

Kashimsab Vs. The State of Karnataka

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Court : Karnataka Kalaburagi

Decided On : Sep-13-2019

Judge : K.S.Mudagal

Appeal No. : CRL.P 200857/2019

Appellant : Kashimsab

Respondent : The State of Karnataka

Advocate for Pet/Ap. : Sri. Mahantesh Patil

Judgement :

1 Crl.P.No.200857/2019 C/w Crl.P.No.200856/2019, Crl.P.No.200858/2019 IN THE HIGH COURT OF KARNATAKA R KALABURAGI BENCH DATED THIS THE13H DAY OF SEPTEMBER, 2019 BEFORE THE HONBLE MRS. JUSTICE K.S.MUDAGAL CRIMINAL PETITION NO.200857/2019 C/w CRIMINAL PETITION NO.200856/2019, CRIMINAL PETITION NO.200858/2019 IN CRIMINAL PETITION NO.200857/2019

BETWEEN :

KASHIMSAB S/O MAHIBOBSAB GIRAGANVI, AGE:

49. YEARS, OCC: BUSINESS (OWNER OF M/S SHAM STONE CRUSHER), R/O: KOLHAR VILLAGE, TQ: B. BAGEWADI, DIST: VIJAYAPUR-586210. (BY SRI, MAHANTESH PATIL, ADVOCATE) ... PETITIONER

AND:

THE STATE OF KARNATAKA, REPRESENTED BY SPP HIGH COURT OF KARNATAKA KALABURAGI BENCH-585102 (THROUGH KOLHAR P.S.) (BY SRI, MALLIKARJUN SAHUKAR, HCGP) ...RESPONDENT2Crl.P.No.200857/2019 C/w Crl.P.No.200856/2019, Crl.P.No.200858/2019 THIS CRIMINAL PETITION IS FILED UNDER SECTION482CR.P.C. PRAYING TO QUASH THE CHARGE SHEET IN C.C.NO.956/2019 (CRIME NO.68/2018) IN KOLHAR POLICE STATION, DIST. VIJAYAPUR FOR OFFENCE PUNISHABLE U/S379OF IPC, PENDING ON FILE OF ADDL. CIVIL JUDGE & JMFC BASAVAN BAGEWADI, IN RESPECT OF PETITIONER, IN INTEREST OF JUSTICE AND EQUITY. IN CRIMINAL PETITION NO.200856/2019

BETWEEN :

MALLIKARJUN S/O SHANMUKAPPA HADLI, AGE:

46. YEARS, OCC: BUSINESS, R/O: VINAYAK NAGAR, BAGALAKOT TALUKA, DIST: BAGALAKOT-587330. ... PETITIONER (BY SRI, MAHANTESH PATIL, ADVOCATE)

AND:

THE STATE OF KARNATAKA, REPRESENTED BY SPP HIGH COURT OF KARNATAKA KALABURAGI BENCH-585102 (THROUGH KOLHAR P.S.) ...RESPONDENT (BY SRI MALLIKARJUN SAHUKAR, HCGP) 3 Crl.P.No.200857/2019 C/w Crl.P.No.200856/2019, Crl.P.No.200858/2019 THIS CRIMINAL PETITION IS FILED UNDER SECTION482CR.P.C. PRAYING TO QUASH THE CHARGE SHEET IN C.C.NO.956/2019 (CRIME NO.68/2018) KOLHAR POLICE STATION, VIJAYAPUR DISTRICT FOR OFFENCE PUNISHABLE U/S379OF IPC, PENDING ON FILE OF ADDL. CIVIL JUDGE AND JMFC BASAVAN BAGEWADI, IN RESPECT OF PETITIONER, IN INTEREST OF JUSTICE AND EQUITY. IN CRIMINAL PETITION NO.200858/2019

BETWEEN :

SHIVANAND S/O SHIVARUDRAPPA KALAYANI, AGE:

46. YEARS, OCC: BUSINESS, R/O: VIDHYA GIRI, BAGALAKOT TALUKA, DIST: BAGALAKOT-587330. (BY SRI MAHANTESH PATIL, ADVOCATE) ... PETITIONER

AND:

THE STATE OF KARNATAKA, REPRESENTED BY SPP HIGH COURT OF KARNATAKA KALABURAGI BENCH-585102 (THROUGH KOLHAR P.S.) (BY SRI MALLIKARJUN SAHUKAR, HCGP) ...RESPONDENT4Crl.P.No.200857/2019 C/w CrI.P.No.200856/2019, CrI.P.No.200858/2019 THIS CRIMINAL PETITION IS FILED UNDER SECTION482CR.P.C. PRAYING TO QUASH THE CHARGE SHEET IN C.C.NO.956/2019 (CRIME NO.68/2018) KOLHAR POLICE STATION, VIJAYAPUR DISTRICT FOR OFFENCE PUNISHABLE U/S379OF IPC, PENDING ON FILE OF ADDL. CIVIL JUDGE AND JMFC BASAVAN BAGEWADI, IN RESPECT OF PETITIONER, IN INTEREST OF JUSTICE AND EQUITY. THESE PETITIONS ARE COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING: ORDER

... Petitioner

s in these cases are accused Nos.2, 4 and 5 in Crime No.68/2018 of Kolhar Police Station. The said case was registered against petitioners and three others for the offences punishable under Sections 379 IPC and 3(1) and 42 Karnataka Minor Mineral Concession Act, 1994 and 4(1), 4(1)(a) MMDR Act, on the basis of complaint of one Sri Kosayya, Deputy Tahasildar, Kolhar. 5 CrI.P.No.200857/2019 C/w CrI.P.No.200856/2019, CrI.P.No.200858/2019 02. While filing the charge sheet, offences under Sections 3(1) and 42 Karnataka Minor Mineral Concession Act, 1994 and 4(1), 4(1)(a) MMDR Act were dropped and charge sheet was filed only for the offence punishable under Section 379 IPC. 03. Case of the prosecution in brief is as follows:-

"On the basis of credible information of illegal transportation of crushed stones, on 09.04.2018 at 02.00 a.m. the complainant along with police and other concerned department officers and officials, conducted search of Tippers No.KA-33-A-1376 and KA-29-A-0864 at Kolhar UKP cross on N.H.218. In Tipper No.KA-33- 1376 accused were transporting three brass crush stones worth Rs.3,00,000/- and in

Tipper No.KA-29- 0864 2 brass manufactured sand worth Rs.3,000/- and they were seized under the Mahazar. On interrogation, the driver of the Tippers revealed that, 6 CrI.P.No.200857/2019 C/w CrI.P.No.200856/2019, CrI.P.No.200858/2019 they have loaded minor minerals from M/s. Shama Stone Crusher situated at Kolhar and they were transporting the same for sale.

04. Accused Nos.2 and 4 are the owners of those Tipper Lorries. Accused No.5 is the owner of M/s. Shama Stone Crusher. Accused Nos.1 and 3 are the drivers of the said Lorries and accused No.6 is the Contractor who purchased the sand.

05. Sri Mahantesh Patil, learned counsel for the petitioners submits that accused No.5 was owner of land Sy.No.2of Kolhar Town and license holder for carrying Stone Crusher. He further submits that owner committing theft of his own property does not arise. He contends that, if sale of minor mineral and sand and the transportation was in violation of MMRD Act, that may constitute different offences and not an offence of theft under Section 378 IPC. In support of his contentions he relied upon the following judgments. 7 CrI.P.No.200857/2019 C/w CrI.P.No.200856/2019, CrI.P.No.200858/2019 i) State (NCT of Delhi) /vs/ Sanjay, (2014) 9 SCC772and ii) Bandrappa /vs/ State by Gadigenur Police, Bellary District, 2007

(3) KAR.L.J.183.

06. Per contra Sri Mallikarjun Sahukar, learned High Court Government Pleader submits that license was issued only to exploit mineral and to trade in that in accordance with the terms of license. He submits that if mineral exploitation for sale and transport was in accordance with conditions of license, that may not constitute the offence of theft, if such activities were taken up in violation of license conditions, such acts amount to theft. He further submits that irrespective of the license, mineral remains property of the Government. 8 CrI.P.No.200857/2019 C/w CrI.P.No.200856/2019, CrI.P.No.200858/2019

07. Landed properties in Karnataka are governed by Karnataka Land Revenue Act. Section 70 of the Karnataka Land Revenue Act reads as follows:-

