

(2006) 04 JH CK 0016

Jharkhand High Court

Case No: Writ Petition (Cr.) No. 202 of 2003

Babloo Kumar

APPELLANT

Vs

State of Jharkhand,
Superintendent of Police and
Officer Incharge, Topchanchi P.S.

RESPONDENT

Date of Decision: April 28, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120B, 419, 420, 467, 468

Citation: (2006) 3 JCR 144

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Advocate: R.S. Mazumadar and M.K. Sinha, for the Appellant; R.R. Mishra, G.P.-II, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Amareshwar Sahay, J.
Heard the parties.

2. The prayer of the petitioner in this writ application is for quashing of the First Information Report and the entire criminal proceeding in connection with Topchanchi P.S. Case No. 183/2003, which was registered under Sections 419, 420, 467, 468, 471 and 120B of the Indian Penal Code.

4. In the aforesaid first information report, it was alleged that on 29/08/2003, the informant along with other police officials got a secret information that from Muraidih Colliery, coal was being loaded in the name of non-existent factory for being sold in the black market. On this information the Truck bearing No. BR 17 A-5321 was intercepted and was stopped by the informant; On being asked, the Driver

of the truck disclosed that the Coal on the truck was loaded from Muraidih Colliery and was being taken to Dehri Mandi. On being asked to produce the papers, the driver produced the papers before the informant from which it appeared to him that the Chalan of Muraidih Colliery of BCCL was issued in the name of M/S Shilpee Coal Briquette, Kasap of Bhojpur. The truck was brought to the police station for further enquiry and then on verification of the documents it was found that on 29/08/2003 on the strength of Chalan issued in the name of M/S Shilpee Coal Briquette, the coal in question was loaded on the aforesaid truck No. BR 17 A- 5321 by the authorized agent. From the relevant register it was found that the proprietor of M/S Shilpee Coal Briquette, i.e. B. Kumar in whose name the D.O. of the coal was issued, the coal was lifted for the said factory. It was further alleged in the F.I.R. that on 04/09/2003 it was found on physical verification at Bhojpur that the unit was found to be closed. On the basis of the aforesaid allegation, the F.I.R. under the aforesaid sections was registered by the Topchanchi police station.

5. The case of the petitioner in brief is that he is the proprietor of M/S Shilpee Coal Briquette Plant which is situated at Kasap in the district of Bhojpur, Bihar. The said unit is engaged in manufacture of coal briquettes. On an application filed by the petitioner before the Coal India Limited for grant of coal linkage, the Chief General Manager (Marketing) after inspection of the unit, granted linkage of coal to the petitioner on 15/12/1997 and pursuant to the said linkage the petitioner was regularly lifting the coal from different collieries of B.C.C.L. on valid sale orders/challans. According to the petitioner, in November, 2001 the unit of the petitioner was inspected by the Industry Department of the Government of Bihar and it was found that the petitioner's unit was operational and functional. However, the supply of coal to the petitioner was suspended vide wireless message of the Industries Department dated 30/07/2002 but against the stoppage of supply of the coal, the petitioner moved this Court in its writ jurisdiction in W.P. (C) No. 4888/2002 and this Court after hearing the parties passed an order on 05/09/2002, as contained in Annexure-6 to the writ petition, on the basis of the decision in the case of Maya Fuel Private Limited v. B.C.C.L. reported in 2002 (III) L.L.J. 394. The relevant extract of the order is quoted herein below:

The question of supply of coal to a linked consumer of non-core sector fell for consideration before a Bench or this Court in the case of Maya Fuel Pvt. Ltd. v. B.C.C.L. Ltd. in W.P. (C) No. 4790 of 2001. This Court vide its judgment dated 14th August 2002, held that the State authorities have no more jurisdiction to determine the question of supply of coal or its suspension. The assessment of determination of linkage quantity, i.e. Maximum Permissible Quantity (M.P.Q.) cannot be made by the State authorities, such as District Industries Centre, S.L.S.I. and to be made by the Coal Companies as the supply of coal is depended on various factors such as requirement of coal of a linked consumer, availability of coal with the Coal Companies etc.

