

(1994) 12 CAL CK 0008
In the Calcutta High Court
Case No : Criminal Rev. No. 2066 of 1994

Smt. Seema Sarkar

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 07-12-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 482
Mines and Minerals (Development and Regulation) Act, 1957 — Section 21(2)
Penal Code, 1860 (IPC) — Section 379

Citation : (1995) 1 CALLT 95

Hon'ble Judges : Nripendra Kumar Bhattacharyya, J

Bench : Single Bench

Advocate : Asoke Kumar Chakraborty and Subhankar Sen, for the Appellant; Ramendra Nath Chakraborty and Alokanda Bhose, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : Jaysukh Bavanji Shingalia Vs. State of Gujarat, AIR 2015 SC 75 : (2014) AIRSCW 5487 : (2014) 10 SCALE 166

Nripendra Kumar Bhattacharyya, J.—The accused petitioner has challenged the proceeding in G.R. Case No. 664 of 1993 arising out of Bhatar Police Station Case No. 42 of 1993 dated 18th May, 1993 u/s 21(2) of the Mines and Minerals (Regulation and Development) Act, 1957 and Section 379 of the Indian Penal Code. The said G.R. Case is pending before the court of the learned Sub-Divisional Judicial Magistrate, Burdwan.

2. The short background of the case is that the Block Land and Land Reforms Officer, Bhatar, lodged a complaint with the Bhatar Police Station as the Authority under the West Bengal Minor Minerals Rules, 1973 alleging, inter alia, that the accused petitioner has unauthorisedly excavated the land amounting to 55.582 Cft. of ordinary clay for manufacturing brick without any authorised licence from the government and as such she has contravened Section 21(2) of the Mines and

Minerals (Regulation and Development) Act, 1957 and Section 379 of the Indian Penal Code. Bhatar Police Station registered the complaint treating it as an F.I.R. being Bhatar P.S. Case No. 42 of 1993 dated 18th May, 1993 and on the strength of the same G.R. Case as aforesaid was started before the learned Sub-Divisional Judicial Magistrate, Burdwan.

3. The learned Advocate for the petitioner, Mr. Asoke Kumar Chakraborty, challenged the order of taking cognizance and so also the complaint itself on twin grounds. According to Mr. Chakraborty, no court is competent and empowered to take cognizance of an offence under the Mines and Minerals (Regulation and Development) Act, 1957 unless the complaint is being lodged by a person authorised in this behalf either by the Central Government or by the State Government. He also referred to the definition clause under the West Bengal Minor Minerals Rules, 1973, being Rule 3 of that Rule, where such authority has been mentioned as in Sub-rule (b) of Rule 3. Mr. Chakraborty further submitted that the Block Land and Land Reforms Officer being not an authority within the meaning of the said rule, lodging of complaint by him has no legal sanctity and taking cognizance on that allegation and the complaint being treated as an F.I.R. is also illegal. He has not disputed the proposition of law that the West Bengal Minor Minerals Rules, 1973 has been framed according to the rule-making power that has been given by the Central Act being the Mines and Minerals (Regulation and Development) Act, 1957. Mr. Chakraborty also contended that: in case of a militancy or where the power has been given by the Central Act on the same subject the Central Act shall prevail and the State Act shall be ignored. That argument of Mr. Chakraborty need not be considered in this case because this case can be decided on some other points. The point that has been referred to by Mr. Chakraborty as has been indicated earlier regarding the two Acts, Central Act and the State Act, has no bearing on this case.

4. Mr. Ramendra Nath Chakraborty, learned Advocate, appearing with Mrs. Alokanda Bhose, learned Advocate, on the other hand, contended on behalf of the State that apart from violation by the accused of the provision u/s 21(2) of the Mines and Minerals (Regulation and Development) Act, 1957, there is an allegation against the accused petitioner of stealing and a charge-sheet has been submitted against her u/s 379 of the Indian Penal Code. Mr. r. Chakraborty did not dispute the contention of Mr. Asoke Chakraborty that taking cognizance by the learned Magistrate of the offence u/s 21(2) of the Mines and Minerals (Regulation and Development) Act, 1957 is bad as a complaint has been filed not by an authorised person but he also contended that the order of taking cognizance by the learned Magistrate is legal so far it relates to the offence u/s 379 of the Indian Penal Code.

5. Heard the submissions of the learned Advocates for the parties and considered the materials on record.

6. The learned Magistrate has taken cognizance of. the offence on the basis of the charge-sheet as submitted by the Police u/s 21(2) of the Mines and Minerals

(Regulation and Development) Act, 1957 and section 379 of the Indian Penal Code. Cognizance can be taken u/s 190 of the Code of Criminal Procedure, 1973. Cognizance is one and it cannot be divided. Splitting of cognizance is not permissible under the law. This is the admitted position that the complainant who lodged the complaint is not an authorised person to make such complaint. So taking cognizance on the basis of the complaint by the learned Magistrate for violation of the provision u/s 21(2) of the Mines and Minerals (Regulation and Development) Act, 1957 is bad. The only question that is left open is whether taking cognizance itself is bad or a partial cognizance can be taken ? In the peculiarity of the facts and circumstances of the case ; if the offence as alleged u/s 379 I.P.C. against the accused is dissociated from the allegation of excavation of earth without licence constituting an offence u/s 21(2) of the Mines and Minerals (Regulation and Development) Act, 1957, then there is no ingredient for an offence u/s 379 I.P.C. against the accused. Even if it is assumed that there is such an ingredient then the order of taking cognizance is bad because cognizance is one and it cannot be made a split. If it is found that taking cognizance of an offence is bad the other part of the offence for which cognizance has been taken cannot be sustained in law.

7. I accordingly find that the complaint as has been lodged by a person not being authorised to do so cannot also be sustained in law. If the complaint goes the entire edifice on which the case stands also crumble down to earth. I accordingly quash the complaint on which the Bhatar P.S. Case No. 42 of 1993 dated 18th May, 1993 was started and so also the G.R. Case No. 664 of 1993 pending in the court of the learned Sub-Divisional Judicial Magistrate, Burdwan.

The revisional application is accordingly allowed.