
(2013) 02 JH CK 0088
In the Jharkhand High Court
Case No : Cr. M.P. No. 884 of 2012

Yugal Kishore Bhuwania

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 12-02-2013

Acts Referred:

Citation : (2013) 2 AJR 24 : (2013) 3 EFLT 275

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Judgement

R.R. Prasad, J.—Heard learned counsel appearing for the petitioner and learned counsel appearing for the State. A case was lodged by the Sub-divisional Officer, Jagannathpur, West Singhbhum, Chaibasa on the allegation that on inspection of the premises of Shyam Mineral Crusher Plant, situated at village Sarbil, it was found that stone after being brought from the forest area is being crushed illegally without having any licence by the Mines and Mineral Department and also without having any permission from the Pollution Control Department.

2. On such allegation, a case was registered as Noamundi P.S. Case No. 8 of 2011 u/s 414 of the Indian Penal Code, under Sections 33/ 41/ 42/ 52 of the Indian Forest Act and also u/s 4/ 21(1)(6) of the Mines and Mineral (Regulation and Development) Act and also u/s 37 of the Air (Prevention and Control of Pollution) Act, 1981.

3. On submission of the charge sheet, when cognizance of the offences punishable under Sections 33/ 41/ 42/ 52 of the Indian Forest Act and also u/s 4(1A) and 21(1)(6) of the Mines and Mineral (Regulation and Development) Act and also u/s 414 of the Indian Penal Code was taken, vide order dated 16.3.2012, it was challenged to be bad in this application.

4. Mr. Gadodia, learned counsel appearing for the petitioner submitted that it is the case of the prosecution that the Sub-divisional Officer, Jagannathpur on receiving information that the petitioner has been running crusher unit illegally

without having licence from the Mines and Mineral Department and also without having any permission from the Pollution Control Department inspected the premises and found the allegation to be true and thereby lodged a case for commission of offences under Sections 33/ 41/ 42/ 52 of the Indian Forest Act but in view of Section 52D of the Indian Forest Act as amended by the State Government, power of entry, inspection, search and seizure lies with the Forest Officer not below the rank of Range Officer of forest or Police Officer not below the rank of Sub-Inspector in case of contravention of any of the provision of the Forest Act but here in this case, it is the Sub-divisional Officer, who had made search and seizure, who has never been empowered under the Act to make search and seizure and if the case lodged upon the search and seizure which is illegal, entire prosecution gets vitiated so far the offence under the Forest Act is concerned.

5. It was further submitted that similarly the court also committed illegality in taking cognizance of the offences punishable under Sections 4(1A)/ 21(1)(6) of the Mines and Mineral (Regulation and Development) Act as the court can take cognizance only on a complaint lodged by the authorized person but here in this case, the complaint has never been lodged by the competent authority rather an FIR has been lodged by the Sub-divisional Officer, Jagannathpur and thereby the court has certainly committed illegality.

6. It was further submitted that so far cognizance of the offence u/s 414 of the Indian Penal Code is concerned, that also gets vitiated as when an offence comes within the purview of any Special Legislation, one cannot maintain prosecution for the said offence under the General Law, in view of the provision as contained in Section 4 of the Code of Criminal Procedure and thereby the court also committed illegality in taking cognizance of the offence punishable u/s 414 of the Indian Penal Code as whatever allegation has been made for commission of the offence u/s 414, that pertains to allegation which would be covered by Section 4(1A) of the Mines and Mineral (Regulation and Development) Act.

7. Thus, it was submitted that the entire order taking cognizance is fit to be quashed.

8. Learned counsel appearing for the State by referring to the statements made in paragraph 16 of the counter affidavit filed on behalf of the Sub-divisional Officer, Jagannathpur submitted that the petitioner was illegally running a crusher unit without having any licence and thereby he was causing Public Nuisance u/s 268 of the Indian Penal Code and making atmosphere by crusher dust noxious to health punishable u/s 278 of the Indian Penal Code and in such situation, Sub-divisional Officer does have every power to make inspection and to effect seizure and thereby the order taking cognizance can never be said to be illegal.

9. The stand which has been taken on behalf of the State does not appear to be tenable for the reason that the case has never been lodged for commission of

offence either u/s 268 or u/s 278 of the Indian Penal Code, rather the case has been lodged for commission of the offences under the Forest Act and the Mines and Mineral (Regulation and Development) Act and also for an offence u/s 414 of the Indian Penal Code. Therefore, the plea which has been taken by the State with respect to competency on the part of the Sub-divisional Officer to lodge the case is never acceptable.

10. Going further in the matter, it does appear that it is the Sub-divisional Officer, who having effected search and seizure lodged the case for commission of the offence under the Indian Forest Act, though in view of Section 52 (State amendment) of the Forest Act it is only an officer not below the rank of Range Officer and also the Police Officer not below the rank of Sub-inspector are competent to make search and seizure, if there has been reason to believe that there has been contravention of the provision of the Forest Act. Since search and seizure have never been effected by the competent person, any prosecution based on search and seizure gets vitiated, in view of the decision rendered in a case of Roy V.D. Vs. State of Kerala, .

11. Further I do find that for maintaining prosecution under the Mines and Mineral (Regulation and Development) Act, a person authorized can only be with the competent in view of the provision as contained in Section 22 of the Mines and Mineral (Regulation and Development) Act to lodge a complaint for contravention of the provision of the Mines and Mineral (Regulation and Development) Act.

12. Here in the case as has been stated above, competent person has never come forward to lodge any complaint for commission of the offence under the Mines and Mineral (Regulation and Development) Act and thereby the court has certainly committed illegality in taking cognizance of the offences under the Mines and Mineral (Regulation and Development) Act.

13. Further it does appear that the court has also taken cognizance of the offence u/s 414 of the Indian Penal Code though in the facts and circumstances, the prosecution under the General Law is never permissible in view of the provision as contained in Section 4 of the Code of Criminal Procedure as the allegation constituting offence u/s 414 of the Indian Penal Code falls within the parameter of the provision as contained in Section 4 of the Mines and Mineral (Regulation and Development) Act which speaks that no person shall undertake mining operations in any area, except under and in accordance with the terms and conditions of a permit or licence or of a mining lease granted under this Act.

14. Thus, under the circumstances stated above, the order dated 16.3.2012 is hereby quashed. In the result, this application stands allowed.