
(2014) 08 JH CK 0042
In the Jharkhand High Court
Case No : W.P. (Cr.) No. 184 of 2010

Yogendra Baraik

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 25-08-2014

Acts Referred:

Chartered Accountants Act, 1949 — Section 24, 24A, 25, 26, 28
Constitution of India, 1950 — Article 14
General Clauses Act, 1897 — Section 26
Mines and Minerals (Development and Regulation) Act, 1957 — Section 22
Penal Code, 1860 (IPC) — Section 120B, 409, 416, 419

Citation : (2014) 4 Crimes 311 : (2014) 4 FLT 849 : (2014) 4 JLJR 366

Hon'ble Judges : Dhruv Narayan Upadhyay, J

Bench : Single Bench

Advocate : Sumit Gadodia, Advocate for the Appellant; J. Rahman, J.C. to G.P.-III, Advocate for the Respondent

Judgement

Dhruv Narayan Upadhyay, J.—Heard the parties.

2. This writ petition has been filed for quashing of entire criminal prosecution launched against the petitioner vide Pakur (M) P.S. Case No. 124/2008 corresponding to G.R. No. 369/2008 as well as order dated 13.11.2009, passed by learned Chief Judicial Magistrate, Pakur whereby cognizance for the offence punishable under Sections 419, 420, 467, 468, 409, 120B of the Indian Penal Code and Section 40 of the Mining Act has been taken.

3. The prosecution case in brief is that on 14.06.2008, at about 18:30 hrs., the informant who happens to be the Officer Incharge of the Pakur (M) Police Station along with other police officials had proceeded to arrest accused persons wanted in connection with Pakur (M) P.S. Case No. 83/2008. When the informant reached near village Chanchki on Pak(sic) Dhulian Road, he found some persons present on the road and the motorcycle with a bag hanged on its handle, was parked. Laden Sheikh alias Ejajul Sheikh who was sitting on the motorcycle was apprehended and the Police recovered 20 numbers of mining challans kept in the

bag which Laden Sheikh confessed that mining challans were purchased him for issuing it against transportation of stone chips. The mining challan were issued in favour of Bijay Kumar Ram whose mines were already closed since long.

The informant recorded his self statement at the spot, prepare seizure list against mining challans seized and registered Pakur (M) Police Station Case No. 124/2008 dated 14.06.2008.

4. In course of investigation, involvement of present petitioner was transpired as he was posted as Assistant Mining Officer and he is the person who had issued those challans which were not filled up. The Police, after collecting evidence, submitted charge-sheet against accused persons and accordingly cognizance has been taken.

5. The petitioner has mainly challenged institution of F.I.R. on the following grounds:

(a) That mining challans were not forged and were duly issued after receiving required royalty.

(b) That Police has no authority either to register or to investigate in a case punishable under Section 40 of the Bihar Minor Mining Concession Rules and Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 puts a bar from taking cognizance on a police report. The learned counsel has referred Section 22 which reads as under:

"22. Cognizance of offences. - No Court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government.

(c) That offence relating to Special Act shall be guided and tried according to Special Act and general penal law i.e. Indian Penal Code shall have no role to play.

(d) That superior officials of the Police Department had also instructed the Investigating Officer to do proper investigation in the matter but it was not followed and on perfunctory investigation, charge-sheet was submitted.

(e) That a departmental proceeding was also initiated against the petitioner but he has been exonerated and the charges levelled against him have not been found true but even then sanction has been accorded and cognizance has been taken.

6. The learned counsel has relied on a Judgment rendered in the case of (i) Arun Kumar Ghose and Others Vs. State of Jharkhand and Another, ; (ii) Shyam Lal Sahu, Surendra Gope and Jagarnath Sahu Vs. The State of Jharkhand and Ajay Prasad, Officer-in-Charge, and (iii) The Institute of Chartered Accountants of India Vs. Vimal Kumar Surana and Another, . He has further submitted that the criminal prosecution instituted on police report for special offence punishable

under the Mining Act is not maintainable and no cognizance can be taken on a police report and, therefore, the F.I.R. as well as the order taking cognizance and the entire criminal proceeding arising out of Pakur (M) Police Station Case No. 124/2008 dated 14.06.2008, is liable to be set aside.

