the vehicles in question has already been confiscated and against that petitioner no.1 has filed Confiscation Appeal No.02/2022-23 and petitioner no.2 has filed Confiscation Appeal No.07/2022-23 and both the appeals were dismissed vide order dated 11.04.2023. He further submits in the appeals, all the grounds raised by the petitioners herein, have been answered elaborately by the appellate authority and in view of that, at this stage when those materials are not on the record, this Court may not interfere with this petition by quashing the entire proceeding. He also submits that challans were not produced at the time of seizure of the vehicles. He submits that the transit challan (Serial Nos. Z005277, Z005278, Z005841, Z005842 and Z005843 dated 25.05.2022) was submitted only after 13 days of the seizure on 09.06.2022 in the court of the authorized officer of Dumka in Confiscation Case No.27/2022. He also submits that in the said challan, compulsory details such as destination/address of the purchaser was not disclosed. Moreover, the challan was issued for 200 cft of black stone, but the mineral product being stone chips was carried on the vehicles at the time of seizure. He further submits that in the prosecution report,

it is mentioned that the challan of M/s Jayanti Stone Quarry is not having stone crusher machines to produce stone chips that were found on the vehicle. He submits that the said challan issued from the office of Revenue Officer DL & LRD Birbhum is only valid for intra-state transit (within the State of West Bengal) of black stone mineral and cannot be used for inter-state transit to Jharkhand. He submits that the factual verification was also made and the signature of the revenue officer with the dated 24.04.2022 on the submitted challan dated 25.05.2022 is found to be not genuine and the prosecution report establishes that the challans which have been issued under the signature of the revenue officer, D.L. And L.R.D, Birbhum dated 25.04.2022 are fraudulent as inter-state challans are issued by the Director of Mines and Mineral, Government of West Bengal and not by the Additional District Magistrate and District Land Reforms Officer, Birbhum, Suri. He submits that in this background when further development is already there and confiscation proceeding has been completed and the petitioners have preferred appeals which were dismissed and further the petitioners are having alternative remedy of filing revision, this petition may kindly be dismissed.

6. In view of the above submissions of the learned counsel for the parties, the Court has gone through the contents of the prosecution report and finds that there are allegations of carrying mines what has been discussed in the counter affidavit as well as supplementary counter affidavit, filed by the respondent-State. It further transpires that the challans were not produced at the time of seizure of the vehicles in question. The said challans were verified by the authority concerned of the State of Jharkhand and the said challans were found to be fake and on the fake challans and by way of producing the said challans later on, the vehicles were sought to be released from the authority concerned. The Court finds that Section 52 of the Indian Forest (Bihar Amendment, 1989) Act, 1927 speaks of seizure of property liable to be confiscated. In view of that Section, the power of confiscation exercisable under Section 52 of the Indian Forest (Bihar Amendment, 1989) Act, 1927 cannot be said in any manner dependent upon launch of criminal prosecution and it has nowhere provided that seized forest produce can be confiscated only after launch of criminal prosecution. In the case of Divisional Forest Officer & another v. G.V. Sudhakar Rao & others; [(1985) 4 SCC 573], it has been clearly laid down that the Legislature intended to provide two separate proceedings before the two different forums and there is no conflict of jurisdiction between the authorised officer and initiation of confiscation proceeding is not dependent upon launch of criminal prosecution.

7. In view of the above facts, it has come in the further investigation that without any challan, forest produce has been transported by the vehicles in question and the challans were found to be fake one as discussed in paragraph 13 of the supplementary counter affidavit, filed by the respondent-State. No case of interference is made out as further materials are not on the record which has lead to passing of the order in the confiscation case as well as the appeal

preferred by the petitioners, which have been dismissed vide order dated 11.04.2023.

8. In course of argument, learned counsel for the respondent-State has produced photo copy of the order passed in the said appeals filed by these petitioners, which have been taken on record and looking into the said appellate orders, the Court finds that the learned appellate court has dealt with every aspects of the matter minutely looking to the judgment of the Hon'ble Supreme Court as well as this Court and has come to the conclusion that the case of release is not made out. Further, the petitioners are having alternative remedy of revision under the said Act.

9. The Hon'ble Supreme Court has deprecated of quashing the FIR when the investigation is not completed when such things are not on the record in S.M. Datta v. State of Gujarat and another; [(2001) 7 SCC 659].

10. In view of the above facts, reasons and analysis, the Court finds that no case of interference is made out.

11. Accordingly, this petition is dismissed.