"Section

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"Right to mines and mineral products to vest in Government, - [Notwithstanding anything contained in]. any law in force before the commencement of this Act or under the terms of any grant made or of any other instrument of transfer executed, by or on behalf of the Government for the time being, the right to mines, minerals and mineral products, shall vest absolutely in the State Government and the State Government shall, subject to the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act No.67 of 1957), have all the powers necessary for the proper enjoyment or disposal of such rights. 9 Crl.P.No.200857/2019 C/w Crl.P.No.200856/2019, Crl.P.No.200858/2019 08. The above provision goes to show that notwithstanding any law or instrument of transfer executed, by or on behalf of the Government for time being, the right to mines, minerals and mineral products, vest absolutely in the State Government. That means Government is owner of the minerals, even if that is in a property owned by a private person. 09. Even license at Annexure-C was subjected the conditions mentioned therein which reads as follows: The license shall further adhere to the following conditions pertaining to Mineral Dispatch Permit:-

"i) Every stone crushing / sand manufacturing units as the case may be, intending to utilize minor minerals as raw materials shall be registered with Integrated Lease Management System of Department of Mines and Geology. 10 Crl.P.No.200857/2019 C/w Crl.P.No.200856/2019, Crl.P.No.200858/2019 ii) No crusher licensee shall receive, cause to receive, store or cause to store any mineral or processed mineral in his premises without valid mineral dispatch permits issued in accordance with mineral concession rules. iii) The licensee shall acknowledge the mineral received with permits in electronic form in Integrated Lease Management System of mines and Geology Department. iv) Licensee shall apply for Mineral Dispatch Release Order (MDRO) to the Mines and Geology Department at the time of transportation of the beneficiated mineral or any mineral processed in the crusher. v) Any officers empowered by the District Stone Crushers Licensing and Regulation Authority have power to inspect the crusher

unit and the licensee should produce all necessary documents before him. 11 CrI.P.No.200857/2019 C/w CrI.P.No.200856/2019, CrI.P.No.200858/2019 vi) License holder shall abide any modifications in rules and regulations made from time to time and any directions given by the authority/Court.

10. The above conditions make it clear that licensee was required to possess and produce dispatch permits, electronic forms and dispatch release orders to the inspecting party during inspection.

11. The above conditions coupled with Section 70 of KLR Act go to show that licensee is not the absolute owner of the mineral. He gets absolute rights of the ownership, only if he complies with those conditions. Till then state is the de-jure owner and possessor of the property.

12. Section 378 IPC reads as under:-

"Section 378. Theft Whether, intending to take dishonestly any moveable property out of the possession of any person without that persons consent, moves that 12 CrI.P.No.200857/2019 C/w CrI.P.No.200856/2019, CrI.P.No.200858/2019 property in order to such taking, is said to commit theft.

13. The removal of the property either by owner of crusher or by any other person without compliance of conditions of the licensee either for sale or for any other reason, amounts to such removal without knowledge and consent of the true owner.

14. The allegations are that accused No.3 was transporting the aforesaid minor minerals depriving the Government of its royalty, with dishonest intention. Under the circumstances, it cannot be said that the allegations did not constitute the offence under Section 378 IPC.

15. In State (NCT of Delhi)s case, Section 70 of the Karnataka Land Revenue Act had not fallen for consideration. That case relates to removal of the minor minerals from river basin or Government Property. In 13 CrI.P.No.200857/2019 C/w CrI.P.No.200856/2019, CrI.P.No.200858/2019 that context it was held that act alleged may constitute offence under Section 378 IPC.

16. In Bandrappas case, question whether license holder transporting or selling property without paying royalty or without adhering to the condition of the license, had not fallen for consideration. Thus both those judgments are not applicable. Under the circumstances, it cannot be said that allegations made against petitioners did not constitute the offence under Section 378 IPC.

17. At this stage learned counsel for the petitioners submits that, petitioners had paid required royalty and possessed required permits. If that be so there was no impediment for the petitioners to produce the documents before the Investigating Officer before filing the charge sheet. Even otherwise if they possess required documents, to meet the case of prosecution, it 14 CrI.P.No.200857/2019 C/w CrI.P.No.200856/2019, CrI.P.No.200858/2019 is open for them to produce before the Magistrate and seek their discharge.

18. With these observations, petitions are dismissed. In view of the disposal of the main petitions, the pending IAs stood disposed of. KJJ Sd/- JUDGE

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