

Mohammad Shabir. Mohammad Shabir. Vs.

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Court : Jharkhand Ranchi

Decided On : Apr-28-2011

Judge : D.K. Sinha, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482, 173; Indian Penal Code (IPC) - Sections 468, 471, 414, 420, 467, 34; [Constitution of India](#) - Article 226

Appeal No. : Cr.M.P.No. 1446 of 2010.

Appellant : Mohammad Shabir.

Respondent : The State of Jharkhand.

Advocate for Def. : Mr. Sekhar Sinha, Advs.

Advocate for Pet/Ap. : Mr.Ajay Kumar Pathak; Mr. Deepak Kumar, Advs.

Judgement :

1. The petitioners have invoked the inherent jurisdiction of this Court under section 482 of the Code of Criminal Procedure for quashment of the entire criminal proceeding including the order dated 19.12.2008 by which cognizance of the offence was taken by the CJM Dhanbad against the petitioners and others under sections 468/ 471/414 /420/ 467/ 34 of the Indian Penal Code in Chirkunda P.S. Case No. 188 of 2003 corresponding to G.R. No. 3348 of 2003 now pending before the court of SDJM Dhanbad.

2. The brief fact of the case is that while the opposite party No.2 A.S.I. of police was on patrolling duty, he received tip off that a truck No. BR-2A-3242 was carrying steam coal on the name of a factory which had no existence and thereby, on forged and fabricated documents. On such information he intercepted the truck but the driver fled away and in course of search of the cabin of the truck, he found two Challans vide No. 14 dated 14.11.2003 with destination of the coal to Supreme Industries, Raniganj(West Bengal) and another challan No. C-56718 dated 14.11.2003 issued by Sikni Coal Porject,Latehar dispatched to Supreme Industries ,Chirkunda, Dhanbad with the name of the customer/ purchaser Md. Islam. Certain other discrepancies were also found between the Weigh Bridge Slip issued by Sikni Coal Project and second Weigh Bridge slip with the variation of weight of the steam coal in both the challans. Finding such discrepancies, the informant enquired into the existence of Supreme Industries either at Chirkunda or at Raniganj but it could not be traced out at any of the places and finding that fraud was played, he instituted FIR against the accused being the owner of 'Sahu Transport', the driver, purchaser of coal and the owner of the truck. The informant gathered that the transport challan was issued for the destination Supreme Industries, Raniganj (W B.) whereas coal challan was for the destination Supreme Industries, Chirkunda.

3. The learned counsel appearing for the petitioners submitted that the transporter Shiv Prasad Sahu, who had supplied the truck to Md. Islam for transportation of coal, was exonerated from his criminal liability by order of this Court recorded in W.P.(Cr.) No. 46 of 2007 on 5.2.2008 and his entire criminal proceeding arising out of Chirkunda(Galfabari)P.S. Case No. 188 of 2003 was set aside. The petitioner No.1 Mohammad Shabir is the owner whereas the petitioner No.2 Surender Oraon was the driver of the truck No. BR-2A-3242 which was intercepted by the police merely on suspicion and it was alleged that two documents disclosed two destinations of the coal to be transported .The petitioner No.1 Mohammad Shabir had supplied his truck with the driver thereon i.e the petitioner No.2 Surender Oraon to the transporter which was owned by the co-accused Shiv Prasad Sahu who on demand send the said truck for transportation of coal against the valid documents and therefore, in the facts and circumstance, no offence much less the offence alleged in which cognizance of the offence was

taken could be attracted against the petitioners i.e the owner and driver of the truck .

4. The Jharkhand State Mineral Development Corporation Limited used to deal in coal through its Sikni Coal Unit on free sale basis and the coal purchased from the said Corporation could be taken to any place in India without hindrance or violation of any relevant law, as such, the learned counsel further submitted that the coal, which was purchased by Md. Islam from Sikni Coal Project on 14.11.2003 was being taken to Chirkunda but in the meantime, it was intercepted by the O.P. No.2 on its way to Chirkunda. Finally it was submitted that though FIR was instituted on 18.11.2003 but no police report under section 173 Cr.P.C. could be submitted by the Investigating Officer within a span of 8 years for the reasons best known to the Investigating Officer.

5. The learned counsel further submitted that this Court while disposing of W.P.(Cr.) No. 46 of 2007 on 5.2.2008 observed arising out of the same and similar case that the Jharkhand State Mineral Development Corporation Limited issued a certificate in favour of Md. Islam on his demand certifying thatd. Islam was D.O. holder and the truck of the petitioner No.1 bearing registration No. BR-2A-3242 was carrying steam coal about 14.920 M.T., dispatched vide challan No. C-56718 dated 14.11.2003 from Sikni Coal Project to Supreme Industry, Chirkunda Dhanbad with the signature and seal of the authority of JSMDCL.

6. No counter affidavit has been filed on behalf of the State to controvert the contention as to whether charge sheet has been submitted under section 173 Cr.P.C. or not against the petitioners though the case was instituted in the year 2003. The learned A.P.P. did not controvert the contentions of the petitioners that petitioner No.1 had supplied his truck to the transporter co- accused Shiv Prasad Sahu,. Proprietor of 'Sahu Transport', for transportation against freight and it was given for the transportation of coal of Md. Islam. The Transporter preferred a writ petition by invoking the extraordinary jurisdiction of this court under Article 226 of the [Constitution of India](#) for setting aside his criminal prosecution which was allowed by a detailed order recorded in W.P(Cr.) No. 46 of 2007 on 5.2.2008.I find that there was no nexus between the petitioners directly with the person who had

taken their truck against freight from the transporter Shiv Prasad Sahu and for the reasons stated I find that the case of the petitioners stands on better footing than that of the transporter Shiv Prasad Sahu for consideration.

7. In the result, the entire criminal proceeding of the petitioners Mohammad Shabir and Surender Oraon arising out of Chirkunda P.S. Case No. 188 of 2003 corresponding to G.R. No. 3348 of 2003 pending before the court of SDJM, Dhanbad is set aside and this petition is allow

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