The Court further held that the Coal Companies can revise the linkage quantity/MPQ in cases, such as less availability of coal than the demand, lifting of lesser quantity of coal by linked consumer etc.

In the circumstances as the district Industries Centre, Bihar has no jurisdiction to determine the question of supply of coal in favour of one or other consumer, the Wireless message dated 30th July, 2002 issued on such direction is set aside.

The cases are remitted back to the competent authority of M/s B.C.C.L. for determination of issue relating to supply of coal in favour of petitioners within one month from the date of receipt/production of a copy of this order.

It will be open to the Coal company to re-determine/revise the coal linkage quantity/M.P.Q. for good ground, such as non-functioning of any unit etc.

In case of favourable decision, the Respondents will allow such petitioner (s) to lift coal as per linkage/M.P.Q. or M.P.Q. redetermined.

The writ petitions stand disposed of with the aforesaid observations and directions.

6. Thereafter, the unit of the petition was inspected by the B.C.C.L. and it was found that the petitioner's unit was in working condition. On the basis of the said verification report, the supply of coal to the petitioner was resumed by BCCL and since thereafter, the petitioner was regularly lifting the coal for manufacturing briquettes. According to the petitioner, with reference to his application dated 17/07/2003, BCCL issued sale order/delivery order in favour of the petitioner's unit on 07/08/2003 for a total quantity of 39.72 M.T. of steam coal to be lifted from Muraidih Colliery and on the basis of the aforesaid sale order the authorized lifting agent of the petitioner, lifted the coal in question, which has been mentioned in the F.I.R. Further according to the petitioner, the balance quota of coal against the said sale order was lifted on 29/08/2003 in the aforesaid truck bearing No. BR 17A-5321 from Muraidih Colliery, which was intercepted by the police on 29/08/2003.

The interception of the truck by the police and institution of the F.I.R. by the Topchanchi Police Station, has been challenged by the petitioner in this application on several grounds inter alia that none of the sections of the penal code, under which the FIR was lodged, is attracted nor any case is made out against the petitioner. It is submitted that the FIR was lodged only with an intention to harass and humiliate the petitioner. The truck of the petitioner loaded with coal was having valid documents and the driver of the truck on demand by the informant produced the relevant papers. For verification of the papers, one S.I. was sent to Muraidih Colliery and on verification it was found that on the strength of valid Challan issued in favour of M/S Shilpee Coal Briquette, the coal was loaded on the said truck No. BR 17A-5321.

It is further submitted that there is no restriction at all in the movement of Coal. It is submitted that previously, in view of the provisions of Bihar Trade Articles (Licenses

Unification) Order, 1984, there was restriction so far the sale, purchase, storage of coal was concerned but the coal was deleted from the said Unification Order 1984 on 29/04/1992 and since then there is no regulatory provisions in respect of coal and, therefore, now after 29/04/1992, the coal can be transported anywhere in India without any permission of any authority. Further according to the petitioner on similar grounds the prosecution as well as the lodging of the FIR have been quashed by this Court in the cases of Abhash Kumar Seksaria and Ors. in Cr. W.J.C. No. 33/1991 (R), C.W.J.C. No. 441/1999 (M/s Arya Coke Private. Ltd.), CWJC No. 1413/1996 (R) (M/s Gaulam Coal Works Pvt. Ltd.) and Cr. M.P. No. 1163/2002 (M/s Shiv Shambhu Hard Coke). The orders passed in the aforesaid cases have been annexed with this writ petition.

On the aforesaid grounds, the petitioner has prayed for quashing of the FIR and the entire criminal prosecution against him.

7. On the other hand, by filing counter affidavit on behalf of Respondent Nos. 2 and 3, it has been submitted on behalf of the State that during the course of investigation, the Investigating Officer went to Bhojpur in order to find out whether the Industry of the petitioner was closed or not. The Investigating Officer vide memo dated 17/12/2003 submitted report from which it appeared that M/s Shilpee Coal Briquette was closed and, therefore, the informant suspected that the coal was being transported for the purpose of black marketing.

