

(2009) 08 JH CK 0014

Jharkhand High Court

Case No: Writ Petition (Cr.) No. 236 of 2006

Avatar Singh and Mohinder
Singh

APPELLANT

Vs

The State of Jharkhand and
District Mining Officer

RESPONDENT

Date of Decision: Aug. 10, 2009

Acts Referred:

- Air (Prevention and Control of Pollution) Act, 1981 - Section 21
- Mines and Minerals (Development and Regulation) Act, 1957 - Section 21, 21(4), 4
- Penal Code, 1860 (IPC) - Section 120B, 34, 353, 447, 467

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: Ananda Sen and N. Tiwari, for the Appellant; R.R. Mishra, G.P.-II, for the Respondent

Final Decision: Allowed

Judgement

R.R. Prasad, J.

This writ application is directed against that part of order dated 21.8.2006 passed by learned Chief Judicial Magistrate, Chaibasa in Misc. Case No. 18 of 2006 (arising out of Noamundi P.S Case No. 15 of 2006), whereby learned Chief Judicial Magistrate, Chaibasa was pleased to pass order for confiscating the trucks bearing Registration Nos. PB-10 BH-4287 and PB-13L-7987, belonging to petitioner No. 1- Avatar Singh, and PB-10 AS-9565, belonging to petitioner No. 2- Mohinder Singh.

2. The facts giving rise this application are that on 23.2.2006 a team, consisting of District Mining Officer, Chaibasa and others constituted for the purpose of stopping illegal mining transportation etc., raided a place known as Jojo Camp situated at Noamundi and found huge quantity of fine iron ore stored on a vacant piece of land which was being loaded on several trucks including the trucks in question with the

help of dumper and J.C.B. On seizure or the challan and other documents, it could be known that the iron ore was to be transported from Orissa to Haldia Port under the transit permit issued by the Government of Orissa, but the transporters instead of taking the trucks to its destination brought it at Jojo Camp so that the iron ores, illegally mined and stored, be loaded on those trucks before proceeding to its destination. From the documents, it could be also known that one Manish Khemka of Calcutta was the person who had indulged himself in the illegal activities in connivance with the transporter- S.M. Carrier Private Ltd. and thereby 8 trucks, one dumper and one J.C.B. were seized.

3. On the basis of the said complaint, an F.I.R. was instituted as Noamundi P.S Case No. 15 of 2006 under Sections 447, 353, 467, 468, 120B/34 of the Indian Penal Code as well as under Sections 4/21 of the Mines and Minerals (Development & Regulation) Act, 1957 and also u/s 21 of the Air (Prevention and Control of Pollution) Act, 1981. Subsequently, on a report (Ext. 3), submitted by the Officer In-charge, Noamundi P.S. to Chief Judicial Magistrate, Chaibasa, a confiscation proceeding was initiated vide Misc. Case No. 18 of 2006 for confiscating the vehicles seized in connection with the aforesaid case. On being noticed, petitioner No. 1- Avatar Singh, owner of two trucks bearing Registration Nos. PB-10 BH-4287 and PB-13L-7987, and petitioner No. 2- Mohinder Singh, owner of the truck bearing Registration No. PB-10 AS-9565, filed their show-causes, wherein they stated that the vehicles had been engaged by North Pastern Carrier Corporation Limited for transportation of iron ores (fines) from Jajangar, Orissa to Haldia Port and on the way, the said vehicles have been seized, though neither the drivers nor the owners of the vehicles have been made accused for committing any offence under the Mines and Minerals (Development & Regulation) Act, rather whatever allegation of commission of offence under the Mines and Minerals (Development & Regulation) Act has been made, that has been made against Manish Khemka as well as transport S.M. Carrier Private Ltd. and, therefore, the vehicles in question be released in favour of the petitioners.

4. Upon it, the matter was taken up for inquiry, wherein Diwakar Prasad Singh (A.W.-1), Mines Inspector, Ashim Kispotta (A.W.-2), Circle Officer, Noamundi and the informant-Raghavnandan Prasad (A.W.-3), District Mining Officer, Chaibasa have been examined who stated before the court that when the iron ores were being loaded on the trucks, it were seized, as they did not have any documents relating to transportation of the same in terms of the provisions of Jharkhand State Minerals Transportation Rules, 2005 rather the documents relating to transportation were there which had been issued by the Government of Orissa, but it were forged. The petitioners also examined themselves as O.P. W. 2 & O.P. W. 4, whereby they produced challans, issued by North Eastern Carrier Corporation Ltd., which were marked as Ext. B, E, and F, whereas transit permits were marked as X/2, X/3, X/4, X/5, X/6, X/7, X, 8, X/9 and X/10 for identification. Learned court after considering the oral and documentary evidences did find the challans, issued by the North Eastern

Carrier Corporation Ltd., and also transit permits, issued by the Government of Orissa, to be forged, as according to the court, writing of the numbers of the vehicles in the challans as well as in the transit permits were of different inks and on that ground alone, the vehicles were ordered to be confiscated.

