

State Of Jharkhand Vs Dr. Nishkant Dubey & Ors

Court: Supreme Court Of India

Date of Decision: Jan. 21, 2025

Acts Referred: Constitution of India, 1950 " Article 226

Code of Criminal Procedure, 1973 " Section 154, 154(1), 173, 190(1)(d), 482

Indian Penal Code, 1860 " Section 336, 378, 441, 447, 448

Aircraft Act, 1934 " Section 4, 4A, 4B, 4C, 5, 5(2)(gc), 10, 11A, 12B

Environment Protection Act, 1986 " Section 15, 15(1)

Hon'ble Judges: Abhay S. Oka, J; Manmohan, J

Bench: Division Bench

Advocate: Arunabh Choudhury, Pragya Baghel, Meenakshi Chatterjee, Adyashree Dutta, Jayant Mohan, Ankit Yadav, Shaoni Das, Punit Vinay

Final Decision: Dismissed

Judgement

''''

Manmohan, J",,,,

1. Present appeals have been filed challenging the judgment and order dated 13th March, 2023 passed by the High Court of Jharkhand at Ranchi",,,,

allowing the writ petitions filed by the Respondents herein and quashing the First Information Report (Ã¢â¬ÏFIRÃ¢â¬Ï,Ã¢â¬Ï) being Deoghar Kunda P.S. Case,,,,

No.169 of 2022 registered against the Respondents-accused persons for commission of alleged offences under Sections 336, 447 and 448 of Indian",,,,

Penal Code, 1860 (Ã¢â¬ÏIPCÃ¢â¬Ï,Ã¢â¬Ï) and Sections 10 and 11A of the Aircraft Act, 1934 holding that the FIR is vitiated by mala fides and allowing the",,,,

proceedings to continue would amount to abuse of law. The High Court of Jharkhand at Ranchi while quashing the FIR has held as under:-,,,,

Ã¢â¬Ï, Ã¢â¬Ï,Ã¢â¬Ï26. In view of the above facts, reasons and analysis and considering that Aircraft took off after permission of the ATC, Aircraft Act, 1934 is itself complete",,,,

code and there are procedure prescribed therein to lodge the complaint and of the enquiry, in view of the Act, the competent authority has not complained",,,,

anything, even Airport Director has been made accused and even the two sons of the petitioner no. 1 has not been spared and considering that when the Special",,,,

Act is there, Sections of Indian Penal Code are not attracted, petitioner no.1 and 4 in W.P.(Cr.) No. 448 of 2022 are Member of Parliament and petitioner no.1 is",,,,

Chairman of the Airport Advisory Committee of Deoghar Airport and petitioner no.4 is also a member of the Standing Committee, Civil Aviation, further" ,,,,

considering the materials on record which suggests that several cases have been lodged against the petitioner no.1 in W.P.(Cr.) No. 448 of 2022 which have been ,,,,

quashed by this Court and some judgments are affirmed by the Hon'ble Supreme Court, it transpires that F.I.R. has been lodged malafidely and allowing to" ,,,,

continue the proceeding will amount the abuse of process of law, accordingly, the F.I.R. bearing Deoghar Kunda P.S. Case No. 169 of 2022 including the entire" ,,,,

criminal proceeding registered under sections 336, 447 and 448 of the Indian Penal Code and section 10 and 11A of the Airport Act, 1934, pending in the Court" ,,,,

of learned Sub Divisional Magistrate, Dumka, is hereby quashed.Ã¢â€" ,,,,

FACTS ,,,,

2. The facts, as mentioned in the FIR, are that on 31st August, 2022 at 17:25 hours, the Respondents-accused persons boarded a chartered plane to" ,,,,

travel from Deoghar Airport. After some time, the door of the plane opened and the pilot came down and moved towards the Air Traffic Control" ,,,,

