

(2023) 03 JH CK 0005

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 107 Of 2008, 1251 Of 2015

Umesh Choudhary And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 14-03-2023

Acts Referred:

Indian Forest Act, 1927 — Section 33
Forest (Conservation) Act, 1980 — Section 2
Indian Penal Code, 1860 — Section 192, 199, 406

Citation : (2023) 03 JH CK 0005

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Anoop Kumar Mehta, Shashi Kumar Verma, Bhola Nath Ojha

Final Decision : Allowed/Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Both the cases have been heard together since common question of fact and common complaint case and order taking cognizance are under challenge.
2. Heard Mr. Anoop Kumar Mehta, learned counsel for the petitioners and Mr. Shashi Kumar Verma and Mr. Bhola Nath Ojha, learned counsel for the opposite parties.
3. These petitions have been filed for quashing the entire criminal proceedings in connection with Case No. G-165 of 2003/T.R. No.452 of 2007 including the order taking cognizance dated 22.10.2005 passed by the learned Chief Judicial Magistrate, Hazaribagh, whereby cognizance under Section 33 of the Indian Forest Act and Section 2 of the Forest (Conservation) Act has been taken against the petitioners, pending in the court of the learned Judicial Magistrate, 1st Class, Hazaribagh.
4. The opposite party no.2 lodged a written report dated 05.08.2003 in the court of the learned Chief Judicial Magistrate, Hazaribagh. The case was filed alleging

therein that while the opposite party no.2 along with other witnesses was on patrolling duty of Sugia reserved forest on 05.08.2003 at about 04:00 p.m., he found that at the direction of the accused persons, forest lands within the Sugia protected forest was being cleared and mining work was being carried out since before. It was also alleged that on the directions of the accused persons, the provisions contained in the Indian Forest Act, 1927 and the Forest (Conservation) Act, 1980 were being violated openly and the work was being carried for the benefit of the project as a result of which about 0.66 hectares of forest land, 31.95 hectares of reserved forest land and 102.03 hectares of Jungle-jhari was destroyed. The offence report of opposite party no.2 was forwarded to the learned Chief Judicial Magistrate and on receipt of the offence report, Case No. G-165 of 2003 has been registered.

5. Mr. Anoop Kumar Mehta, learned counsel for the petitioners submits that at the relevant time, petitioner nos. 1 and 2 in Cr.M.P. No.107 of 2008 were the Project Officer, Karma Project and Manager of Karma Project respectively and the petitioner in Cr.M.P. No.1251 of 2015 was the Chairman cum Managing Director of M/s. Central Coalfields Limited. He further submits that the petitioners are not the owner of the mine as the owner of the mine is either the Director (Technical) or the Director (T) OP under the Mines Act, 1952. He also submits that the petitioners did not issue any order or direction in respect of working of a coal mine. He further submits that the petitioner in Cr.M.P. No.1251 of 2015 has tendered his resignation as Chairman cum Managing Director of M/s. Central Coalfields Limited, which was duly accepted and he was relieved in the month of August, 2004 itself. He also submits that on the own showing of the opposite party no.2, the forest in question is a protected forest and notified as such in the year 1952. 30 years period has since expired in the year 1982 and thereafter there has been no re-notification made by the Government. He further submits that an application was made by the M/s. Central Coalfields Limited for diversion of forest lands of Karma Open Cast Project measuring an area of 134.64 Hectare, which was subsequently revised to 132.28 Hectare and subsequently vide letter dated 01.09.2003, proposal was submitted seeking prior approval of the Central Government. The proposal was thereafter considered by the Central Government and the Central Government agreed in principle for diversion of 132.28 Hectare of forest lands for Karma Open Cast Mining Project. He also submits that M/s. Central Coalfields Limited complied with the conditions laid down in letter dated 12.01.2005 for the purpose of grant of Stage-I clearance granted by the Ministry of Environment and Forest for diversion of 132.28 Hectare of forest lands and also made payment of the revised demand, contained in Annexure-3 of Cr.M.P. No.1251 of 2015 and thereafter clearance report was submitted by the State Government vide letter dated 21.04.2008, whereupon the Central Government granted approval as required under Section 2 of the Forest (Conservation) Act, 1980 for diversion of 132.28 Hectare of forest land.