7. Learned counsel appearing for the respondent has opposed the arguments and drawn my attention towards counter affidavit filed by them. It was contended that the petitioner, who was posted as Assistant Mining Officer, in connivance with persons involved in illegal trade of mining, had been promoting and abetting the crime. The mining challans were issued against a quarry which stood closed long ago and it was well within the knowledge of petitioner. For the purpose of cheating and forgery, there was a conspiracy between the petitioner and other accused persons and the offence of cheating and forgery are not defined and punishable under Jharkhand Minor Mineral Concession Rules, 2004. Since cognizable offence under the Indian Penal Code were made out, the Police had every right to register and investigate into the matter. There is no merit in this writ petition and the same is liable to be dismissed.

8. I have gone through the materials placed before me and the relevant provisions of law. Before adverting opinion on the issue involved, it is required to be made clear that Jharkhand Minor Mineral Concession Rules, 2004 (hereinafter referred as Rules, 2004) is now relevant law enforceable and Section 54(1) of the Rules derives from Rule 40(1) of the Bihar Minor Mineral Concession Rules, 1972. Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 corresponds to Rule 57 of Jharkhand Minor Mineral Concession Rules, 2004 which provides that unless a complaint or F.I.R. in writing is presented or lodged by a competent officer, Deputy Director of Mines, Additional Director of Mines, Director of Mines or any other officer authorised by the Government on this behalf, no court shall take cognizance of the offence under these Rules.

9. Now coming to the facts in hand is that some of the accused were apprehended by the police and they were found in possession of un-filled mining challans alleged to have been issued in favour of a quarry standing in the name of Bijay Kumar Ram, Mauza - Fatehpur, Pakur. During investigation it was detected that intentionally to promote illegal trade of stone chips, mining challans were issued against a quarry which was closed for more than 5 years. It was also detected that the petitioner was posted as Assistant Mining Officer and he was the person who had issued those challans which were recovered from possession of a person who was not authorised to possess those challans. The accused who was arrested at the spot had confessed that he used to issue those challans against transportation of stone chips illegally extracted.

What I mean to say is that facts appearing in case at hand that petitioner had issued those challans are not disputed but he has filed present writ petition to quash the F.I.R. and criminal proceeding and the cognizance taken against him in connection with Pakur (M) P.S. Case No. 124/2008 corresponding to G.R. No. 369/2008.

10. The petitioner has mainly relied on the point that challans which were recovered, are not forged rather they were duly issued after realising required royalty. The Officer incharge of Pakur (M) Police Station has wrongly registered a case on the basis of self statement recorded by him and he had investigated into the matter without having jurisdiction and submitted charge-sheet. Since there is a Special Act, provisions contained in the Rules are to be complied with. The learned counsel for the petitioner has also referred some of the orders passed by this Court by which criminal prosecution has been quashed on the ground that the Police has no authority to investigate into the matter and no cognizance can be taken on a police report. The counter affidavit filed by Superintendent of Police, Pakur (para-12) indicates that complicity of the petitioner in the crime was detected and thereafter he has been made accused in the aforesaid case. It is contended that the petitioner used to issue challans against closed mines standing in the name of Bijay Kumar Ram of Mauza - Fatehpur. To verify the information, report from Circle Officer was called for and the letter 222/Ra, dated 12.07.2008 clearly speaks that excavation work over Plot No. 228/Part comprising an area of 83 Bigha 03 Katha 15 Dhur of Mouza Fatehpur is closed for last 5 years. Thus the statement given by the Superintendent of Police, Pakur and the evidence collected by the Investigating Officer in the case diary clearly suggests that the petitioner was having hands in gloves with other accused and he had been accommodating them and abetting the offence under a conspiracy. The petitioner, without examining the return, intentionally had been issuing challans against the closed mines standing in the name of Bijay Kumar and the challans so issued were handed over to persons involved in smuggling of stone chips and other minerals.

Prima facie the evidence collected by the Investigating Officer indicates involvement of the petitioner along with other accused in the offence of cheating and forgery. Needless to say cheating and forgery has not been defined in Jharkhand Minor Mineral Concession Rules, 2004.

11. Now coming to the legality of institution and investigation of a case in which offence under special Act is alleged to have been committed. It is apparent from the contention made in the F.I.R. that some of the accused persons were apprehended and they were found in possession of mining challans issued by the petitioner and those apprehended persons were not authorised to possess those challans and that too in a bunch being kept in a bag while those accused were standing on a road. The evidence during investigation was collected to the effect that those mining Challans were intentionally issued by the petitioner for abetting the offence of cheating and forgery. Since ingredients of cognizable offences punishable under Sections 419, 420, 467, 468 and 120-B of the Indian Penal Code were attracted, the Police had every right to register a case and investigate into the matter in accordance with law.