(Ã¢â€ATCÃ¢â€) room as the Air Traffic Controller had denied permission for take-off. Learned counsel for Appellant-State of Jharkhand stated that ,,,,

the first informant who was Security-in-charge in Deoghar Airport followed the pilot and when he entered the ATC room, he saw that the pilot was" ,,,,

creating pressure for giving Respondents-accused persons clearance for take-off at the earliest. Thereafter, the other Respondents-accused persons" ,,,,

also barged into the ATC room and created pressure for the clearance to be given to them. According to the learned counsel for the Appellant-State ,,,,

of Jharkhand, pursuant to the pressure exerted by the Respondents-accused persons, the ATC clearance was given and the chartered flight took-off" ,,,,

at 18:17 hours even when the sunset time on that day was 18:03 hours. ,,,,

ARGUMENTS ON BEHALF OF APPELLANT-STATE OF JHARKHAND ,,,,

3. Learned counsel for the Appellant-State of Jharkhand stated that the ATC room is a restricted area and the Respondents-accused persons ,,,,

forcefully trespassed and entered the ATC room which was a serious security breach and the Respondents-accused persons threatened the ATC ,,,,

officers and coerced them to give permission for take-off. He stated that the ATC had denied clearance/permission to chartered flight to take-off ,,,,

from Deoghar Airport due to low visibility and bad weather conditions. He pointed out that the Deoghar Airport does not have the facility of night ,,,,

operation. He stated that by forcefully obtaining the ATC clearance by threatening and creating pressure on the ATC officers, the chartered flight" ,,,,

with the Respondents-accused persons on board, took-off at 18:17 hours i.e., after sunset." ,,,,

4. He submitted that there was a clear violation of Rule 14(ix) of Airport (Security) Rules, 2011 which empowers the Security Officer to supervise the",,,,

movement of persons in the restricted areas. He contended that the said Rules of 2011 have been promulgated in exercise of powers under Section 4,,,

read with Section 5 of the Aircraft Act, 1934. Section 5(2)(gc) of the Aircraft Act, 1934 permits the Central Government to make rules to provide for",,,,

“the measures to safeguard civil aviation against acts of unlawful interference”,,,

5. He submitted that the High Court of Jharkhand failed to appreciate that the bar under Section 12B of the Aircraft Act, 1934 will get triggered and",,,,

come into play only after the investigation is complete and the result of investigation in the form of the Final Report/Chargesheet is filed before the",,,,

competent Court. According to him, Section 12B does not bar the police from registering an FIR and consequently conducting investigation arising out",,,,

of the FIR.,,,,

6. He pointed out that in the context of prosecution under the Environment Protection Act, 1986 which, by virtue of Section 19, mandates that no",,,,

Court shall take cognizance of an offence under this Act except on complaint made by the officers specified therein, the Division Bench of the",,,,

Bombay High Court in Navi Mumbai Environment Preservation Society and Anr. vs. Ministry of Environment (PIL No.218/2013) dated 22nd,,,

December, 2016 has after considering the judgment of this Court in State (NCT) of Delhi vs. Sanjay, (2014) 9 SCC 772 held that the offence under",,,,

Section 15(1) of the Environment Protection Act, 1986 is a cognizable offence and therefore, the police can register the FIR under Section 154(1) of",,,,

the Code of Criminal Procedure, 1973 (for short “CrPc”). The Division Bench of the Bombay High Court (speaking through one of us",,,,

Hon’ble Mr. Justice A.S. Oka as his Lordship then was) held, “Therefore, if FIR is registered by the Police for the offence punishable",,,,

under Section 15 of the Act of 1956, the registration of offence and investigation carried out by the police is not per se vitiated. A complaint",,,,

can be made/filed by authorized officer under Clause (a) of Section 19 before the concerned Court. While filing a complaint, the authorized",,,,

officer can always rely upon the material collected by the police during the investigation. The Complaint can include the material collected,,,

by the police during the investigation carried out on the basis of the FIR.” He pointed out that the High Court of Bombay in the said case, inter",,,,

alia, issued the following interim direction at para 15(iii):-",,,,

“(III) We clarify that registration of offences by the Police under Sub-Section (1) of Section 15 of the said Act of 1986 and the investigation carried out thereon,,,

is not per se illegal. The officers authorized under clause (a) of Section 19 can always file complaints in accordance with the said Code by relying upon the,,,

material collected during the investigation and material forming part of the charge sheet prepared by the Police.Ã¢â€,â€,,,

