

(2009) 11 JH CK 0070

Jharkhand High Court

Case No: Writ Petition (Cr.) No. 174 of 2009

Avinash Prasad

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision: Nov. 19, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 190(1), 2, 200, 204, 205
- Forest Act, 1927 - Section 33

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

Bench: Single Bench

Advocate: Indrajit Sinha, for the Appellant; R.N. Roy, G.P. III, for the Respondent

Judgement

R.R. Prasad, J.

On 10.8.2004 when the Forest Guard found that illegal Mining of Iron Ore has been done in the forest area, bearing plot No. 893 under Thana No. 747, leased out to M/s. TISCO situated at Noamundi by digging pits without taking permission of the Forest Department, a prosecution report was submitted alleging therein that said illegal mining has been done by M/s. TISCO, for which its Managing Director, Abinash Prasad is responsible. On enquiry, when the allegations were found to be true, the offence report was filed before the court of learned Chief Judicial Magistrate, Chaibasa, who took cognizance of the offence u/s 33 of the Indian Forest Act against the petitioner on 8.4.2005. Accordingly, summons issued by the court was received by him. Thereafter an application was filed u/s 205 of the Code of Criminal Procedure on 23.6.2005, upon which an order was passed on 12.9.2005 whereby personal appearance was dispensed with on the condition that the petitioner would appear physically at the stage of explanation of the accusation and at the stage of recording statement u/s 313 of the Code of Criminal Procedure. On the next date i.e. on 29.9.2005 fixed in the case an application was filed on behalf of the petitioner u/s 251 praying therein that substance of accusation be explained to accused through his Lawyer. The case was adjourned to some other date for

appearance of the petitioner. However, in the meantime, a writ application bearing W.P.(Cr.) No. 282 of 2005 was filed in this Court by the petitioner challenging the order taking cognizance on amongst other on the ground that the petitioner has never committed any offence u/s 33 of the Indian Forest Act, rather it was the other person who committed mischief by extracting iron ore from the leasehold area of the petitioner and for that, the petitioner had even lodged a case against the named accused. However, the said writ application was allowed to be withdrawn by this Court, vide its order dated 16.5.2006 giving liberty to the petitioner to raise all the points at the time of framing of charge. After very long gap, an application was filed for discharge before the court below taking the same ground that it was not the petitioner, who did commit offence as alleged, rather one Mangal Singh Soren has committed all the mischiefs against whom, the petitioner had lodged information. The said application was dismissed by the learned Chief Judicial Magistrate, Chaibasa, vide its order dated 4.3.2009 holding therein that whatever point has been taken for discharge, that can be looked into only during trial and that there has been no provision under the Code to discharge an accused in a summons case triable by the Magistrate and as such, petition filed for discharge was held to be not maintainable.

2. Being aggrieved with that order, the petitioner has filed the instant writ application.

3. Mr. Indrajit Sinha, learned Counsel appearing for the petitioner submits that learned Chief Judicial Magistrate, keeping in mind the provision as contained in Section 258 of the Code of Criminal Procedure, did hold that there has been no provision under the Code to discharge a person, who is an accused in a summons case instituted upon a complaint but the learned Magistrate misdirected himself in holding so as the complaint which has been referred to in Section 258 would always mean that complaint in which court has taken cognizance after examining complainant u/s 200 or after postponement of the issue of process summon is issued to a person u/s 204 of the Code of Criminal Procedure and as such, it was well within the domain of learned Magistrate to pass order relating to discharge or dropping of the proceeding.

4. Learned Counsel further submits that as per the case of the prosecution disclosed In the offence report and even in the prosecution report that illegal mining was done by the Company, namely, M/s. TISCO petitioner being Managing Director in that event, in absence of any allegation, cannot be held vicariously liable, specially when the statute, i.e, Indian Forest Act is silent over fixing the vicarious liability upon the Managing Director and as such, prosecution is bad, in view of the decision of the Hon'ble Supreme Court rendered in a case of [Maksud Saiyed Vs. State of Gujarat and Others](#), Thus, entire prosecution is fit to be quashed.

5. As against this, learned Counsel appearing for the State submits that on account of the fact that the petitioner had earlier withdrawn the writ application, the plea

which had been taken presently and was also available earlier, cannot be allowed to be agitated again and that the court below is absolutely justified in holding that there has been no provision for discharge of a person who is an accused in a summons case arising out of a complaint case and as such, the instant application is fit to be dismissed.

6. The submission advanced on behalf of the petitioner that the "complaint", reference of which is there in Section 258 of the Code of Criminal Procedure, relates to that complaint upon which Magistrate has taken cognizance after taking statement of the complainant or after the postponement of the issue of process u/s 204 of the Code of Criminal Procedure is devoid of any substance, in view of the definition of "complaint" given u/s 2(d) of the Code of Criminal Procedure which reads as under:

2(d) "Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

7. Thus, the definition of the complaint does suggest that the complaint can be made either orally or in writing. If the complaint is made in writing by a public servant acting or purporting to act in discharging of his official duties, the Magistrate in terms of Sub-section (a) of Section 200 need not to examine him on oath. If the complaint in writing does constitute offence, the Magistrate would be competent to take cognizance u/s 190(1)(a) of the Code of Criminal Procedure whereas if oral or written complaint is made by a person in his personal capacity and not in official capacity, the court may take cognizance after examining the complainant or may postpone the issue of the process but in both the cases, it would be a complaint and as such, the word "complaint" used in Section 258 of the Code of Criminal Procedure cannot have two different connotations for the purpose of Section 258 of the Code of Criminal Procedure and in that view of the matter, the trial court appears to be quite justified in holding that Code of Criminal Procedure never contemplates dropping of the proceeding or discharge of a person accused in a summons case arising out of a complaint case. In this context, case of [Adalat Prasad Vs. Rooplal Jindal and Others](#), and also a case of *Subramaniam Sethuraman v. State of Maharashtra and Anr.* 2005 SCC (Cri) 242 be referred to wherein it has been held by the Hon"ble Court that in a summons case it is not open to the accused person to seek on discharge.

8. Coming to other point, it does appear that the petitioner had earlier challenged the order taking cognizance on several grounds which application was dismissed on its withdrawal on behalf of the petitioner and under this situation, the point raised on behalf of the petitioner that in absence of any allegation on the part of the petitioner of committing offence, the petitioner cannot be held liable vicariously for the offence committed by the Company does not deserve to be adjudicated in this application, rather it would be open for the petitioner to raise all these points in

course of trial.

9. Accordingly, I do not find any merit in this application. Hence, it is dismissed.