8. From the pleadings of the parties, the facts, which are not in dispute imulges as follows:

The petitioner is the proprietor of M/s Shilpee Coal Briquette a manufacturer of coal briquettes situated at Kasap in the district of Bhojpur, Bihar was allowed linkage by the Coal India Limited and on the basis of the linkage of coal, Delivery/Sale order was issued in favour of the unit of the petitioner and on the strength of that Sale/Delivery order, total 39.705 M.T. of coal was lifted and while the coal was being transported through a truck bearing No. BR 17A-5321 on 29/08/2003 and was being transported to Bhojpur the same was intercepted by the police on an information that in the name of a closed Industrial unit, the coal was lifted and was being transported in connivance with the colliery people in order to sale the coal in black market and accordingly, the impugned F.I.R. was registered for the offences under Sections 419, 420, 467, 468, 471 and 120B of the Indian Penal Code against the petitioner.

It is also not in dispute that earlier the supply of coal to the petitioner's unit was suspended on the recommendation of the District Industries Centre but the same was resumed subsequently after the order passed by this Court, which has been quoted in the preceding paragraphs of this order.

9. This Court in the case of Maa Chhinmastika Coke Industries Pvt. Ltd. and Ors. v. State of Bihar and Ors. reported in 2001 (I) L.L.J. 80 has held that after the deletion of

coal from the Bihar Trade Articles (Licenses Unification) Order, 1984, there is no regulatory provision in respect of coal. Neither the consumer nor the dealer can be subjected to any regulatory provision and the Industrial units are entitled, as a matter of right to purchase and acquire coal to the extent it is required for their consumption as per their own assessment. The coal having been deregulated the State authorities having divested of any authority to monitor the operation of the Industrial unit, have no jurisdiction to ask the Coal Company to suspend the supply of coal to one or the other party.

10. In the case of *Maya Fuel Pvt. Ltd. v. Bharat Coking Coal Ltd.* reported in 2002 III L.L.J. 394 this Court has held as follows:

(i) The "Linkage Quantity" and "Maximum Permissible Quota" (MPQ) are not different but same.

(ii) It can be revised on the request of a linked consumer for good ground and similarly the coal company can also revise the linkage quantity/MPQ, in cases such as less availability of coal than the demand, lifting of lesser quantity than the linkage quantity for years together by the linked consumer etc.

(iii) The assessment of linkage quantity/MPQ can be made by a subsidiary coal company with whom a consumer is linked.

(iv) The assessment based on the best booking of consumer during any of the three calendar year is reasonable and not arbitrary having nexus with the consumption of a consumer and availability of coal.

(v) In case of wrong assessment of linkage quantity/MPQ based on incorrect data etc., the linked consumer can request the coal company for re-assessment of linkage quota/MPQ.

11. In the present case, as noticed above, the FIR was lodged by the informant, i.e. police officer against the petitioner and others on the allegations that he suspected that the coal in question, which was lifted from Muraidih Colliery in the name of Shilpee Coal Briquette, Kasap, Bhojpur a closed Industrial unit, was being transported for the purpose of black marketing. As noticed earlier, all the relevant papers with regard to the coal in question were produced by the driver of the truck when the truck was intercepted and stopped by the informant and the informant also found all the papers, produced by the driver, to be genuine and valid and, therefore, apparently, no offence whatsoever what to speak of Sections 419, 420, 467, 468, 471 and 120B were made out.

12. In this view of the matter, without going in to the other points raised by the petitioner, I hold that when the police found all the relevant papers regarding allotment of coal to BCCL and transportation of the same on valid and genuine documents then nothing remained there for any further investigation in the matter by the police and no case was made out against the petitioner. Consequently, this

writ application is allowed and the impugned F.I.R. being Topchanchi P.S. Case No. 183/2003 registered under Sections 419, 420, 467, 468, 471 and 120B of the Indian Penal Code is hereby quashed.