Being aggrieved with that order, this writ application has been filed.

5. Learned Counsel appearing for the petitioners submits that simply for the reasons that the writing of the numbers of the vehicles in the challans, issued by the North Eastern Carrier Corporation Ltd., and also the transit permits, issued by the Mining Authority of Government of Orissa, were of different inks, the documents were considered to be forged, though the prosecuting agency has never verified it from the concerned Authority who had issued those documents and in absence of any inquiry being made from the concerned person, any finding with respect to the documents being forged would be illegal and any such finding in such circumstances is an outcome of conjecture and surmises.

6. However, learned Counsel appearing for the State submits that it is true that no inquiry was made by the prosecuting agency about the genuinity of the documents from the concerned person who had issued it, but still the court has found those documents to be forged, as the writings were of different inks.

7. Having heard learned Counsel appearing for the parties, I do not find any substance in the submission advanced on behalf of the State, simply for the reasons that if some documents have been written in two different inks that would never mean that those documents would always be forged, as there could have been so many reasons for having two writings over the same documents. When the prosecuting agency considered those documents, such as challans, issued by the North Eastern Carrier Corporation Ltd., and the transit permits, issued by the Mining Officer, Government of Orissa, to be forged, it should have easily inquired into the matter over the genuinity of the documents from the maker of the documents, but the prosecuting agency never seems to have taken any pain to get the documents verified from the maker of the documents and in absence of such inquiry, it cannot be said conclusively about the documents being forged simply for the reasons that the documents do have writing in two different inks. Therefore, any finding, given by the learned Chief Judicial Magistrate, Chaibasa about the documents, being forged, certainly appears to be bad.

8. It has been stated in the FIR that the iron ores (fine) were being carried to Haldia Port from Orissa but the trucks got stopped at Jojo Camp for getting the illegal iron ores loaded, but no such evidence was produced by the prosecuting agency. Moreover, the prosecuting agency seems to have been admitted at least that the iron ores were being transported under transit permit, issued by the Mining Authority, Government of Orissa. However, it is the stand of the prosecuting agency that iron ore was never being carried under the permit issued by the State of

Jharkhand in terms of the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and also Jharkhand Mineral Transit Challan Regulations, 2005. It would appear from reading of the relevant provision of the Regulation that the transit permit is required to be issued at the place from where iron ores are dispatched and since admittedly iron ores had been dispatched from Orissa, the transporter was not required to have any permit under the Jharkhand Mineral Transit Challan Regulations, 2005.

9. Under these circumstances, the petitioners can never be said to have committed any offence whatsoever under the Mines and Minerals (Development and Regulation) Act, 1957. In this respect, Sub Section (4) of Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957, prescribing penalties for contravention of the provisions of the Act or Rules needs to be taken note of, reads as follows:

(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral tool, equipment, vehicle or any other thing shall be liable to be seized by an officer of authority specially empowered in this behalf.

10. Keeping in view the facts and circumstances, as indicated above and also coming to the finding that the prosecuting agency failed to establish that the documents, under which iron ores were being carried, were forged, the petitioners can never be said to have committed any offence in terms of Section 21(4) of the Mines and Minerals (Development and Regulation) Act, 1957.

11. In this view of the matter, that part of order dated 21.8.2006 passed by learned Chief Judicial Magistrate, Chaibasa in Misc. Case No. 18 of 2006 (arising out of Noamundi P.S Case No. 15 of 2006), whereby two trucks bearing Nos. PB-10 BH-4287 and PB-13L-7987, belonging to petitioner No. 1- Avatar Singh, and the truck bearing No. PB-10 AS-9565, belonging to petitioner No. 2- Mohinder Singh, were ordered to be confiscated, is hereby quashed. Consequently, the respondent No. 2 (District Mining Officer, Chaibasa) is directed to release the aforesaid trucks forthwith in favour of the petitioners on executing bond of Rs. three lakhs each with one surety each.

12. Accordingly, this writ application is allowed.

13. Before parting with this order, it be observed that any finding given is confined to this case only and hence it would not be prejudicial so far the main case is concerned.