
(2019) FFLT 76

Jharkhand High Court

Case No: Criminal Miscellaneous Petition No. 283 Of 2018

Murari Singh And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: March 1, 2019

Acts Referred:

Indian Penal Code, 1860 â€” Section 175, 379, 414, 420#Mines And Minerals (Development And Regulation) Act, 1957 â€” Section 4, 21, 21A, 21(6), 22#Code Of Criminal Procedure, 1973 â€” Section 2(d), 482#Jharkhand Minor Mineral Concession Rules, 2004 â€” Rule 4, 54

Citation: (2019) FFLT 76

Hon'ble Judges: R. Mukhopadhyay, J

Bench: Single Bench

Advocate: Kalyan Roy, Shekhar Sinha

Final Decision: Disposed Off

Judgement

1. Heard Mr. Kalyan Roy, learned counsel for the petitioners and Mr. Shekhar Sinha, learned A.P.P. for the State.

2. In this application, the petitioners have prayed for quashing of the entire criminal proceedings in connection with Dhanwar P.S. Case No. 374/2017,

corresponding to G.R. No. 3513/2017, registered for the offences punishable under Sections 175 /379 /414 /420 of the Indian Penal Code, Sections

21A 21(6) and 22 of the M.M.D.R., Act, Rule 54 & 4 of the J.M.M.C., Rules.

3. The prosecution case arising out of the First Information Report is that on 08.12.2017 a raiding team was constituted with respect to illegal

extraction and transportation of sand and during the course of raid two trucks were apprehended bearing registration nos. BR 01 GC 4796 and JH 02

M 1153, loaded with 1000 CFT of sand each. It has been alleged that on demand no paper could be produced and which ultimately led to institution of

Dhanwar P.S. Case No. 374/2017.

4. It has been submitted by Mr. Kalyan Roy, learned counsel for the petitioners that the petitioners are the owner of the trucks which were under the

supervision and custody of the drivers and merely on account of being the owner the petitioners have been implicated in the criminal case. It has

further been submitted that so far as Section 22 of the MMDR, Act is concerned only a complaint can be instituted in terms of Section 2(d) of the

code of criminal procedure and there being no provision for institution of a First Information Report the criminal proceedings as against the petitioners

deserves to be quashed and set aside. It has further been submitted that the sand mines at Bagodih Kheron under plot no 2630 measuring an area of

5.26 hectares of land has been settled in favour of one Pradeep Kumar Saw in the year 2016 and pursuant to the said settlement a deed was executed

between the said Pradeep Kumar Saw and the State Government. Learned counsel further submits that the sands was purchased from Pradeep

Kumar Saw who had a valid lease for mining sand and the sand was transported under valid documents from the leasehold area of Pradeep Kumar

Saw. Learned counsel therefore submits that the entire transaction was genuine and valid and as such the petitioners being the owner of the trucks

cannot be hauled up in a criminal proceedings.

5. Learned A.P.P. for the State has opposed the prayer made by the petitioners.

6. It is to be noted herein that the petitioners have approached this Court at the very initial stage of the institution of the case and since the

investigation is underway the documents or the plea of the petitioners which has been raised before this Court cannot be looked into at this stage as

the same is a subject matter of investigation.

7. Moreover the defence documents cannot be considered in an application under Section 482 of the Cr.P.C., more so when investigation has not yet

concluded.

8. So far as the plea of the petitioners with respect to no case being made out under the MMDR, Act, in view of the fact that under Section 22 of the

MMDR, Act a complaint is maintainable such contention is no longer res integra in view of the judgment of the Hon'ble Supreme Court in the case of

State (NCT of Delhi) versus Sanjay reported in (2014) 9 SCC 772. The relevant part of the order is quoted herein under:

61. Reading the provisions of the Act minutely and carefully, prima facie we are of the view that there is no complete and absolute bar in

prosecuting persons under the Penal Code where the offences committed by persons are penal and cognizable offence.

62. Sub-section (1-A) of Section 4 of the MMDR Act puts a restriction in transporting and storing any mineral otherwise than in accordance with the

provisions of the Act and the Rules made thereunder. In other words no person will do mining activity without a valid lease or licence. Section 21 is a

penal provision according to which if a person contravenes the provisions of sub-section (1-A) of Section 4, he shall be prosecuted and punished in the

manner and procedure provided in the Act. Sub-section (6) has been inserted in Section 4 by amendment making the offence cognizable

notwithstanding anything contained in the Code of Criminal Procedure, 1973. Section 22 of the Act puts a restriction on the court to take cognizance

of any offence punishable under the Act or any Rule made thereunder except upon a complaint made by a person authorised in this behalf. It is very

important to note that Section 21 does not begin with a non obstante clause. Instead of the words "notwithstanding anything contained in any law

for the time being in force no court shall take cognizance", the section begins with the words "no court shall take cognizance of any

offence."

63. It is well known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over

some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions.

70. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a

mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorised

under the Act shall exercise all the powers including making a complaint before the Jurisdictional Magistrate. It is also not in dispute that the

Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorised officer. In case of breach and violation

of Section 4 and other provisions of the Act, the police officer cannot insist the Magistrate for taking cognizance under the Act on the basis of the

record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against

prosecution of a person except on a complaint made by the officer is attracted only when such person is sought to be prosecuted for contravention of

Section 4 of the Act and not for any act or omission which constitutes an offence under the Penal Code.

72. From a close reading of the provisions of the MMDR Act and the offence defined under Section 378 IPC, it is manifest that the ingredients

constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the

Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravel and other minerals from the river, which

is the property of the State, out of the State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of

proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action

against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure

and submit a report before the Magistrate for taking cognizance against such persons. In other words, in a case where there is a theft of sand and

gravel from the government land, the police can register a case, investigate the same and submit a final report under Section 173 CrPC before a

Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(d) of the Code of Criminal Procedure.

73. After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the Act vis-à-vis the Code of Criminal Procedure

and the Penal Code, we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of

dishonestly removing sand and gravel from the riverbeds without consent, which is the property of the State, is a distinct offence under IPC. Hence,

for the commission of offence under Section 378 IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the

said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of

various provisions of the MMDR Act. Consequently, the contrary view taken by the different High Courts cannot be sustained in law and, therefore,

overruled. Consequently, these criminal appeals are disposed of with a direction to the Magistrates concerned to proceed accordingly. ¶

9. In the present case also apart from the petitioners being prosecuted for the offence under Section 21 of the MMDR, Act they are also being

prosecuted for theft and cheating which was precisely the consideration before the Hon'ble Supreme Court in the judgment under reference. It has

been held therein that the prohibition contained in Section 22 of the MMDR, Act only on a complaint is attracted only when such person is sought to

be prosecuted for contravention of Section 4 of the MMDR, Act and not for any act or omission which constitutes an offence under the Indian Penal

Code. Even being repetitive it must be taken note of that the petitioners are being prosecuted both under the provisions of the MMDR, Act as well as

under the Indian Penal Code and on such context therefore a First Information Report for prosecuting the petitioners are maintainable and therefore

the plea of the learned counsel for the petitioners that only a complaint can be filed so far as the offence under Section 21 of the MMDR, Act is

concerned is negated.

10. Consequent to what has been discussed above, I do not find any merit in this application which accordingly stands disposed of with a liberty to the

petitioners to raise all their points at the appropriate stage.