

Tirath Singh Vs. State of Bihar

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Court : Jharkhand

Decided On : Jan-10-2013

Appellant : Tirath Singh

Respondent : State of Bihar

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Rev. No. 156 of 2000 (R) Tirath Singh Petitioner Versus The State of Bihar (Now Jharkhand) Respondent ----- CORAM : HONBLE MR. JUSTICE H. C. MISHRA For the Petitioner: Mr. Jai Prakash, Sr. Advocate, Mrs. Chaitali C.sinha, Advocate, Mr. Yogesh Modi, Advocate, For the Respondent: Mr. Moti Gope, A.P.P. ----- C.A.V. on 29.11.2012 Pronounced on 10.01.2013 ORDER H.C.Mishra,J.

: Heard learned counsel for the petitioner and the learned counsel for the State.

2. The petitioner is aggrieved by the order dated 03.04.2000 passed by Sri A. K. Singh, learned Judicial Magistrate, Dhanbad, in Govindpur (Barwadda) P.S. Case No. 111 of 1999, corresponding to G.R. No. 1248 of 1999, whereby the application filed by the petitioner for discharge, under section 239 of the Cr.P.C., has been dismissed by the Court below, holding that there are sufficient materials on record to frame the charge against the petitioner under Rule 40(1) of the Bihar Minor Mineral Concession Rules, 1972 (herein after referred to as the Rules), under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 (herein after referred to as the Act) and Section 379 of the Indian Penal Code, and the case was fixed for framing of the charge.

3. The facts of the case lie in a very short compass. The petitioner was found engaged in manufacturing bricks after illegal mining of soil and accordingly, the F.I.R. was lodged on the basis of the written report submitted by the District Mining Officer, Dhanbad, on 22.04.1999 stating that clay is a minor mineral within the meaning of the Rules, and due to illegal extraction of the clay, the petitioner was liable under the provisions of Rule 40(1) of the said Rules and under section 21 of the Act, and in view of the fact that the petitioner was also causing loss of the Government revenue, he had also committed the offence under Section 379 of the Indian Penal Code. On the basis of the letter of the District Mining Officer, Dhanbad, to the aforementioned effect, the FIR was lodged and investigation was taken up.

4. It appears from the impugned order that after investigation the police submitted the charge-sheet against the petitioner under Rule 40(1) of the Rules, under Section 21 of the Act and Section 379 of the Indian Penal Code, but the cognizance of the offence was taken only under Section 379 of the Indian Penal Code and not under Rule 40(1) of the Rules or Section 21 of the Act.

5. It appears that in the meantime the petitioner made the payment of royalty of Rs.25,580/- to the State Government vide Treasury Challan, and the information to that effect was given by the District Mining Officer to the Officer In-charge of Barwadda Police Station vide letter contained in Memo No. 494 dated 04.05.1999, informing that the petitioner has already paid the royalty and as such necessary action may be taken. The said letter has been brought on record as Annexure-2 to this application. It appears from the impugned order that the Court below has also taken note of the fact that the petitioner had made the payment of the royalty to the State Government through Treasury Challan.

6. Learned counsel for the petitioner has submitted that the impugned order passed by the Court below is absolutely illegal, in as much as, the case was instituted as a police case and the cognizance is barred under Rule 41 of the Rules as also Section 22 of the Act, as both of them provide that no cognizance of any offence punishable under the Act and Rules shall be taken except upon complaint in writing by the person authorized in this behalf. Accordingly, it was a fit

case for discharge. It has also been submitted that the offence under the Act and Rules are compoundable in nature, as Rule 42 of the Rules and Section 23A of the Act provide for compounding of the offence. It has been submitted by the learned counsel for the petitioner that in view of the fact that the royalty was accepted by the State Government and the District Mining Officer, Dhanbad, by his letter contained in Memo No. 494 dated 04.05.1999 had informed the police officer about the same asking him to take proper action, the case ought to have been dropped at that stage itself. Learned counsel has placed reliance upon a decision of the Patna High Court (Ranchi Bench) in *Sadanand Prasad Singh Vs. State of Bihar & Anr.*, reported in 1996 (2) East Cr C 80.(Pat.), in which in a similar case which related to the illegal mining of the stone chips and the accused had deposited the royalty, fines etc., and the Court was informed about the same, it was held that the offence was compoundable in nature. It was also held that Section 379 of the Indian Penal Code was not applicable to the facts of the case and the entire criminal proceeding was quashed. Placing reliance on the said decision, learned counsel has submitted that the impugned order cannot be sustained in the eyes of law.

7. Learned counsel for the State on the other hand has submitted that the offence is clearly made out against the petitioner for the offence under section 379 of the Indian Penal Code, as it was a case of loss of revenue to the State Government and on the basis of the material on record the Court below has found that the offence is made out against the petitioner. Learned counsel for the State has submitted that there is no illegality in the impugned order, worth interference in the revisional jurisdiction.

8. After having heard learned counsels for both the sides and upon going through the record, I find that the case has been instituted under Section 379 of the Indian Penal Code with the specific allegation that Section 379 of the Indian Penal Code is made out due to the loss of revenue caused to the State Government. It is apparent that the petitioner had deposited the amount of royalty and the information to that effect was also given by the informant, District Mining Officer, Dhanbad, to the police station. It is also apparent that the fact of depositing the royalty by the petitioner has been taken note of by the Court below also, in the

impugned order dated 03.04.2000.

9. In view of the fact that the petitioner had already deposited the royalty and the information to that effect was given by the informant, District Mining Officer, Dhanbad, to the concerned police station, as also in view of the fact that the offences under the Rules and the Act are compoundable in nature, I am of the considered view that the case of the petitioner is fully covered by the decision of the Patna High Court in Sadanand Prasad Singhs case (supra) and section 379 of the Indian Penal Code shall not be applicable to the facts of this case. I also find force in the submission of the learned counsel that the cognizance under the Act and Rules are barred on the police case and accordingly, the criminal proceeding against the petitioner is absolutely illegal. As such, the impugned order cannot be sustained in the eyes of law.

10. Accordingly, the impugned order dated 03.04.2000 passed by Sri A. K. Singh, learned Judicial Magistrate, Dhanbad, in Govindpur (Barwadda) P.S. Case No. 111 of 1999, corresponding to G.R. No. 1248 of 1999, is hereby set aside. Consequently, the petitioner stands discharged.

11. This application is accordingly, allowed. Let the Lower Court Record be sent back forthwith. (H.C.Mishra, J.) Jharkhand High Court, Ranchi. Dated the 10th of January, 2013. D.S./N.A.F.R.

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