
(2008) 09 JH CK 0050

Jharkhand High Court

Case No: None

Arun Kumar Verma and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: Sept. 2, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 254, 482
- Forest (Conservation) Act, 1980 - Section 2
- Forest Act, 1927 - Section 2, 30, 33

Citation: (2008) 4 JCR 500

Hon'ble Judges: Dilip kumar sinha, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

D.K. Sinha, J.

The petitioners have invoked the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quashment of their criminal proceedings in Forest Case No. 232 of 1998 for the alleged offence u/s 33 of the Indian Forest (Bihar Amendment) Act, 1989 and u/s 2 of the Forest Conservation Act, pending in the Court of Judicial Magistrate, 1st Class Giridih in T.R. No. 1385 of 2004.

2. The petitioners had earlier moved before this Court in Cr. Misc. No. 8131 of 1999 R which was disposed of on 11.1.2000 with the liberty to the petitioners to raise all the points before the Court below at the time of explaining the substance of accusation and it was directed to the Court below to pass appropriate order in accordance with law on proper verification of the allegation levelled against them."

3. The learned Counsel Mr. Deepak Kumar submitted that the petitioner No. 4 M/s. Kariya Tari Mica Mining Company Ltd. was a lessee since time immemorial and other petitioners were workers in the said company incorporated under the Company's

Act doing mining work within the leasehold area of the company which did not fall within the forest area nor, there was any notification of the Forest Department u/s 30 of the Indian Forest Act, 1927 for the relevant year 1998 of the alleged offence but they were criminally prosecuted on the behest of the Forest Department maliciously.

4. The prosecution case as contained in forest offence submitted by the complainant was that when the prosecution party visited the Pachrukhi protected forest area in course of petrolling on 14.5.1998, mining operation was found to be undertaken by the petitioners and others under the petitioner No. 5 Kariya Tari Mica Mining Company within Thana No. 96, police station Gawan in plot No. 3 which was notified u/s 30 of Indian Forest Act vide CPF 10152/52-R 5802 dated 27.12.1952 and it was alleged that the mining operation was undertaken after cleaning the land within forest area which also constituted an offence. It was assessed that about 40 decimals of lands were encroached upon by the petitioners in the illegal mining.

5. Mr. Deepak Kumar, the learned Counsel, exhorted that M/s. Kariya Tari Mica Mining Company Ltd. i.e., petitioner No. 5 herein duly represented by its Director was granted a valid lease which was renewed from 1.1.1983 to 31.12.2002 for a period of 20 years in respect of 36.63 acres of land situated at plot No. 3 in Mouza Pachrukhi which comprises, according to the offence report, the alleged place of occurrence. The lease was granted by the competent authority of the State of Bihar within the knowledge of the Divisional Forest Officer, Giridih who had recommended for cancellation of the lease of the land in question which was granted in favour of M/s. Kariya Tari Mica Mining Company Ltd. vide memo No. 575 dated 26.2.1998 (Annexure 3).

6. Mr. Kumar pointed out that for constituting an offence u/s 33 of the Indian Forest Act it was incumbent upon the prosecution to prove that the petitioner had violated by committing offence u/s 33 of the Indian Forest (Bihar Amendment) Act with respect to any land which was notified as protected forest area u/s 30 of the Indian Forest Act. Even if the prosecution case is admitted to be true, the limitation of notification for a period of 30 years expired much before the alleged date of occurrence. In the instant case the prosecution presented its case that the petitioners had violated the provision of Section 33 of the Indian Forest (Bihar Amendment) Act, 1989 by undertaking mining work over the notified protected area under the notification issued on 27.12.1952 with prospective effect which was valid for 30 years only till 26.12.1982. Admittedly, offence as alleged took place on 14.5.1998 beyond the period of the notification of the forest which expired on 26.12.1982 by implication of law over the land in question which was the lease hold area of the petitioners.

7. However, upon objection there being raised by the Prosecution-Forest Department and the criminal prosecution initiated against the petitioners. M/s. Kariya Tari Mica Mining Company (Petitioner No. 5) stopped its mining operation

and filed application for surrender of the lease in view of the controversy arose, between two departments of the Government viz., Forest Department and Mines Department and for that the petitioner-company was being harassed adversely affecting its financial position and finally the lease area was surrendered by the said company in the year 1998 itself. Mr. Kumar attracted the attention by submitting that the Forest Department instituted another Forest Case No. 578 of 1998 in respect of the same land for the offence u/s 33 of the Indian Forest Act as well as Section 2 of the Forest Conservation Act to which the petitioner-company preferred Cr. Rev. No. 47 of 2002 and this Court having been satisfied prima facie stayed the criminal proceeding by admitting the revision.

8. Finally Mr. Kumar submitted that even if the trial is proceeded against the petitioners the entire exercise would be futile for want of the legal evidence against the petitioners for their criminal prosecution under the Indian Forest Act and the Conservation of the Forest Act as the petitioners finding no other equally efficacious and alternative remedy, preferred this Criminal Miscellaneous petition by invoking the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quashment of their criminal prosecution.

9. I find from the facts and circumstances of the case and materials on record that when the similar issue was raised before this Court in Cr. Misc. No. 8131 of 1999 @, the Bench of this Court observed on 11.1.2000 in the following manner:

All these matters have to be dealt with by the trial Court where the case is pending. As such, this application is disposed of with a direction that if the points referred to above, besides any other point, are raised before the learned trial Court at the time of explaining the substance of accusation, the learned trial Court should consider the same and, after proper verification pass necessary orders in accordance with law.

10. I further find that before this liberty was given to the petitioners, substance of accusation was already explained to them and hence they could not get the opportunity to agitate the matter before the trial Court, on the other hand, preferred to file the present petition u/s 482 of the Code of Criminal Procedure. In a summons" trial case the accused persons have ample opportunity to prove the relevant facts in their defence and in that manner they may avail the opportunity by exercising their options u/s 254(1)(2) of the Code of Criminal Procedure by adducing evidence and producing documents.

11. In the circumstances, this Criminal Miscellaneous petition is disposed of with the liberty to the petitioners to avail their option u/s 254(1)(2) of the Code of Criminal Procedure with the direction to the Court concerned to dispose of the case as expeditiously as possible, in accordance with law, on its own merit without prejudice.