

**(2013) 10 JH CK 0025**

**Jharkhand High Court**

**Case No:** Criminal M.P. No. 1718 of 2012

Mangal Kumar @ Minu Agarwal  
@ Mama, Sushil Kumar Agarwal,  
Ranjit Kumar Tiwari and Sandeep  
Kumar Jha

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

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**Date of Decision:** Oct. 24, 2013

**Hon'ble Judges:** R.R. Prasad, J

**Bench:** Single Bench

**Advocate:** Rajan Raj, for the Appellant;

**Final Decision:** Allowed

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### **Judgement**

R.R. Prasad, J.

Heard learned counsel appearing for the petitioners and learned counsel appearing for the State. This application has been filed for quashing of the order dated 16.12.2010 passed by the then Additional Chief Judicial Magistrate, Chaibasa, West Singhbhum in Gua (Barajamda) P.S. Case no. 18 of 2010 under which cognizance of the offences punishable under Sections 188, 406, 120(B) of the Indian Penal Code has been taken against the petitioners.

2. It is the case of the prosecution that the then Sub-divisional Officer, Chaibasa as well as Additional Superintendent of Police, Chaibasa when raided the premises of M/s. Maa Vidyawasini Metals to which petitioners are one of the proprietors they did find a crusher machine under operation. There 8000 M.T. of Size Iron Ore as well as 3000 M.T. of Fines Iron Ore were found stored. On verification of the stock register, physical stock of iron ore was found different from entry made in the stock register and thereby iron ore was seized and at the same time, control room as well as crusher machine were sealed. Iron ore seized was given in Jimmanama to petitioner no. 3.

3. On the said allegation as well as on the allegation that subsequent to seizure of iron ore, the petitioners went on selling/purchasing iron ore to make out the stock consistent to the entry made with respect to stock of iron ore in the stock register.
4. On such allegation, a case was registered as Gua (Barajamda) P.S. case no. 18 of 2010 under Sections 188, 406, 120(B) of the Indian Penal Code.
5. According to learned counsel appearing for the petitioners, the matter when was subsequently verified by the Mines Department it never found any inconsistency in between physical stock of iron ore and the entry made in the stock register. In that event, iron ore was ordered to be released in favour of the petitioners by the Chief Judicial Magistrate, Chaibasa and at the same time, since no discrepancy had been found, seal of the control room as well as crusher machine were lifted. In that event, the petitioners cannot be said to have committed any offence whatsoever u/s 406 of the Indian Penal Code.
6. At the same time, the prosecution of the petitioners u/s 188 of the Indian Penal Code seems to be wholly misconceived as it has never been the case of the prosecution that the petitioners did disobey any order duly promulgated by public servant. More so, the prosecution under that section can only be launched by public officer by way of complaint in terms of the provision as contained in Section 195(1)(a)(i) of the Code of Criminal Procedure.
7. As against this, learned counsel appearing for the State submits that it is the case of the prosecution that on search being made, discrepancies were found in between physical stock of iron ore and the entry made in the stock register. Further in spite of iron ore being seized, the petitioners went on during business so as to make the stock consistent with the entry made in the stock register.
8. Further allegation which has been made against the petitioners is that upon seizure of iron ore, it was given on Jimmanama to the petitioner no. 3. In spite of that, the petitioners sold iron ore.
9. On such submissions being made, learned counsel appearing for the petitioners submits that entire allegation is misconceived as it would appear from the order relating iron ore that 8000 M.T. of Size Iron Ore as well as 3000 M.T. of Fines Iron Ore have been released in favour of the petitioners and therefore, in that event, any allegation of disposing of iron ore which had been seized and had been given to Jimmanama to the petitioner no. 3 is unsustainable.
10. The aforesaid submission made on behalf of the petitioners gets substantiated from the document annexed as Annexure 6(d) to the supplementary affidavit. In that event, it can easily be said that any allegation made by the prosecution that the petitioners did dispose of the iron ore which had been seized is untenable.
11. Further going into the matter, once it has been shown that the petitioners did not dispose of the iron ore which had been seized, the petitioners cannot be said to

have committed offence u/s 406 of the Indian Penal Code.

12. Furthermore, as has been put forth on behalf of the petitioners that the Mining Department has never found any irregularity as the quantity of iron ore found was the same which was shown in the stock register. Even otherwise any discrepancy found in between physical stock of iron ore and the entry made in the stock register would not make out a case of u/s 406 of the Indian Penal Code.

13. Under this situation, entire criminal proceeding of Gua (Barajamda) P.S. case no. 18 of 2010 including the order taking cognizance is hereby quashed. In the result, this application stands allowed.