7. He further submitted that the finding of the High Court of Jharkhand in the impugned judgment that the Aircraft Act, 1934 is a Special Act and a",,,,

complete Code in itself and therefore, IPC offences are not attracted, is erroneous and is in the teeth of the law laid down by this Court inS tate (NCT",,,,

of Delhi) Vs. Sanjay (supra) and in Jayant & Ors. Vs. State of Madhya Pradesh, (2021) 2 SCC 67.0 The relevant portion of the judgment relied",,,,

upon in State (NCT of Delhi) Vs. Sanjay (supra) is reproduced herein below:-,,,

Ã¢â€,â€"69. Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute",,,,

bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the riverbedÃ¢â€,â€!,,,,,

xxx xxx xxx xxx,,,

72. From a close reading of the provisions of the MMDR Act and the offence defined under Section 378 IPC, it is manifest that the ingredients constituting the",,,,

offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence,,,

punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravel and other minerals from the river, which is the property of the State," ,,,,

out of the State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission of an offence under",,,,

the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the,,,

manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against,,,

such persons. In other words, in a case where there is a theft of sand and gravel from the government land, the police can register a case, investigate the same and",,,,

S.NO.,REASON,PARTICULARS,,

1., "AllegedÃ¢â€, offenceÃ¢â€, governedÃ¢â€,

by the provisions of Section 12B

of the Aircraft Act." , "Procedure under Section 12B of the Aircraft Act,

1934Ã¢â€, Ã¢â€,â€"Ã¢â€, PreconditionÃ¢â€, ofÃ¢â€, complaintÃ¢â€,

toÃ¢â€, beÃ¢â€, made by/withÃ¢â€, Ã¢â€, Ã¢â€, sanctionÃ¢â€, Ã¢â€, Ã¢â€,

ofÃ¢â€, Ã¢â€, Ã¢â€, theÃ¢â€, Ã¢â€, Ã¢â€, relevantÃ¢â€, Ã¢â€, Ã¢â€, Aviation

Authorities has been completely bypassed." ,,

2., "FIR premised on an incorrect

legal basis.", "The basis of the FIR was that the Aircraft could be operated only till 17:30 hrs. This position is legally flawed and completely incorrect.

Rule 4 of the Aircraft Rules, 1937 clearly defines flight by night as, inter alia, a flight performed between the period of half an hour after sunset.

As per FIR, on the day of alleged incident, i.e., 31st August, 2022, the sunset was at 18:03 hours.

As per the Petitioner's own affidavit before the High Court, (para 6, at page 128, of SLP), the flight took off at 18:17 hours after the clearance from Kolkata ATC.

Therefore, the flight, take-off, being, within, the period of half an hour after sunset, was legal and proper.",,

3., "Allegation, in, FIR, of,

forcible entry, into,

the, ATC, Room,

Deoghar Airport and pressure

exerted, to,

obtain, ATC clearance.", "The clearance for take-off was given by the ATC,

Kolkata. The, ATC, at, Deoghar,

Airport, neither had the authority nor the

control to grant take-off clearance.

There, is, no, allegation, that,

the answering Respondent tried to influence take-

off clearance from the ATC-Kolkata.",,

16. Further, under Section 5 of the Aircraft Act, 1934, the Central Government may make rules for regulating the manufacture, possession, use",,,,

operation, sale, import or export of any aircraft or class of aircraft and for securing the safety of aircraft operations.

Among several subjects, the",,,,

Central Government can frame rules in relation to:,,,

- i. the measures to safeguard civil aviation against acts of unlawful interference, under sub-clause (gc) of Section 5;" ,,,,
- ii. safety oversight and regulatory functions, under sub-clause (qb); and" ,,,,
- iii. regulatory and oversight functions in respect of matters relating to civil aviation security, under sub-clause (qc)." ,,,,

17. According to learned senior counsel for the Respondents-accused persons, a necessary concomitant which flows from the combined reading of" ,,,,

the above is that the safety and security of the civil aviation is completely governed under the Aircraft Act, 1934 and the Rules framed thereunder. At" ,,,,

this stage, he referred to Rule 90 of the Aircraft Rules, 1937, which reads as under:-" ,,,,

“90. Entry into public aerodromes. “ ,,,,

(1) No person shall enter or be in the terminal building of any Government aerodrome or public aerodrome or part of such building or any other area in such ,,,,

aerodrome notified in this behalf by the Central Government unless he holds an admission ticket issued by the aerodrome operator or an entry pass issued by the ,,,,