12. What is significant in the case at hand is that Rule 57 provides that unless a complaint or F.I.R. in writing is presented by a competent officer, no Court shall

take cognizance for the offence punishable under Section 54(1) of the Rules corresponding to earlier Rule 40(1) of the Bihar Minor Mineral Concession Rules but not for any other offences which constitutes offences under Indian Penal Code. This view is available in paragraph-18 of the Judgment in the case of The Institute of Chartered Accountants of India Vs. Vimal Kumar Surana and Another, . In that case offences punishable under Sections 24, 24-A, 25 and 26 of the Chartered Accountants Act, 1949 were attracted and restrictions were also available that cognizance can only be taken on a complaint. Their Lordship has further expressed their views and given example relating to similar issue in paragraphs-22, 23 and 24 which reads as under:

"22. The issue deserves to be considered from another angle. If a person cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is (Section 416 IPC), then he can be charged with the allegation of cheating by personation and punished under Section 419 for a term which may extend to 3 years or with fine or both. If a person makes any false document with the intent to cause damage or injury to the public or to any person, or to support any claim or title, then he can be prosecuted for an offence of forgery (Section 463) and can be punished under Section 465 with imprisonment which may extend to 2 years or with fine or with both. If a person commits forgery for the purpose of intending that the document forged by him shall be used for the purpose of cheating then he can be punished with imprisonment for a term which may extend to 7 years and fine (Section 468). If a person makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for committing any forgery which would be punishable under Section 467 or with such intent, in his possession any such seal, plate or other instrument, knowing the same to be counterfeit then he is liable to be punished with imprisonment for life or with imprisonment which may extent to 7 years. He shall also be liable to fine.

23. The provisions contained in Chapter VII of the Act neither define cheating by personation or forgery or counterfeiting of seal, etc. nor provide for punishment for such offences. If it is held that a person acting in violation of Section 24 or contravening sub-section (1) of Sections 24-A and 26 of the Act can be punished only under the Act even though his act also amounts to one or more offence(s) defined under IPC and that too on a complaint made in accordance with Section 28, then the provisions of Chapter VII will become discriminatory and may have to be struck down on the ground of violation of Article 14.

24. Such an unintended consequence can be and deserves to be avoided in interpreting Sections 24-A, 25 and 26 keeping in view the settled law that if there are two possible constructions of a statute, then the one which leads to anomaly or absurdity and makes the statute vulnerable to the attack of unconstitutionality should be avoided in preference to the other which makes it rational and immune from the charge of unconstitutionality. That apart, the court

cannot interpret the provisions of the act in a manner which will deprive the victim of the offences defined in Sections 416, 463, 464, 468 and 471 of his right to prosecute the wrong doer by filing the first information report or complaint under the relevant provisions of Cr.P.C."

To handle such situation, Section 26 of the General Clauses Act, 1897, which has also been referred in the Judgment in the case of Institute of Chartered Accountants of India (Supra) by Their Lordship, reads as under:

"26. Provision as to offences punishable under two or more enactments.- Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

13. To sum up it is held that contention made in the F.I.R. prima facie constitute the offence attracting cognizable offence punishable under the Indian Penal Code. The complicity of the petitioner came in light during investigation and accordingly, the evidences to that effect were collected by the Investigating Officer and finally charge-sheet was submitted and cognizance under Section 419, 420, 467, 468, 409 and 120-B of the Indian Penal Code and Section 40 of the Mining Act, was taken. The cognizance under Section 40 of the Mining Act cannot be taken on a police report as it is barred as per the provision contained under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 which corresponds to Rule 57 of Jharkhand Minor Mineral Concession Rules, 2004. It is further indicated that according to Section 57 of the Rules, 2004, prosecution for the offences under this Act can only be launched either through complaint in writing or by way of F.I.R., lodged by a competent officer of the Department and the Officer Incharge of the Police Station is not empowered to launch prosecution under said Rule 57. In the circumstances, cognizance taken under Section 40 of the Mining Act is hereby quashed but so far offences punishable under the Indian Penal Code shall proceed in accordance with law. The above view expressed by this Court find support from the finding given by Their Lordship in paragraph-46 of the Judgment in the case of Institute of Chartered Accountants of India (Supra). The trial court shall be at liberty to frame charges against the respective accused persons for the respective offences which he finds attracted on the basis of materials available on the case records and the case diary. The interim stay granted against framing of charge by order dated 23.08.2012 stands vacated.

With above discussions and observations, the case of the petitioner is distinguished from the Judgments relied upon by him. The writ petition in part allowed and accordingly stands disposed of.