6. Learned counsel for the opposite parties submit that there is violation and that is why the case has been lodged.

7. In view of the above facts and considering the submissions of the learned counsel for the parties, the Court finds that it is an admitted fact that underground mining activities were being carried out by M/s. Central Coalfields Limited beneath the forest area since long. So far as the allegation made in the offence report is concerned, save and except inclusion of the name of the petitioners in the column of accused, there is no specific or direct allegation against them of committing any offence under Section 33 of the Indian Forest Act . There is no concept of vicarious liability under the Indian Forest Act and the petitioners cannot be made vicariously liable for any offence committed by the company itself. A reference may be made to the judgment passed in Maharashtra State Electricity Distribution Company Limited and another v. Datar Switchgear Limited and others; [(2010) 10 SCC 479] and in Fasiuddin & others v. State of Bihar (now Jharkhand); [2012 (3) JCR 602 (Jhr.)] as also the order dated 31.07.2014 passed in Cr.M.P. No. 800 of 2009 in Krishna Kumar Poddar v. State of Jharkhand. In Maharashtra State Electricity Distribution Company Limited (Supra), it has been held as follows:-

"30. It is trite law that wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the statute concerned. In our opinion, neither Section 192 IPC nor Section 199 IPC incorporate the principle of vicarious liability, and therefore, it was incumbent on the complainant to specifically aver the role of each of the accused in the complaint. It would be profitable to extract the following observations made in S.K. Alagh:

"19. As, admittedly, drafts were drawn in the name of the company, even if the appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Penal Code. if and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself." "

8. In Krishna Kumar Poddar and others v. State of Bihar (Now Jharkhand) (Cr. M.P. No. 800 of 2009), while considering the order passed in the case of the Fasiuddin & others v. State of Bihar (now Jharkhand) & another (supra), it was held in paragraph-6 as follows:-

"6. After having heard the learned counsels for both sides and upon going through the records, I find that the case of the petitioner is fully covered by the decision of this Court in Md. Fasiuddin's case (supra). It is apparent from the offence reports dated 30.4.2005, 2.5.2005 & 25.4.2005 that the petitioner was not present at the place of occurrence and there is no allegation against him therein, nor is he named therein. Only in the prosecution reports the petitioner had been made accused, being the proprietor of Chotanagpur Graphite Industries, without making any specific averment or allegation against him."

9. Similar is the present case inasmuch in the prosecution report/ offence report there is no averment made with respect to the active/ direct involvement of the petitioners in the commission of forest offence. Merely because the petitioners happen to be Project Officer, Manager and Chairman cum Managing Director of M/s. Central Coalfields Limited at the time of the incident, the same by itself would not make them liable to face criminal prosecution. Moreover, the application for diversion of forest lands of Karma Open Cast Project was allowed and subsequent to that, amount of Rs.13,43,10,707/- has already been paid and, thereafter, the State Government has allowed the M/s. Central Coalfields Limited to work.

10. Considering that the amount received by the Government and there is no direct complicity of the petitioners in the forest offence, these petitions deserve to be allowed. In view of the judgments of the Hon'ble Supreme Court referred herein above and in absence of any vicarious liability, the prayer made in the petitions are allowed.

11. In view of the above facts, reasons and analysis, the entire criminal proceedings in connection with Case No. G-165 of 2003/T.R. No.452 of 2007 including the order taking cognizance dated 22.10.2005 passed by the learned Chief Judicial Magistrate, Hazaribagh, pending in the court of the learned Judicial Magistrate, 1st Class, Hazaribagh is, hereby, quashed.

12. Accordingly, these petitions are allowed and disposed of.