Commissioner of Security (Civil Aviation) or any person authorized by the Central Government in this behalf. “ ,,,,

18. Therefore, according to him, the access to an aerodrome and any activities thereafter are completely governed by the Act and/or the Rules" ,,,,

framed thereunder. ,,,,

19. He pointed out that similarly, Parts II, III, IV and V of the Aircraft (Security) Rules, 2011 prescribe the security measures at aerodromes, the" ,,,,

access control, security checks and the other security measures by aircraft operators. Rule 18 under the above stated Part III regulates the entry into" ,,,,

aerodrome. Further, under the said Aircraft (Security) Rules, 2011, Rule 2(y) defines “security incident” which includes the contravention of" ,,,,

breach of security laws etc. ,,,,

20. Further, Rules 45 and 46 of the Aircraft (Security) Rules, 2011 prescribe that any accident / incident has to be reported to the Commissioner, who" ,,,,

shall order an inquiry to be conducted by a competent officer. Rules 45 and 46 are reproduced herein below:- ,,,,

“45. Reporting of security accident or incident. - ,,,,

Every aircraft operator, aviation security group, aerodrome operator, regulated agent and owner or operator of catering establishment shall report the security" ,,,,

accident or security incident to the Commissioner immediately on the occurrence of the security accident or security incident. ,,,,

46. Investigation of security accident or incident. - ,,,,

(1) The Commissioner may order investigation of any security accident or security incident and appoint an officer not below the rank of Assistant Commissioner ,,,,

of security as Inquiry Officer. ,,,,

hrs.Ã¢â¬â,â,â,â,

26. He stated that it is inconceivable as to why the Respondents-accused persons would attempt to exert undue influence over the ATC officials at,,,

Deoghar Airport when the ultimate power to grant ATC clearance was in the hands of the ATC Kolkata authorities.,,,,

27. He repeatedly emphasised that none of the allegations in the FIR made out the offences alleged under IPC. He stated that as the ATC clearance,,,

was granted by the ATC Kolkata Region which is more than 300 Kms. from the Deogarh Airport, the Respondent No.1 cannot be said to have",,,,

committed any act endangering the life or safety of anyone at the Deogarh Airport under Section 336 IPC.,,,,

28. He further stated that the allegation that Respondent No.1 pressurized the officials of ATC Deoghar is proven false by the Appellant-StateÃ¢â¬â,â,â,â,

own Affidavit, inasmuch as, the actual clearance was given by ATC Kolkata. Thus, there is no question of the Respondent No.1 intimidating the ATC",,,,

Deogarh officials under Section 447 IPC.,,,,

29. He lastly contended that the FIR is one of the many instances, where the Appellant-State of Jharkhand has filed false FIRs against the",,,,

Respondent No.1 and his family. Among others, on three such occasions, those FIRs have been quashed by the High Court and the said orders have",,,,

