

**(2012) 01 JH CK 0042**

**Jharkhand High Court**

**Case No:** Writ Petition (Cr) No. 352 of 2010

Dasbarathi Paul and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

**Date of Decision:** Jan. 13, 2012

**Acts Referred:**

- Explosive Substances Act, 1908 - Section 3, 4, 5
- Mines Act, 1952 - Section 22, 22A, 57, 72A, 72C
- Penal Code, 1860 (IPC) - Section 286, 304, 337, 338, 427

**Citation:** (2012) 3 JCR 378

**Hon'ble Judges:** Prakash Tatia, C.J

**Bench:** Single Bench

**Advocate:** Jai Prakash, Y. Modi and C.C. Sinha, for the Appellant; R.N. Roy, GP-III and M.J. Rahman, JC to GP-III, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

@JUDGMENTTAG-ORDER

Prakash Tatia, C.J.

Heard counsel for the parties. The petitioners are seeking quashing of F.I.R of Pakur (Malpahari) P.S. Case No. 217/2009, wherein a case has been registered under Sections 286, 337, 338, 304 and 427, I.P.C with offence punishable under Sections 3, 4 and 5 of the Explosive Substance Act.

2. Learned Counsel for the petitioners drew my attention to Regulation 164 of the Metalliferous Mines Regulations, 1961 and submitted that protections by the blaster, who is using explosive, have been given in Regulation 164 and in case those protections are not taken resulting into even death of a person, by virtue of provision u/s 72C(1)(a) of the Mines Act, 1952, offender can be prosecuted and punished and maximum punishment provided is imprisonment which may extend

to two years or fine which may extend to five thousand rupees or with both. It is submitted that Section 72A of the Act, 1952 also provides for punishment for a term which may extend to six months in a case where provision made in Clauses (d), (l), (m), (n), (o), (p), (r), (s) and (u) of Section 57 are contravened. Section 73 is the general provision for cases of disobedience of orders which also provides for not only penalty but also, in case of penalty, provides for imprisonment for a term which may extend to three months or with fine, as the case may be, with or without imprisonment. It is also submitted that Hon'ble Supreme Court in the case of [Raj Kapoor Vs. Laxman,](#) has laid down that when there is a special law, then application of general law stands excluded.

3. I considered the submission of the Learned Counsel for the petitioners and perused the facts and relevant provisions referred above. So far as Regulation 164 of the Regulations 1961 is concerned, these are statutory protection which are required to be taken by the person who is engaged in mining activities involving use of explosive and blast. Section 72C is a special provision of law covering special provision for contravention of law with dangerous results and it says that whoever contravenes any provision of the Act of 1952 or any regulation, rule or bye-law or of any order made thereunder (other than an order made under sub-section (1-A) or sub-section (2) or sub-section (3) of Section 22) [or under sub-section (2) of Section 22A] shall be punishable under the provisions of the clauses made thereunder. Therefore, Section 72C is a special provision for punishing a person contravening (1) any provision of Act, (2) of any regulation, (3) rule or bye-law and (4) of any order made thereunder. It nowhere deals with the offence covered under Indian Penal Code, nor it provides for any punishment for any offence which are punishable under Indian Penal Code. Section 72-C(1)(a) of the Act, 1952 reads as under :--

72-C(1)(a).--If such contravention results in loss of life with imprisonment which may extend to two years, or with fine which may extend to five thousand rupees or with both, or

This provision is also not a provision of passing punishment u/s 304, I.P.C specifically or any other offence under Sections 286, 337, 338 and 427, I.P.C.

4. For the purpose of quantification of the punishment, gravity has been made the criterion and it has been provided that in case one contravenes provision of any Act, regulation, rule, bye-laws or any order resulting into loss of life, for such contravention of provision of Act, regulation, rule, bye-laws or any order shall be punishable with imprisonment which may extend to two years or with fine which may extend to five thousand rupees or with both. It is not a provision which can be said to be a special provision covering the field of the offence and punishment provided under Indian Penal Code.

5. Learned Counsel for the petitioner also tried to challenge the F.I.R on the ground that registration of the F.I.R under the Explosive Substance Act is illegal as in mining

operation, one is required to possess and keep explosives. At this stage, this argument cannot be entertained when there is only F.I.R and investigation is yet to complete to find out whether on what basis an offence has been committed. In view of the above reasons, I find no merit in this petition, which is accordingly dismissed.