

Surendra Kumar Agarwal Vs. State of Orissa and ors.

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Court : Orissa

Decided On : May-14-2009

Reported in : 2009(II)OLR407

Judge : S.C. Parija, J.

Appellant : Surendra Kumar Agarwal

Respondent : State of Orissa and ors.

Disposition : Petition allowed

Judgement :

S.C. Parija, J.

1. The accused-petitioner has filed this writ petition praying for quashing of the FIR registered as Barkot PS. Case No. 66 of 2008 under Section 379 IPC and Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 and the corresponding criminal proceeding in G.R. Case No. 326 of 2008, pending in the court of learned S.D.J.M., Deogarh.

2. The case of the accused-petitioner is that for operating the Intermediate Storage Depot for storage and transportation of Iron Ores, the petitioner applied for a licence under the provisions of Orissa Minerals (Prevention of Theft, Smuggling and other Unlawful Activities) Rules 1990 (since repealed). Accordingly the

petitioner was granted a licence in Form 'D' in the name of M/s. Sankar Transport, under the provisions of Rule 4 of the aforesaid 1990 Rules, for storage and transshipment of Iron Ores at Rajna in Barkot, in the district of Deogarh.

3. While the petitioner was operating the Intermediate Storage Depot at Rajna in Barkot, a search was made in the depot premises of the petitioner by the Deputy Director of Mines, Sambalpur, opposite party No. 2, and during such search, the said opposite party No. 2 seized three truck loads of Iron Ore lumps weighing about 30 tonnes, on the allegation that the licence Issued for storage of minerals does not cover Iron Ore lumps. Pursuant to such seizure, opposite party No. 2 filed a written report dated 21.03.2008 before the IIC, Barkot Police Station, Deogarh, which was to the following effect:

Sir,

This is to inform you that Sri Surendra Kumar Agrawal, Proprietor of Shankar Transport, Ranja is having a licence for storing and transporting Iron Ore. During verification on 17.03.08, I found storage of iron ore lumps on about 30 M.T. (approx) for which he was not entitled to. The proprietor could no satisfactory explain existence of such ore. The party is responsible for such unauthorized storing.

I would, therefore, request you to take necessary action against the offender.

4. The said written report of the opposite party No. 2 dated 21.03.2008 was registered as a FIR vide Barkot P.S. Case No. 66/2008, under Section 379 IPC and Section 21 of the Mines and Minerals (Development and Regulation) Act 1957 (for short MMDR Act).

5. The case of the accused-petitioner is that 'Iron Ore' includes both Iron Ore lumps and Iron Ore fines, as Iron Ore is classified as lumps sized ore and fines, depending upon the size and specification. Iron Ore lumps are generally of the size varying from 10 mm to 30 mm. Sized crushed ores are of the size varying from 5 mm to 18 mm. similarly, Iron Ore less than 5 mm size are classified as Iron Ore fines. Hence there is no difference between Iron Ore, Iron Ore lump and Iron Ore fines.

Ore fines, as would be evident from Serial No. 23 of Second Schedule to the MMDR Act. Accordingly it is pleaded that no separate licence was required for storage of iron Ore lumps and therefore the seizure of 30 tonnes of Iron Ore lumps by the opposite party No. 2 on the allegation that the licence issued for storage of minerals does not cover Iron Ore lumps and the subsequent filing of written report is erroneous and misconceived.

6. Learned Counsel for the petitioner refers to Section 21(4A) of the MMDR Act read with Rule 12 (2) of the Orissa Minerals (Prevention of Theft, smuggling and illegal Mining and Regulation of Possession, Storage and Transportation) Rules 2007 (for short '2007 Rules'), which provides for confiscation of the seized property only by an order of the Court competent to take cognizance of such offence. In this regard, it is submitted that as Section 22 of the MMDR Act read with Section 15 of the 2007 Rules specifically provides that no Court shall take cognizance of any offence punishable under the MMDR Act except upon a complaint in writing made by the competent authority or person authorised in that behalf by the State Government, the initiation of the criminal proceeding under the impugned FIR is erroneous, misconceived and without jurisdiction. It is also submitted that though Section 23 of the MMDR Act read with Rule 16 of the 2007 Rules provides for compounding of offences punishable under the said Act, no opportunity has been given to the present petitioner to even compound the alleged offence.

7. Section 21 of the MMDR Act provides for penalties for contravention of the provisions of Section 4 (1) or (1 A) of the said Act. Sub-section 4A of Section 21 of the MMDR Act provides for confiscation of mineral, tool, equipment, vehicle or any other things seized, which shall be liable to be confiscated by an order of the Court competent to take cognizance of offence.

8. Section 22 of the MMDR Act reads as under;

22. Cognizance of offence - No court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government.

9. Section 23A of the MMDR Act provides that any offence punishable under the said Act or any rule made thereunder, either before or after institution of the prosecution, be compounded by person authorised under Section 22 to make a complaint to the Court with respect to that offence, on payment of such amount as may be specified by that persons.