been upheld by this Court.,,,,

COURTÃ¢â¬â,â,â,âS REASONING.,,,,

S.N.,Name,Alias,"RelativeÃ¢â¬â,â,â,âs

Name",Present Address

1,"CharteredÃ¢â¬â, Ã¢â¬â, Ã¢â¬â, Ã¢â¬â, Plane

Pilot" ,,, "1,Ã¢â¬â, Ã¢â¬â, Ã¢â¬â, Ã¢â¬â, Ã¢â¬â,

UnknownÃ¢â¬â, Ã¢â¬â, Ã¢â¬â, Ã¢â¬â, Ã¢â¬â,

Kunda, Deoghar,

Jharkhand, India

2,"ShreeÃ¢â¬â, Ã¢â¬â, Ã¢â¬â, Ã¢â¬â, Ã¢â¬â, Ã¢â¬â,

Nishikant Dubey" ,,, "1,Ã¢â¬â, MPÃ¢â¬â, GoddaÃ¢â¬â,

Lokshabha GoddaÃ¢â¬â,

Magar,Ã¢â¬â, Jharkhand, India

3,Shree Kanishk Kant Dubey",,, "1,Ã¢â¬â, Ã¢â¬â, Ã¢â¬â, Ã¢â¬â,

Unknown,Ã¢â¬â, Ã¢â¬â, Ã¢â¬â, Ã¢â¬â, Kunda,

Deoghar, Jharkhand, India

4,"ShreeÃ¢â¬â, Ã¢â¬â, Ã¢â¬â, Ã¢â¬â, Ã¢â¬â, Ã¢â¬â,

Mahikant Dubey",,,,"1,Ã, Ã, Ã, Ã, Ã,

Unknown,Ã, Ã, Ã, Ã, Ã, Kunda,

Deoghar, Jharkhand, India

5,Shree Manoj Tiwari,,,"1,Ã, MPÃ, North-East,Ã,

Delhi Lokshabha, New Delhi

6,"ShreeÃ, Ã, Ã, Ã, Ã, Ã, Ã, Ã,

Mukesh Pathak",,,,"1,Ã, Ã, Ã, Ã, Ã,

Unknown,Ã, Ã, Ã, Ã, Ã, Kunda,

Deoghar, Jharkhand, India

7,"ShreeÃ, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã,

Deota Pandey",,,,"1,Ã, Ã, Ã, Ã, Ã,

Unknown,Ã, Ã, Ã, Ã, Ã, Kunda,

Deoghar, Jharkhand, India

8,Shree Pintu Tiwari,,,"1,Ã, Ã, Ã, Ã, Ã,

Unknown,Ã, Ã, Ã, Ã, Ã, Kunda,

Deoghar, Jharkhand, India

9,"ShreeÃ, Ã, Ã, Ã,

Ã, Ã, Ã, Ã, Ã, Ã, Ã, Sandip

Dhingra",,,,"1, Airport Director, Kunda,

Deoghar, Jharkhand, India

10. Total value of property (In Rs.),,,,

11. Inquest Report/U.D. Case No., if any:",,,,

S.NO. Ã, Ã, Ã, Ã, UIDB Number:,,,,

12. First Information contents:,,,,

To, P.S. In charge, Kunda P.S. District Deoghar,",,,,

Sub: On 31.08.2022 in the Deoghar Airport Shri Nishikant Dubey, Hon'ble Member of Parliament Godda and his two sons, Shri Manoj Tewari, Hon'ble Member",,,,

of Parliament and others without any permission have entered into the ATC and created pressure by using their influence upon the ATC personnel for obtaining,,,

forceful ATC Clearance. Sir, I, Suman Anan, Aged about 59 years, son of Late Rajeshwar Sharma, Resident of Deo Nagar Shastri Nagar, P.S. Nagar, District",,,,

Girideah (Jharkhand), Deputy Superintendent of Police, presently posted on the post of Security-In-Charge of the entire Deoghar Airport. Since the day of my",,,,

posting I am fulfilling my duties with devotion as per rules. With respect to the above subject this is to inform you that on 31.08.2022 at 13.05 hrs. a chartered,,,,,

plane from Delhi reached Deoghar Airport. In that chartered plane following persons were found: (1) Shri Nishikant Dubey, Hon'ble Member of Parliament" ,,,,,

Godda, (2) Shri Kanishkant Dubey, (3) Shri Mahikant Dubey, (4) Shri Manoj Tiwari, Hon'ble Member of Parliament. (5) Shri Kapil Mishra, Hon'ble Member of" ,,,,,

Parliament, (6) Shri Sheshavri Dubey, (7) Sh. Sunil Tiwari and others. To receive them, huge numbers of people were there. After receiving them passengers and" ,,,,,

others came out. In the evening at 17.25 hrs the passengers of Chartered Plane and persons came to see-off them at Deoghar Airport. All passengers went inside,,,,,

the chartered plane and the door of the plane was closed. After some time the door of the plane opened, the pilot came down. After coming down Pilot started" ,,,,,

moving towards ATC. Upon seeing him moving towards ATC, I became alert from the point of view of security and started walking behind the pilot. In this regard I" ,,,,,

would like to mention that at Deoghar Airport still the Night Take-off/ Landing and IFR facility are not available. Because of non availability of this facility due,,,,,

to Low Visibility/ Bad Weather Condition/ After Sunset, generally it was not possible to give ATC Clearance to Aircraft. On 31.08.2022 the sunset time at" ,,,,,

