

Vivek Kumar and Anr Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Nov-05-2015

Appellant : Vivek Kumar and Anr

Respondent : State of Jharkhand

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. M.P. No. 1071 of 2007
1. Vivek Kumar, S/o Vijay Agrawal, R/o Vivek Store, Lohardaga, P.S. & Dist.- Lohardaga 2. Umesh Kumar Gupta @ Umesh Prasad Gupta, R/o Upper Bazar, Mahavir Chowk, Lohardaga, P.S. & Dist.- Lohardaga Petitioner(s) Versus 1. The State of Jharkhand 2. Abdul Gaffar Ansari Opp. Parties Coram: HONBLE MR. JUSTICE RAVI NATH VERMA For the Petitioner(s) : Mr. Nilesch Kumar, Adv. For the State : Addl. P.P. 06 /05.11.2015 Invoking the inherent power of this Court under Section 482 of the Code of Criminal Procedure (for short the Code), the two petitioners have moved this Court with prayer to quash the entire criminal proceeding pending against them in connection with Lohardaga P.S. case no. 86 of 2007 for the offence under Section 15 of the Environment (Protection) Act, 1986.

2. The prosecution case as it appears from the FIR lodged at the instance of one Abdul Gafar Ansari, the Sanitary Inspector of Lohardaga Municipality in short is that the two shops of the petitioner were inspected by the authority, and from their shops banned plastic bags of less than 20 micron and also less than 8x 12 of size for delivery of articles were recovered. It is also alleged that two petitioners who

are owners of those shops.

3. Learned counsel appearing for the petitioner seriously contended that initiation of the proceeding by lodging FIR is itself bad in law in view of the specific provision under Section 19 of the Environment (Protection) Act, 1986 wherein only complaint can be filed before competent court. It was also submitted that Section 2 (d) of the Code of Criminal Procedure defines a complaint which specifically excludes a lodging of FIR and section 19 of the above Act clearly lays down that no court shall take cognizance of an offence under the Environment (Protection) Act, 1986 except on a complaint and since the FIR has been lodged, the entire criminal proceeding is bad in law and deserves to be quashed. It was also submitted that the informant who was the Sanitary Inspector was not competent or authorized under the Act to make a complaint in writing. Learned counsel further relying upon a judgment in a case of Man Mohan Singh and Ors. vs. Kishor Kumar Gandhi & Anr. [2008 (2) East Cr C532(JHr)] submitted that in the said case, after going through the provision of law, the initiation of the proceeding itself was held to be not sustainable, as the FIR was lodged in contravention of the provision of the Act.

4. Learned counsel representing the State submitted that the informant was authorized to make a complain in writing and merely in place of complain, he has lodged FIR. At the initial stage, the entire proceeding can not be quashed.

5. Having heard the learned counsel appearing for the parties and after going through the records, I find that the present FIR has been lodged against two petitioners for the offence punishable under Section 15 of Environment (Protection) Act, 1986. The said provision deals with the penalty for contravention of the provision of the Act and the rules, order and directions.

6. Section 19 of the said Act deals with the cognizance of offence and it specifically speaks of that no court shall take cognizance of any offence under this Act except on a complaint made by the Central Government or by any authority or officer authorized in this behalf by the Government or by any person who has given notice not less than sixty days in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government. In the

case, Man Mohan Singh & Ors. (supra), the court while considering the issue of lodging of FIR under the provision of Environment (Protection) Act, 1986, has held in paragraph 7, 10 and 11 as follows:-

7. After going through the provisions of law as well as the directions given in the PIL, it appears that the law provides for filing a complaint before the appropriate authority for violations of the provisions of the Act and Rules.

10. From the facts available on records, it appears that the premises of the petitioners were searched by the Regional Officer, Jamshedpur on being authorised by Annexure-B which clearly mentions that FIR be lodged which is not in the scheme of the Environment Protection Act, 1986. Section 19 of the said Act may be quoted: No Court shall take cognizance of any offence under this Act except on a complaint made by- (a) The Central Government or any authority or officer authorised in this behalf by that Government: or (b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government officer authorised as aforesaid.

11. In such view of the facts, the Regional Officer has lodged the FIR in contravention of the provisions of the Act. As such, I find that the initiation of the proceeding itself cannot be sustained.

7. In view of the ratio decided in the above case, no court shall take cognizance of any offence under this Act except on a complaint made by a competent authority or an officer authorized in this behalf by that Government. In the instant case, the FIR has been lodged by the informant, the Sanitary Inspector of Lohardaga Municipality and the learned counsel for the State has not produced any notification to show that the said informant was authorized to lodge the complaint. Apparently, FIR has been lodged in place of filing the complaint in writing. Thus, the very initiation of the criminal proceeding in the light of the above judgment is not sustainable.

8. In view of the above discussion and after considering the entire factual aspects, I find merit in this application. Accordingly, this application is, hereby, allowed.

Consequently, the entire criminal proceeding in connection with Lohardaga P.S. case No. 86 of 2007 corresponding to G.R. No. 305 of 2007 is, hereby, quashed. (R.N.Verma, J.) Smita/-

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