10. The 2007 Rule has been enacted by the State Government in exercise of power under Section 23C of the MMDR Act for prevention of theft, smuggling and illegal mining and to regulate the possession, storage, trading and transportation of minerals in the State of Orissa. Rule 12 of the 2007 Rules provides for seizure and confiscation of minerals raised or transported, stored, sold, supplied, distributed, delivered for sale or processed, without any lawful authority. Sub-rule 2 of Rule 12 provides that except where the offender agrees in writing to get the offence compounded, the authority shall produce the same before the competent authority having jurisdiction or make a report of such seizure to the Court competent to take cognizance and the Court shall try the offence on account of which seizure has been made.

11. Rule 15 of the 2007 Rules provides as under:

No court shall take cognizance of any offence punishable under the Act except upon any complaint in writing is made by the Competent Authority or person authorized in this behalf by the Government.

12. Rule 16 of 2007 Rules provides for compounding offence by the competent authority in exercise of power under Section 23A of the MMDR Act, either before or after the institution of prosecution, on payment of such sum as may be specified, with the approval of the Director of Mines/any officer authorised by the Director.

13. Learned Counsel for the petitioner submits that as Section 22 of the MMDR Act read with Rule 15 of the 2007 Rules clearly provides that no Court shall take cognizance of offence punishable under the said Act except upon a written complaint in writing made by the concerned authority or person authorised in that behalf, the impugned FIR filed by the opposite party No. 2 is not maintainable in

law. In this regard, he has relied upon a Division Bench decision of this Court in the case of *Rabinarayan Sahu v. Forest Range Officer of Soroda Range and Ors.* 2008 (II) OLR 592, in support of his contention that it is well settled in law that when the legislature mandates that a statutory authority must discharge his duties in a particular manner, it is incumbent upon the said statutory authority to do so in the manner as stipulated in the statute or not at all. Where a power is given to do certain things in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden.

14. In the case of *Prabha Shankar Dubey v. State of Madhya Pradesh* : (2004) 2 SCC 56, which was a case arising out of the Narcotic Drugs and Psychotropic Substances Act, 1985, the Hon'ble Supreme Court reiterated the principle that if the thing is required to be done in a particular way, it should be done in that way by strictly complying with the requirement of law and failure to comply with such requirement was held to be fatal to the prosecution.

15. Learned Counsel for the petitioner has also relied upon a decision of this Court in the case of *Sri Jaiprakash Pandey and Ors. v. State of Orissa* (2008) 41 OCR 550 : 2008 (Supp.II) OLR (NOC) 1119 wherein it has been laid down that whenever there is parallel provision in a general statute and special statute, the provision of the special statute shall prevail over the general statute.

16. The aforesaid provisions contained in Section 22 of the MMDR Act and Rule 15 of the 2007 Rules, makes it abundantly clear that no Court shall take cognizance of offence punishable under the said Act or the 2007 Rules made thereunder, except upon a complaint in writing made by the competent authority or person authorised in that behalf by the Central Government or the State Government.

17. The aforesaid provisions of the Act and the 2007 Rules clearly provided that criminal prosecution can be launched only on the basis of a written complaint filed in that regard by the competent authority or the person authorised in that behalf and not otherwise. Hence a reading of the aforesaid provision makes it clear that no FIR can be registered by the police for any offence committed under Section 21 of the MMDR Act and the said provision does not contemplate investigation in a

normal way by the police on the basis of an FIR but only on the written complaint to be presented to the concerned Court.

18. Learned Addl. Government Advocate has made a feeble attempt to support the criminal prosecution launched against the petitioner on the basis of the impugned FIR, on the plea that there is no specific legal bar for filing of such FIR and for the police to investigate the same and file final form before the concerned Magistrate, as per the provisions of the Code of Criminal Procedure.

19. In the instant case, the Deputy Director of Mines, Sambalpur, opposite party No. 2 having filed written report before the IIC, Barkot Police Station, Deogarh, which has been registered as Barkot P.S. Case No. 66/2008, under Section 379 IPC and Section 21 of the MMDR Act, I am of the considered view that the said proceeding is not maintainable in view of the clear provisions contained in the MMDR Act and the 2007 Rules.

20. Applying the principles of law as discussed above to the facts of the present case and in view of the provisions contained in Section 22 of the MMDR Act and Rule 15 of the 2007 Rules, the impugned FIR and the corresponding G.R. Case No. 326 of 2008, pending in the court of learned S.D.J.M., Deogarh, cannot be sustained and the same are accordingly quashed.

21. It is open for the opposite party No. 2 or any other competent authority to initiate appropriate proceeding against the petitioner by way of a complaint in writing made to the concerned Court for the alleged offence, in accordance with law. The petitioner is also at liberty to ask for compounding of the alleged offence, by making necessary written application to the competent authority, which shall be considered and disposed of in accordance with law.

The writ petition is accordingly allowed.