Deoghar was 18.03 hrs and as per my knowledge on that day generally the Aircraft could be operated till 17.30 hrs only. When I reached the ATC Control Room, " ,,,,,

there in the Control Room Shri Sandeep Dhingra, Director of Airport and Pilot of Chartered Plane were already present. At that time the pilot of said Chartered" ,,,,,

Plane was creating pressure upon the ATC personnel present at that time and was saying that the passengers of Chartered Plane necessarily wanted to return,,,,,

back today itself therefore ATC clearance be given to them. During this discussion ATC personnel were talking on the mobile phone regarding clearance. After,,,,,

some time Shri Nishikant Dubey, Hon'ble Member of Parliament Godda Parliamentary Constituency, his both sons Shri Kanishk Kant Dubey, Shri Mahikant" ,,,,,

Dubey and Shri Manoj Tiwari, Hon'ble Member of Parliament came inside the ATC room." ,,,,,

I was surprised and shocked to see the passengers in the ATC Room and I was feeling uncomfortable. Pilot and passengers were creating pressure that the,,,,,

clearance be given to them at the earliest. Thereafter they get the ATC Clearance. Pilot and passengers departed from the ATC room. I was observing the Airport,,,,,

security from the ATC Room. After some time the pilot and passengers again entered into the chartered plane and thereafter chartered plane take-off. Therefore,,,,,

keeping in view all the above facts it is clear that the above mentioned persons have violated the security measures of operating the airport and entered into the,,,,,

ATC Room, despite not having availability of, Night Operation Facility these persons ignoring the security of life and property of the passengers have created" ,,,,,

pressure for ATC Clearance. In this regard it is necessary to mention that through different modes the public was mentioning this incident. Today on 01.09.2022,,,,,

at about 11.30 hrs, for perusing the entire incident I went into the Control Room. Upon perusal of C.C.T.V. of the incident I found that on 31.08.2022 Shri Mukesh",,,,

Pathak, Shri Devta Pandey, Shri Pintu Tiwari have entered into the ATC building by violating the security measures. Therefore, keeping in view the above facts",,,,

the above mentioned persons have violated the security measures, which includes: (1) Pilot of Chartered Plane, (2) Shri Nishikant Dubey, Hon'ble Member of",,,,

Parliament Godda Constituency, (3) Shri Kanishkant Dubey, (4) Shri Mahikant Dubey, (5) Shri Manoj Tiwari, Hon'ble Member of Parliament, (6) Shri Mukesh",,,,

Pathak, (7) Shri Devta Pandey," ,,,,

(8) Shri Pintu Tiwari and (9) Airport Director Shri Sandeep Dhingra who has committed negligence in fulfilling his duty and indirectly supported the passengers,,,,

to enter and remain present in the ATC Room. Therefore, kindly register a First Information Report against all the above persons in the relevant sections and Acts",,,,

and proceed further in the matter. Faithfully Sd/- 01.09.22 Suman Annan, Deputy Superintendent of Police, Deoghar Airport, Deoghar Copy to: (1) Deputy",,,,

Commissioner, Deoghar, (2) Deputy Superintendent of Police, Deoghar, (3) Sub Divisional Police Officer, Sadar, Deoghar" ,,,,

13. Action taken: Since the above information reveals commission of offence(s) u/s as mentioned at Item No.2.,,,,

(1) Registered the case and took up the investigation:,,,,

(2) Directed (Name of I.O.): Animanand Roshan Toppo Rank: SI (Sub Inspector) No. 1101324 to take up the investigation or,,,,

(3) Refused Investigation due to,,,,

Or,,,,

(4) Transferred to P.S. District on point of jurisdiction.,,,,

F.I.R. Read over to the complainant/ informant admitted to be correctly recorded and a copy given to the complainant/ informant free of cost.,,,,

14. Signature/thumb impression of complainant/ informant,,,

15. Date and time when dispatched to the court,,,

Sd/-02.09.2022,,,,

Signature of Officer In-charge,,,

Police Station:,,,

Name: Praveen Kumar,,,,

Rank: SI (Sub Inspector),,,,

No.,,,,

32. Upon a reading of the aforesaid FIR, this Court is of the view that offences under Sections 336, 447 and 448 IPC are not made out in the present" ,,,,

case.,,,,

33. Section 336 IPC seeks to punish a person who does an act rashly or negligently and endangers human life or personal safety of others. To attract,,,

Section 336 IPC, the prosecution must allege that the accused did the act in question; that it was done rashly or negligently and that it was such as to" ,,,,

endanger the life or personal safety of others.,,,,

34. In the present case, the Respondents-accused persons were only asking the ATC to grant permission for take-off. This Court is of the view that" ,,,,

the action of the pilot and the passengers talking to ATC officials in the present case cannot be construed as creating undue or illegal pressure on,,,

ATC officials. Moreover, as the aircraft carrying the Respondents-accused persons had taken off after obtaining ATC permission, it cannot be said" ,,,,

that the Respondents-accused persons acted rashly or negligently so as to endanger human lives. Consequently, Section 336 IPC is not attracted to the" ,,,,

present case.,,,,

35. Further, it is settled law that every trespass by itself is not criminal. To constitute criminal trespass the prosecution has to allege that the trespass" ,,,,

was committed with one of the intents enumerated in Section 441 IPC. Accordingly, the prosecution has to prove that the complainant had possession" ,,,,

of the property in question and that the accused entered into or upon the property; or after having lawfully entered unlawfully remained there with the,,,

intention (a) to commit an offence; or (b) to intimidate, insult, or annoy the person in possession. In the absence of any such allegation, the offence" ,,,,

under Section 441/447 IPC cannot be sustained.,,,,

36. In the present case, no allegation of forcible entry or intimidation or insult or annoyance has been made by any official of ATC. On the contrary, " ,,,,

the Director of Deogarh Airport has been arrayed as an accused in the FIR! Consequently, Section 447 IPC is not attracted to the present case." ,,,,

37. Also, as the ATC office is not a place used as a human dwelling or a place of worship or a place for the custody of goods, the ingredients of" ,,,,

Section 448 IPC are not attracted to the present case.,,,,

38. Consequently, taking Sections 336, 447 and 448 IPC as distinct offences, no case is made out against the respondents-accused persons. " ,,,,

SINCE THE AIRCRAFT ACT, 1934 AND THE RULES FRAMED THEREUNDER CONSTITUTE A COMPLETE CODE AND ITS SECTION 12B" ,,,,

IS IN THE NATURE OF A PRE-CONDITION FOR TAKING COGNIZANCE BY A COURT, THE LOCAL POLICE CAN ONLY FORWARD THE" ,,,,

MATERIAL COLLECTED BY IT TO SUCH AUTHORISED OFFICER.,,,,

39. This Court is further of the view that the Aircraft Act, 1934 as well as the Rules framed thereunder [including Rule 14(ix) of Airport (Security)" ,,,,

Rules, 2011] is a complete Code which deals with safety and security of civil aviation and aerodrome. The Aircraft Act, 1934 also prescribes a special",,,,

procedure for taking cognizance of any offence punishable under the Aircraft Act, 1934 i.e, the complaint must be made by or with the prior sanction",,,,

of the Aviation authorities. Section 12B is in the nature of a pre-condition for taking cognizance by a Court.,,,,

40. Section 5 of the Code stipulates that "if any special law or local law for the time being in force contemplates any special jurisdiction or",,,,

power or any special form of procedure prescribed, unless there is something to the contrary, to be found, it is the provisions of the special",,,,

law or the local law which would prevail. Further, Clause (2) of Section 4, Code mandates that "all offences under any other law shall",,,,

be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time",,,,

being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences."",,,,

41. Consequently, as a complaint can be made/filed by an authorised officer alone under the Special Act i.e. the Aircrafts Act, 1934, before the",,,,

concerned Court, the local police can only forward the material collected by it during the investigation to such authorised officer. It shall be open to the",,,,

authorised officer to take a decision in accordance with law with regard to filing or non-filing of a complaint.,,,,

CONCLUSION,,,

42. Keeping in view the aforesaid findings, the present appeals are dismissed with liberty to the Appellate-State of Jharkhand to forward the material",,,,

collected by it during investigation to such authorised officer under the Aircraft Act, 1934 within four weeks, who shall take a decision in accordance",,,,

with law as to whether a complaint needs to be filed under the Aircraft Act, 1934 and the Rules framed thereunder."",,,,